Supreme Court on PENAL CODE

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About the Book

This three volume Digest gives the most comprehensive coverage of law laid down by the Hon'ble Supreme Court on Indian Penal Code, 1860 from its inception till date. It has been conceived and planned to enable the discovery of all the rulings, easily and quickly. It is based on the time-tested **SCC index system** that is now widely accepted and used.

Special Features

- For important sections, the rulings have been placed under **numerous topic headings** under a synopsis.
- Case law on closely related sections like Ss. 96-106 (Private defence), Ss. 299-304 (Culpable Homicide and Murder), and Ss. 415-420 (Cheating) has been synopsised *collectively* i.e. under one synopsis.
- Another novel feature is the treatment of Ss. 299-304 on which the case law spans almost two volumes out of the three-volume set. Entire case law on Ss. 299-304 can be studied in a unified manner under four major parts:
  - A. Culpable Homicide and Murder – Basic Principles
  - B. Culpable Homicide or Murder Involving Multiple Accused
  - C. Particular kinds of Culpable Homicide, Murder And/Or Other Offences
  - D. Trial, Sentencing and Other Issues
- Interconnection between the sub-headings under a section or a set of sections of the Penal Code is indicated by internal **cross-references**. There are also external cross-references to relevant provisions of CrPC, the Constitution, and also to cognate headings under Criminal Trial.
- Besides using the **topic and the statute approach**, it is also possible to conduct search through the **Table of Cases Digested** of all the three volumes.
- The Digest also contains **annotations, editorial notes and comments and coram details.**

यतो धर्मस्ततो जयः

SUPREME COURT ON
INDIAN PENAL CODE, 1860

Case law since 1950 till date

VOLUME 3

§§ [7401] to [11101]

(Ss. 299 to 304 *(contd.)* & Ss. 304-A to End)

"The law is the last interpretation of the law given by the last Judge." **—Anon.**

"Precedents keep the law predictable and so more or less ascertainable." **—Lord Devlin**

"There is no such thing as a judicial precedent on facts though counsel, and even judges, are sometimes prone to argue and to act as if they were." **—Bose, J., (1955) 2 SCR 1140, 1169**

"The law declared by the Supreme Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India." **—Syed Shah Mohammed Quadri, J., (2002) 4 SCC 388**

"The better wisdom of the Court below must yield to the higher wisdom of the Court above." **—O. Chinnappa Reddy, J., (1985) 1 SCC 260, 268**

"... the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted." **—Lord Diplock, (1972) 1 All ER 801, 874**

"Most of the decisions of the Supreme Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases."

—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22

"... a decision is not an authority for a proposition which did not fall for its consideration."

—S.B. Sinha, J., (2005) 4 SCC 649, para 256

"The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided." **—Arijit Pasayat, J., (2003) 7 SCC 197**

"The trend of judicial opinion is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience."

— R.C. Lahoti, C.J., (2005) 8 SCC 534, para 112

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs." **—Pathak, C.J., (1989) 2 SCC 754, 766**

"A decision is available as a precedent only if it decides a question of law."

—L.M. Sharma, J., (1992) 1 SCC 489, 491

"... the law is, what the judges say it is since the power to interpret the law vests in the judges."

—S. Ratnavel Pandian, J., (1994) 3 SCC 569, 625

"Precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts." **—N. Santosh Hegde, J., (2000) 1 SCC 644, para 12**

"The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of the Supreme Court." **—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22**

"... a judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says." **—B.P. Jeevan Reddy, J., (1993) 2 SCC 368, 393**

"Judicial propriety, dignity and decorum demand that being the highest judicial tribunal even *obiter dictum* of the Supreme Court should be accepted as binding. ... But statements on matters other than law have no binding force." **—Krishna Iyer, J., (1975) 1 SCC 794**

"Taking recourse to the doctrine of stare decisis would be an imperative necessity to avoid uncertainty and confusion." **—U.C. Banerjee, J., (1999) 4 SCC 11, para 16**

"It is not everything said by a Judge while giving judgment that constitutes a precedent. ... The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent" **—K. Ramaswamy, J., (1996) 6 SCC 44, 51, 52**

Supreme Court on Indian Penal Code, 1860

containing

case law since 1950 till date
in THREE VOLUMES

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Vol. 3

INDIAN PENAL CODE, 1860

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&
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Supreme Court on Indian Penal Code, 1860

PREFACE

Amongst the abiding principles of our Constitution is the one stated in Article 141 that the law declared by the Hon'ble Supreme Court is binding on all courts within India. It is therefore imperative for everyone concerned with law within our legal system to know and understand what this binding law is. For this the rulings lying embedded in the learned judgments and orders of the Hon'ble Judges are to be culled out and made accessible, with proper citations to locate them in authentic law reports. Since one may discover many rulings on the same point, bench strength and the date of decision are also relevant under the doctrine of precedent.

Coverage and Method

The present digest, covering the law laid down on the Indian Penal Code, 1860 by the Supreme Court since 1950 to date, has been designed particularly to meet the above need. It has been conceived and planned to enable the discovery of all the rulings, easily and quickly. It is based on the time-tested SCC index system that is now widely accepted and used.

Synopsisation and Systematic arrangement of case law where number of rulings on a section or set of sections is very large

But the search for the relevant rulings would still be tedious if they were not systematically arranged. Particularly for those sections where the number of rulings is large, the same have been placed under numerous sub-headings mentioned in the synopsis. Interconnection between the sub-headings is indicated by cross-references. Also no effort has been spared in making this digest most comprehensive and detailed.

Table of Cases Digested: Looking at dockets nearby

Besides using the topic and the statute approach, it is also possible to conduct a search through the Table of Cases Digested (of all three Volumes) provided in Vol. 1. Since digest notes on the same or similar points are naturally placed close to each other, by locating the digest notes on any known case from the Table of Cases Digested, other relevant rulings on that point can easily be located nearby. For convenience the docket numbers are indicated at the top corners of the pages. The Table of Cases Digested is also a convenient source for finding the citation and cross-citations of any decision.

Annotations, notes and comments

This Digest also contains annotations under some digest notes with respect to earlier connected cases of the Supreme Court and the High Courts, especially those appealed against, and some editorial notes and comments.

Coram details: Names of Hon'ble Judges and author(s) of the opinion(s)

Another feature of interest is that below each ruling are given the names of the Hon'ble Judges who constituted the Bench which heard the matter, with the name of the Hon'ble Judge(s) who has/have given the opinion(s) indicated in bold. In case of several opinions in a case, the superscript numbers after the names of Judges indicate the sequence of the opinions as well as which other Judges signed each of those opinions.

Updation

For case-law of the future the readers are advised to consult the Supreme Court Criminal Digest, 2011 or the Supreme Court Yearly Digest, 2011; and similarly for later years.

Acknowledgement

An analytical, systematic and comprehensive work such as this necessarily involves the combined effort of several persons. Each one of them has contributed in his own way. The merit and accuracy of this work therefore is the result of their dedication, commitment, sustained effort and team work. We warmly appreciate their efforts and contribution and they can justly feel proud of this publication.

Appreciation, and our commitment

We equally appreciate and value the goodwill and continued support received from our subscribers and readers. In trying to provide through Supreme Court Cases™ (SCC) and various digests all the rulings of the Supreme Court we seek to fulfil our own commitment to serve the legal profession as well as the cause of justice.

— Authors and Publishers

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(g) Fine

See also CRIMINAL TRIAL — '220.(j) Fine', pp. 111 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7401] — S. 302 — Fine— Deceased murdered in a brutal manner — Award of life imprisonment — *Imposition of a fine of Rs 25,000 by the High Court on application by complainant for enhancement of sentence, held, not unjustified in the facts and circumstances of the case. Ram Kumar* v. *State of Haryana*, 1997 SCC (Cri) 1087: AIR 1996 SC 3185: 1996 Cri LJ 2441.

Bench Strength **2**. Coram: *G.N. Ray* and **S.B. Majmudar**, JJ. [Date of decision: 12-4-1996]

[7402] — S. 302 — Sentence — For conviction under S. 302, appellant sentenced to life imprisonment and fine of Rs 50,000 imposed with default stipulation, by the trial court — *High Court in appeal, confirming the conviction and sentence — Neither the trial court nor the High Court recording any reason for awarding such exemplary fine — Hence, fine reduced to Rs 1000 with default stipulation (Paras 3 and 4). Omanakuttan* v. *State of Kerala*, (2006) 10 SCC 197: (2006) 3 SCC (Cri) 481.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 20-1-2006]

[7403] — Ss. 302/34 — On facts, held, that after imposing the death sentence it was not necessary to further impose a fine of Rs 2000. *Dalip Singh* v. *State of Punjab*, (1979) 4 SCC 332: 1979 SCC (Cri) 968: AIR 1979 SC 1173: 1979 Cri LJ 700.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 12-1-1979]

[7404] — Ss. 304 Pt. II and 309 — Sentence under — Steep sentence of fine when preferable to imprisonment — *Appellant, a young man, along with his companion, unaware of deafness of the victim, beating him to unconsciousness for making noise despite protest — A few days (eight days in this case) later the beating culminating in death, the victim leaving behind his widow and an unmarried daughter — Feeling remorse both the accused unsuccessfully attempting to commit suicide — The present appellant already remaining in jail for about seven months — In such circumstances, in appeal by appellant alone, sentence under S. 304 reduced from five years' R.I. to the sentence already undergone but fine enhanced from Rs 3000 to Rs 1,00,000 out of which Rs 75,000 directed to be paid to the victim's widow and Rs 25,000 to the daughter — Sentence of six months' R.I. under S. 309, upheld. Venkatesh* v. *State of T.N.*, 1993 Supp (3) SCC 301: 1993 SCC (Cri) 995: AIR 1993 SC 1230: 1993 Cri LJ 61: 1993 (1) MWN (Cr) 317.

Bench Strength **2**. Coram: *P.B. Sawant* and *N. Venkatachala*, JJ. [Date of decision: 9-9-1992]

(h) Life Sentence

See also CRIMINAL TRIAL — '220.(l) Life sentence', pp. 114 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7405] — S. 302 — Award of life imprisonment for offence under Ss. 302/34 is proper being the minimum sentence which could be imposed. *Dilip Kumar Sharma* v. *State of M.P.*, (1976) 1 SCC 560: 1976 SCC (Cri) 85: AIR 1976 SC 133: (1976) 2 SCR 289: 1976 Cri LJ 184.

Bench Strength **3**. Coram: **Y.V. Chandrachud**[1], *P.N. Bhagwati*[1] and **R.S. Sarkaria**[2], JJ. [Date of decision: 10-10-1975]

[7406] — S. 302 — Life imprisonment justified — Appeal against reversal of acquittal by High Court — Conviction upheld — *FIR immediately lodged — Strong motive to commit murder, established — Nothing to prove false implication — High Court properly appreciating evidence without any manifest error — Simply because there are some minor discrepancies in the evidence of witnesses* ***A***, ***RP*** *and* ***SA*** *with regard to time of incident, held, are not sufficient grounds to believe that appellant had been booked in a false case — CrPC, 1973, S. 379. Mahesh* v. *State of Maharashtra*, (2008) 13 SCC 271: (2008) 67 AIC 219 (SC): 2008 Cri LJ 3602.

Bench Strength **2**. Coram: *P.P. Naolekar* and **L.S. Panta**, JJ. [Date of decision: 10-4-2008]

[7407] — S. 302 — Sentence of imprisonment for life — Propriety — Gruesome murder — Perpetrated in cold-blood, premeditated and a well-organised manner — *Accused murdering his father-in-law, mother-in-law and their three minor children with a view to grab their property — Held, deterrent punishment called for — The ends of justice warranted that accused should be in jail in terms of S. 57 IPC — He shall not entitled to get the benefit of any remission either by the State or by the Government of India* (Paras 9 and 10). *Reddy Sampath Kumar* v. *State of A.P.*, (2005) 7 SCC 603: 2005 SCC (Cri) 1710: AIR 2005 SC 3478: 2005 Cri LJ 4131.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 8-9-2005]

[7408] — Ss. 302 and 57 — Sentence — Life imprisonment — *Means imprisonment for the whole of the remaining period of the convicted person's natural life unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 CrPC — In the peculiar circumstances of the case, apprehending imminent danger to the life of the eyewitness (PW 2) and his family in future, taking on record the statement made on behalf of A-1 that if he is sentenced to life imprisonment, instead of being awarded death sentence, he would never claim his premature release or commutation of his sentence on any ground, held, for him the imprisonment for life shall be imprisonment in prison for the rest of his life — He shall not be entitled to any commutation or premature release under S. 401 of the Code of Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the rules made for the purposes of grant of commutation and remissions* (Paras 21, 23 and 19). *Subash Chander* v. *Krishan Lal*, (2001) 4 SCC 458: 2001 SCC (Cri) 735: AIR 2001 SC 1903: 2001 Cri LJ 1825.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 29-3-2001]

Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 1 Cri LJ 736: (1961) 3 SCR 440; State of M.P. v. Ratan Singh, (1976) 3 SCC 470: 1976 SCC (Cri) 428; Sohan Lal v. Asha Ram, (1981) 1 SCC 106; Bhagirath v. Delhi Admn., (1985) 2 SCC 580: 1985 SCC (Cri) 280; Zahid Hussein v. State of W.B., (2001) 3 SCC 750, relied on

(i) Minimum Sentence/Minimum Statutory Sentence

> *See also* CRIMINAL TRIAL — '220.(m) Minimum sentence/Minimum statutory sentence', pp. 117 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7409] — Ss. 302 and 201 — Murder trial — Circumstantial evidence — Guilt established — Murder of wife after quarrel — Minimum sentence of 20 years' RI directed — *Accused-petitioner and his wife (deceased victim) quarrelled in evening and in night, on hearing cries of their child, when accused tried to wake up victim and she did not wake up, he assaulted her with a stick, causing severe internal and external injuries, resulting in her death — High Court affirming his conviction — Sustainability — Held, no direct and ocular evidence in the case, but fact that deceased found dead and petitioner informed villagers that she died of pain in her stomach, confirms fact that he was with her at time of her death — Furthermore, PW 1 (father of deceased) found face of deceased in swollen condition and clotted blood present on her mouth, on which he asked petitioner to report matter to police before burying dead body — However, conduct of petitioner in burying body of victim in disregard of such direction, created suspicion — Only on insistence of PW 1 body of victim exhumed, and thereafter, subjected to post-mortem examination which revealed fact that it was not simply a stomach pain which caused death of victim but several injuries which had been inflicted on her — Weapon of assault also recovered at instance of petitioner — Again, very fact that petitioner tried to hide evidence, resulted in his conviction under S. 201 also — In such circumstances, High Court justified in affirming petitioner's conviction — Minimum sentence of 20 years' RI directed* (Paras 3 to 5). *Ramraj* v. *State of Chhattisgarh*, (2010) 1 SCC 573.

Bench Strength **2**. Coram: **Altamas Kabir** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 10-12-2009]

(j) Plea Bargaining

> *See also* CRIMINAL TRIAL — '220.(n) Plea bargaining', pp. 121 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7410] — Ss. 304 and 307 — Plea bargaining — When can lead to miscarriage of justice — *Where a High Court Judge, relying on own earlier judgment as binding precedent, offering opportunity of plea bargaining to persons whose appeals against conviction and sentence under Ss. 304 or 307 IPC and other serious offences pending in High Court, and dangling bait of reduction of sentence to period already undergone, even if very short, held, such action would open a gate leading to serious miscarriage of justice — Use of Allahabad High Court judgment dated 15-10-1996 in Criminal Appeal No. 3407 of 1979, as a binding precedent suspended* (Para 1). *State of U.P.* v. *Nasruddin*, (2000) 10 SCC 336.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 8-10-1999]

(k) Principles for Sentencing

Synopsis

(i) Generally
(ii) Age of accused/Juvenile/State of accused
(iii) Delay/Pendency in proceedings/ Execution of sentence
(iv) Nature of Offence
(v) Provocation/Irresistable impulse to kill
(vi) Sentence not reduced/ Enhanced

35.(k) Principles for Sentencing

(i) Generally

See also CRIMINAL TRIAL — '220.(o)(i) Principles for sentencing — Generally', pp. 123 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7411] — S. 302 — Sentence — Considerations for determining

The determination of sentence in a given case depends on a variety of considerations, the more important being, the nature of the crime, the manner of its commission, the motive which impelled it and the character and antecedents of the accused. *Apren Joseph* v. *State of Kerala*, (1973) 3 SCC 114: 1973 SCC (Cri) 195: AIR 1973 SC 1: 1973 Cri LJ 185: (1973) 2 SCR 16.

Bench Strength **3**. Coram: *J.M. Shelat, Acting C.J.*[1] and **I.D. Dua**[1] and **H.R. Khanna**[2], JJ. [Date of decision: 1-9-1972]

[7412] — S. 304 Pt. II — Appellate or revisional courts — Power to reduce sentence — Tendency of reducing sentence to period already undergone without any application of mind, taken note of and seriously deprecated — *Discretion in passing sentence, held, is not absolute or whimsical — It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case — CrPC, 1973, Ss. 386, 401 and 399*

It has been noticed by the Supreme Court that the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. There is a need for the courts to apply its mind while imposing sentence. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. (Para 18)

In the instant case, the High Court while convicting the respondent for an offence punishable under Section 304 Part II IPC which has maximum sentence up to ten years thought it fit to impose the sentence already undergone without even applying its mind as to why it should be less than ten years or for that matter, what is the sentence already undergone. Such misplaced generosity on the part of the courts while imposing sentence is seriously deprecated. (Para 18). *State of Rajasthan* v. *Dhool Singh*, (2004) 12 SCC 546: AIR 2004 SC 1264: 2004 Cri LJ 931.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-12-2003]

(ii) Age of accused/Juvenile/State of accused

See also CRIMINAL TRIAL — '220.(o)(ii) Age of accused/Juvenile', pp. 151 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also under '(f)(ii)(2) Death Sentence — Age of accused', Vol. 2

[7413] — S. 302 — Sentence — Reduction of — Old age and sickness — Regard to — *Appellant-accused A-10, aged 87 years and suffering from Parkinson's disease, hypertension, diabetes with severe calcific AV stenosis, mild AR, moderate MR and anaemia of some degree — Moreover, he in jail for about three years — Hence, prayer to reduce his sentence of life imprisonment to period already undergone — Prayer rejected on ground that he was held guilty for being a member of unlawful assembly and sharing common intention with A-1, A-2, A-10, A-11 and A-12 to commit the murder of Deceased 2* (Para 57). *Bathula Nagamalleswara Rao* v. *State*, (2008) 11 SCC 722: (2008) 3 SCC (Cri) 898.

Bench Strength **2**. Coram: *P.P. Naolekar* and **L.S. Panta**, JJ. [Date of decision: 22-4-2008]

[7414] — Ss. 302/34 — Age — Appellant 55 at the time of offence now 70 — Conviction for Ss. 302/34, IPC upheld — *Murder bearing features of ruthlessness, unrelenting and determined vindictiveness — Retributive more than therapeutic approach in awarding punishment in the present facts essential — No interference with award of life imprisonment called for — CrPC, 1973, S. 354. Guvala China Venkatesu* v. *State of A.P.*, 1991 Supp (2) SCC 727: AIR 1991 SC 1926: 1991 Cri LJ 2326.

Bench Strength **2**. Coram: *K.N. Saikia* and *M.M. Punchhi*, JJ. [Date of decision: 5-12-1990]

Stephen: A History of the Criminal Law of England, (1883) pp 81-82, relied on

[7415] — Ss. 304 Pt. II & 323 — Appreciation of evidence — Appellant and his father (who died during pendency of trial) — *Charged with committing murder and assaulting PW 5, wife of the deceased — Deceased, aged 65 years, was suffering from ailments like tuberculosis, lung disease, etc. and cause of his death, which took place 10 days after the assault, was cumulative effect of the injuries suffered by him as well as his illness — Trial court convicted appellant under S. 304 Pt. II and S. 323 and sentenced him to 7 years' RI and one year's RI, respectively — High Court concurred with the trial court — Held, no reason to interfere with concurrent findings of fact — However, having* *regard to the fact that appellant at the time of the incident was in his late teens and also having regard to the age, physical condition of the deceased and cause of his death, 7 years' RI under S. 304 Pt. II being on the higher side, reduced to 3 years' RI but one year's RI under S. 323 maintained* (Paras 2, 3 and 4). *Lal Babu Jha* v. *State of Bihar*, (2007) 15 SCC 748.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 2-9-2003]

(iii) Delay/Pendency in Proceedings/ Execution of sentence

See also CRIMINAL TRIAL — '220.(o)(v) Delay/Pendency in proceedings/execution of sentence', pp. 159 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7416] — S. 302 — Alternate sentence — *Delay relevant factor for imposing lesser sentence*

The extremely excessive delay in the disposal of the case of the appellant would by itself be sufficient for imposing a lesser sentence of imprisonment for life under S. 302, IPC, prescribes two alternate sentences, namely, death sentence or imprisonment for life. When there has been inordinate delay in the disposal of the appeal by the High Court it seems to us that it is a relevant factor for the High Court to take into consideration for imposing the lesser sentence. The appellant was committed to trial by the Presidency Magistrate as early as July 31, 1963 and he was convicted by the Trial Judge on September 4, 1964. It is now January 1971 and the appellant has been for more than six years under the fear of sentence of death. This must have caused him unimaginable mental agony. It would be inhuman to make him suffer till the Government decides the matter on a mercy petition. This is a fit case for awarding the sentence of imprisonment for life. Accordingly the order of the High Court awarding death sentence is set aside and sentence of imprisonment for life awarded. *Vivian Rodrick* v. *State of W.B.*, (1971) 1 SCC 468: 1971 SCC (Cri) 192: AIR 1971 SC 1584: 1971 Cri LJ 1171.

Bench Strength **3**. Coram: **S.M. Sikri, C.J.** and *P. Jaganmohan Reddy* and *I.D. Dua*, JJ. [Date of decision: 27-1-1971]

[7417] — Ss. 302 & 201 — Sentence — Remission of, claimed on ground of delay in disposal of appeal — Appeal against acquittal — *Trial court's order of conviction under Ss. 302 and 201 IPC and sentence of life imprisonment and 3 years' RI (to run concurrently) upset and accused acquitted by High Court — Appeal against acquittal allowed by Supreme Court 14 years thereafter — Plea not to disturb High Court's judgment by asking the accused to serve out the sentence after such a long lapse of time not acceptable as that would amount to perpetration of injustice — Mere delay in disposal of appeal not sufficient to warrant non-interference with illegal, erroneous and perverse finding of the High Court. State of U.P.* v. *Dr. Ravindra Prakash Mittal*, (1992) 3 SCC 300: 1992 SCC (Cri) 642: AIR 1992 SC 2045.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 28-4-1992]

[7418] — Ss. 304 Pt. I/34 — Conviction under, held, justified having regard to overwhelming prosecution evidence to prove the case against the accused-respondents — Incident occurring in 1992 — *Several years lapsed since respondents were acquitted by High Court — Held, it would be just and proper to reduce their sentence of imprisonment from ten years to five years each* (Paras 5 and 6). *State of Rajasthan* v. *Maharaj Singh*, 2005 SCC (Cri) 90: AIR 2004 SC 4205: (2004) 98 Cut LT 686: 2004 Cri LJ 4195.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 3-9-2004]

[7419] — S. 304 Pt. II — Sentence — Reduction of — Ground of delayed adjudication — Case pending for 26 years — *Though accused's conviction under S. 302 Pt. II was justified, sentence reduced from 10 years' RI to 5 years' RI* (Para 15). *Umapada Kayal* v. *State of W.B.*, (2010) 1 SCC 161.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 6-10-2009]

[7420] — S. 304 Pt. II — Sentence of five years' RI under — Delay in proceedings — Effect — *Sentence of five years is not unduly harsh, considering that a life was lost and that too without any justification* (Para 29). *Bhagwati Prasad* v. *State of M.P.*, (2010) 1 SCC 697.

Bench Strength **3**. Coram: *R.V. Raveendran*, **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 3-12-2009]

[7421] — S. 304 Pt. II r/w S. 149 and S. 147 — Factors/Considerations — Incident taking place long time back — Death of victim due to injuries inflicted on him by five accused persons with lathis/dandas — *All accused (including three appellant-accused herein) convicted under S. 304 Pt. II r/w S. 149 and S. 147 and sentenced to four years' RI — Defence contention before Supreme Court that since incident took place about 28 years back, sentence of four years' RI was harsh punishment —*

35.(k)(iv) Principles for Sentencing — Nature of Offence

Tenability — Held, in fact, punishment was on lenient side, as one young life was lost at the age of 22 years — While considering sentence, merely because appeal remained pending and merely because incident took place long back, would not by itself justify any interference with punishment, particularly, when punishment itself is a lenient one (Para 13). *Sunil Kumar* v. *State of U.P.*, (2010) 2 SCC 5.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-1-2010]

(iv) Nature of Offence

See also CRIMINAL TRIAL — '220.(o)(vi) Nature of offence', pp. 171 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also 'A.2.(c)(vi) Sentence under S. 304 Pts. I/II',

'B.3.(k) Common intention (S. 34) — Sentence', and

'B.4.(m) Common object (Ss. 141 to 149) — Sentence' in Vol. 2

[7422] — Ss. 302, 149 and 147 — Intention to kill — Sentence — *Two fatal injuries on head sustained by deceased resulting in extensive fractures of scalp and injury to the brain tissues — Other injuries on vital as well as non-vital parts, some of which grievous being fractures, also sustained by deceased — Held, intention to kill was writ large — Accused persons not entitled to lesser sentence. Juthel* v. *State of M.P.*, (1996) 11 SCC 282: 1997 SCC (Cri) 190: AIR 1995 SC 1455.

Bench Strength 2. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-1-1995]

[7423] — Ss. 302/34 — Sentence — Use of weapons not indiscriminate — Effect — *Early release could be considered where accused had already served more than 14 years* (Para 4). *Jayaram Shiva Tagore* v. *State of Maharashtra*, 1991 Supp (2) SCC 677: AIR 1991 SC 1735: 1991 Cri LJ 2192.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 7-12-1990]

[7424] — S. 304 Pt. I or Pt. II — Offence being under Part II and not Part I, sentence of 3 years' RI instead of 7 years' RI considered proper, while maintaining fine of Rs 10,000 to be given to dependants of the deceased — *But considering the circumstance that the accused had to pass mental and financial ordeal for more than a decade when the occurrence had taken place, his substantive term of imprisonment reduced to the period of imprisonment of more than a year already undergone — Sentence of fine however, maintained. Mohinder Pal Jolly* v. *State of Punjab*, (1979) 3 SCC 30: 1979 SCC (Cri) 635: AIR 1979 SC 577: 1979 Cri LJ 584: 1979 MLJ (Cri) 413.

Bench Strength 2. Coram: **N.L. Untwalia** and *O. Chinnappa Reddy*, JJ. [Date of decision: 14-12-1978]

(v) Provocation/Irresistable impulse to kill

See also '(f)(ii)16. Death Sentence — Aggravating and mitigating circumstances — Mental state and intention: Provocation/ Irresistable impulse to kill, enmity, etc. or Premeditated/Cold-blooded murder, etc.', in Vol. 2

[7425] — S. 300, Exception 1 — Plea of irresistible impulse — *Though not a defence to the charge it can be considered in the award of punishment*

The previous history of the accused which shows a certain amount of lack of control and a sense of grievance together with certain abnormalities of mind which had been noted in documents long before the incident, give a feeling that it was an act of a person who was easily excited and therefore likely to be moved by irresistible impulses. Although under our present law the plea of irresistible impulse is not yet accepted as a defence to a charge of murder, it may be taken into account in assessing the true punishment to be given in a given case.

It is not necessary to lay down any law on the subject of awarding of death penalty and imprisonment for life. All that can be said is that both the sentences are legal and the courts have a discretion in the matter in the light of the circumstances existing in each case. *Brij Kishore Pandey* v. *State of U.P.*, (1971) 3 SCC 931(2): 1972 SCC (Cri) 179(2).

Bench Strength 3. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 2-2-1970]

[7426] — Ss. 300, Exception 1 & 302 — Murder under provocation — *Provocation though not grave enough to justify the killing would justify award of lesser penalty — Murder of mistress on suspicion of infidelity. Vasant Laxman More* v. *State of Maharashtra*, (1974) 4 SCC 778: 1974 SCC (Cri) 688: AIR 1974 SC 1697: 1974 Cri LJ 1166.

Bench Strength 2. Coram: *H.R. Khanna* and **Y.V. Chandrachud**, JJ. [Date of decision: 19-7-1974]

(vi) Sentence not Reduced/Enhanced

See also CRIMINAL TRIAL — '220.(o)(xi) Sentence not reduced/enhanced', pp. 196 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7427] — S. 302 — Murder Trial — Appeal to High Court against conviction under S. 302 and sentence of life imprisonment — *Held, High Court not justified in enhancing the sentence by imposing additional sentence of fine of Rs 5000 and in default 2 years' RI without issuing show cause notice to the accused and without affording the accused opportunity to the heard — Hence the additional sentence set aside — CrPC, 1973 — Ss. 374 and 386. Surjit Singh* v. *State of Punjab*, 1984 Supp SCC 518: 1985 SCC (Cri) 90: AIR 1984 SC 1910(2).

Bench Strength **2**. Coram: *D.A. Desai* and *Ranganath Misra*, JJ. [Date of decision: 31-8-1984]

(l) Particular cases

(i) Dowry death/Bride burning

See also CRIMINAL TRIAL — '220.(p)(i) Dowry death', pp. 198 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See '(f)(ii)18. Death Sentence — Aggravating and mitigating circumstances — Dowry death/Bride burning', and

'C.9. Dowry death/Bride burning (S. 304-B)' in Vol. 2, and

See also S. 304-B IPC

(ii) Rape and Other Sexual Offences

See also CRIMINAL TRIAL — '220.(p)(vii) Rape and other sexual offences', pp. 206 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See '(f)(ii)20. Death Sentence — Aggravating and mitigating circumstances — Rape and murder', and

'C.19. Rape & other sexual offences' in Vol. 2, and

See also Ss. 375 to 375-D

(iii) Other

See also CRIMINAL TRIAL — '220.(p)(viii) Other offences', pp. 218 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7428] — Ss. 302 & 304 Pt. I — Accused, Director of Physical Education, firing gunshots at a body of unruly students when they had surrounded him asking for fulfilment of their demand — *Held, on facts, the gun was brought by the accused for his protection against the aggressive posture of the students and its firing was caused by the accused losing nerve in the face of the students' fury — Life sentence reduced to imprisonment for seven years. Jagat Singh* v. *State of Haryana*, (1977) 1 SCC 225: 1977 SCC (Cri) 95: AIR 1976 SC 2619: 1976 Cri LJ 2002.

Bench Strength **3**. Coram: *P.N. Bhagwati*, **A.C. Gupta** and *P.N. Shinghal*, JJ. [Date of decision: 4-11-1976]

(m) Sentence already undergone

See also CRIMINAL TRIAL — '220.(q) Sentence already undergone', pp. 219 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7429] — S. 304 Pt. II — Appellate or revisional courts — Power to reduce sentence — Tendency of reducing sentence to period already undergone without any application of mind, taken note of and seriously deprecated — *Discretion in passing sentence, held, is not absolute or whimsical — It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case — CrPC, 1973, Ss. 386, 401 and 399*

It has been noticed by the Supreme Court that the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. There is a need for the courts to apply its mind while imposing sentence. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. (Para 18)

In the instant case, the High Court while convicting the respondent for an offence punishable under Section 304 Part II IPC which has maximum sentence up to ten years thought it fit to impose the sentence already undergone without even applying its mind as to why it should be less than ten years or for that matter, what is the sentence already undergone. Such misplaced generosity on the part of the courts while imposing sentence is seriously deprecated. (Para 18). *State of Rajasthan* v. *Dhool Singh*, (2004) 12 SCC 546: AIR 2004 SC 1264: 2004 Cri LJ 931.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-12-2003]

(n) Set-off

[7430] — Ss. 302, 307 and 333 — Benefit of set-off — Entitlement to — *Appellant-accused convicted under Ss. 302, 307 and 333 IPC and sentenced to life imprisonment — While sentencing him, trial court, on basis of* Kartar Singh *case, (1982) 3 SCC 1, did not grant him benefit of set-off under S. 428 CrPC — Sustainability — Held,* Kartar Singh *specifically overruled by* Bhagirath *case, (1985) 2 SCC 580 — Hence, appellant entitled to benefit of set-off under S. 428 CrPC— CrPC, 1973, S. 428* (Paras 3 and 4). *Ranjit Singh* v. *State of Punjab*, (2010) 12 SCC 506.

Bench Strength **2**. Coram: *Dalveer Bhandari* and *A.K. Patnaik*, JJ. [Date of decision: 4-1-2010]

Bhagirath v. Delhi Admn., (1985) 2 SCC 580: 1985 SCC (Cri) 280, relied on

Kartar Singh v. State of Haryana, (1982) 3 SCC 1: 1982 SCC (Cri) 522, held, overruled

36. Time of Occurrence

See also 'D.25.(r) Medical Jurisprudence/Evidence — Time of Death/Rigor Mortis', in Vol. 2

[7431] — S. 302 — Eyewitness, himself severely injured in the incident deposing that the murder of his father took place at 5.00 or 5.30 p.m. — *Having accepted his evidence for convicting some of the accused persons for assaulting the said eyewitness, held, the High Court could not have concluded that the incident took place between 6.30 and 7.00 p.m. and thereby discrediting the prosecution case — More so when the fact was corroborated by the evidence of other witnesses — Further, even if there was an unexplained gap of 1 or 1½ hours, held, the High Court could not refix the time of incident which was not even the case of defence at the trial*

Having accepted the evidence of PWs 1 and 2, who categorically stated that the incident took place at 5.00 or 5.30 p.m., and, relying thereupon, having convicted A-1, A-2 and A-3 (for assaulting PW 1) the High Court could not have concluded that it took place between 6.30 and 7.00 p.m. That apart, when read in the context of the evidence of PW 2 and PW 5 regarding the sequence of events and the sense of time of unsophisticated villagers the reasoning of the High Court to draw the above conclusion is wholly unsustainable. According to the above witnesses, after the incident took place PW 2 first went to the village to inform PW 5, father-in-law of PW 1. PW 5 came to the spot, saw the condition of PW 1, went back to the village, fetched a cart and took PW 1 to his house in the village. Thereafter he and PW 2 went out and brought a taxi and then took PW 1 to hospital which was at a distance of 35 kms and took them 45 minutes to reach in a jeep. When the above facts are taken into consideration the conclusion is inevitable that the prosecution story that the incident took place either at 5.00 or 5.30 p.m. cannot be doubted nor can it be said with precision that there was an unexplained gap of at least 1 to 1½ hours. Even if there was such an unexplained gap, the High Court could not have by back calculation, refixed the time of the incident at 6.30 p.m. or 7 p.m. (after sunset) which was not even the case of the defence during trial. *Kovvuri Surya Bhaskara Reddy* v. *State of A.P.*, (1998) 9 SCC 504: 1998 SCC (Cri) 1047: AIR 1998 SC 1570.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 3-3-1998]

[7432] — S. 302 — Murder in daytime — High Court raising question as to why somebody would choose such time to commit a murder — Propriety — *Said question, held, hypothetical — What is in the mind of a person and the reason for doing a thing is an aspect within the special knowledge of the accused — The prosecution is not supposed to meet every hypothetical question raised by the defence — Evidence Act, 1872, Ss. 106 and 101*

The High Court has raised a question of conjectures as to why somebody would choose day break time to commit a murder. Since the question is hypothetical, the answer to it would also be hypothetical. What is in the mind of a person and the reason for doing a thing is an aspect within the special knowledge of the accused. The prosecution is not supposed to meet every hypothetical question raised by the defence. If the prosecution is required to meet every fanciful plea, it would be a clear case of deflecting the course of justice. If crime is to be punished in a glossemic way, niceties must yield to realistic appraisal. Law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. (Para 14). *State of Punjab* v. *Phola Singh*, (2003) 11 SCC 58: 2004 SCC (Cri) 276: AIR 2003 SC 4407.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-9-2003]

[7433] — S. 302 — Time of death — Dispute regarding — Murder trial — *On facts, appellant-accused convicted under S. 302 IPC — Appellant's contention that it was duty of the prosecution to establish the timing of injury and death of the victim and that it had failed to establish the exact hour — Whether justified — Held, on facts, this contention cannot be agreed to — Once this basic argument is rejected, the rest of the arguments* *based on this very aspect predominantly must fall and the argument that the deceased was already dead at night and only was found to be shown dead in the morning has to be rejected*

The defence argued that in the post-mortem report, it was indicated that the timing of injury and death could be about 24 hours to 36 hours earlier from the time of post-mortem. The post-mortem was conducted on 2-2-1997 i.e. the next day at 9.00 a.m. From this, the defence argued that if 36 hours have to be counted backwards from 9.00 a.m. on 2-2-1997, then the death of *C*, the deceased, could not have occurred in the morning but it must be somewhere at night between 31-1-1997 and 1-2-1997. It was on this basis that the defence tried to develop its theory of false implication as also the wrong timing of filing of FIR. (Para 12)

This basic premise about the hour of death is wholly incorrect. The post-mortem report clearly suggests that the death must have occurred between 24 to 36 hours earlier. Therefore, if the death is 24 hours prior to the post-mortem with a difference of about 2-3 hours as admitted by the doctor in his cross-examination then it is obvious that the death might have occurred in the morning of 1-2-1997 which completely matches the testimony of PW 4 (father of the deceased). It is nowhere tried to be brought out in the cross-examination that the death had not occurred 24 hours prior to the post-mortem examination or that it had occurred much before that i.e. about 36 hours. No suggestion was put to the doctor nor was the post-mortem report assailed in the cross-examination on that particular aspect. (Para 13)

The appellant argued that it was the duty of the prosecution to establish the timing of injury and the death and that it had failed to establish the exact hour. This contention cannot be agreed to inasmuch as the post-mortem report specifically states that the death had occurred 24 hours prior to the post-mortem was conducted. Therefore, this contention of the appellant is rejected that the death must have occurred much more than 24 hours earlier to the hour of the post-mortem, nearabout 36 hours. Once this basic argument is rejected, the rest of the arguments based on this very aspect predominantly must fall and the argument that *C* was already dead at night and only was found to be shown dead in the morning has to be rejected. (Para 14). *Munna* v. *State of M.P.*, (2009) 1 SCC 202: (2009) 1 SCC (Cri) 491: AIR 2009 SC 1344: (2009) 2 ECrN 535 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **V.S. Sirpurkar**, JJ. [Date of decision: 4-11-2008]

[7434] — S. 302 r/w S. 34 — Variation in evidence relating to time of occurrence — Effect — *Held, some allowance has to be given for such variation — But where the variation was so vast (7 p.m. to 10 p.m.), it could not be attributed merely to the inability of the witnesses hailing from the village to give correct time — Besides the witnesses were not illiterate — Hence the discrepancy was fatal* (Para 9). *Harjinder Singh* v. *State of Punjab*, (2004) 11 SCC 253: AIR 2004 SC 3962: (2004) 21 AIC 887 (SC): 2004 Cri LJ 3854.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 27-7-2004]

[7435] — Ss. 302/34 — Discrepancy as to time of occurrence — Effect — *Nine months old baby who was the only child of informant, PW 11 killed before her eyes by respondent and one* **K** *— PW 11 immediately lodging FIR stating the time of occurrence to be about 7 p.m. — During trial PW 11 stating the time of occurrence of the incident to be about 2 a.m. to 3 a.m. — Held, tested in the light of background facts of the case evidence of PW 11 had no other discrepancy except time factor to warrant rejection of her evidence — Hence, order of High Court acquitting respondent set aside*

Even the evidence of a solitary witness can be sufficient to record conviction if the same is wholly reliable. No particular number of witnesses is necessary to prove any fact, as statutorily provided in Section 134 of the Evidence Act. It is the quality and not the quantity of the evidence that matters. The court cannot take a closed view in such matters. The evidence of PW 11 has to be tested in the light of the background facts. She was running from pillar to post to find a shelter for herself and her child who was nine months old. The evidence of PW 11 has no deficiency except the time factor. There is no other discrepancy in her evidence to warrant rejection of her evidence. It is to be noted that PW 11 was a rustic illiterate lady before whose eyes her only child was killed. If the accused's version is accepted, she was a total stranger to him. There is no particular reason as to why she would falsely implicate the accused. When the factum of death has been recorded in the FIR and the time given is around 7.00 p.m., the question of the incident taking place in the morning hours of the next day does not arise. There has been no question raised about the authenticity of the FIR. The judgment of the High Court is set aside and that of the trial court is restored. (Paras 9 to 13). *State of M.P.* v. *Laakhan*, (2009) 14 SCC 433.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 21-4-2009]

37. Transfer of Malice

> *See also* CRIMINAL TRIAL — '241. Transfer of malice', p. 229 in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also 'A.1.(n) S. 303 — Murder by Life Convict', in Vol. 2

[7436] — Ss. 300 Firstly, Thirdly & Exception 4, 301 and 304 Pt. II — Death caused by infliction of spear blow on the chest when deceased tried to intervene to save victims of assault — *No animosity between accused and deceased — Intention to cause death, held, absent even if transmission of malice is inferred — S. 300 Firstly thus inapplicable — Though injury proved to be sufficient in the ordinary course of nature to cause death, intention to cause such injury absent and as such S. 300 Thirdly also inapplicable — In the circumstances, held, S. 304 Pt. II applicable and sentence of 5 years' RI proper*

In a dispute between the accused persons on the one hand and 'B' and 'G' on the other, the accused gave several blows with their respective weapons on the non-vital parts of the body of 'B' and 'G'. On hearing the commotion when 'T', the nephew of 'B' and 'G', tried to intervene to save them, accused 1 gave a blow with his spear on the chest of 'T' resulting in his death. The injury was an incised wound of 4 cms. x 2 cms. going down deep up to the chest cavity which was proved to be sufficient in the ordinary course of nature to cause death. The Sessions Judge convicted accused 1 under S. 302, IPC and accused 2 to 4 under S. 302 read with S. 34, IPC and sentenced them to RI for life and also imposed fine. The High Court, however, held that the prosecution failed to prove that accused 1 caused the single injury which proved fatal to 'T' in furtherance of common intention of all the accused. Partly allowing the appeal the Supreme Court,

Held :

The accused had no animosity with 'T' as their dispute was with 'B' and 'G'. 'T' appeared on the scene after the accused assaulted 'B' and 'G'. Although there could be presumption of transmission of malice but in absence of any evidence and in the facts found it could not be said that accused 1 intended to commit murder of 'T'. Therefore, Para 1 of S. 300 would not be attracted.

On the established facts of the case it also could not be said that accused 1 intended to cause that particular bodily injury which in fact was found to have been caused resulting in death of 'T'. Therefore, Para 3 of S. 300 is also not attracted.

When accused 1 had wielded a weapon like a barchha he must be presumed to know that he was likely to cause an injury which was likely to cause death. Having regard to all the circumstances and facts of the case including the very young age (about 19 years) of accused 1, it may be said that he was shown to have committed an offence under S. 304 Pt. II, IPC. The sentence of five years' rigorous imprisonment would be adequate. *Gurmail Singh* v. *State of Punjab*, (1982) 3 SCC 185: 1982 SCC (Cri) 680: AIR 1982 SC 1466: 1982 Cri LJ 1946.

Bench Strength **2**. Coram: *D.A. Desai* and *Baharul Islam*, JJ. [Date of decision: 30-8-1982]

[7437] — Ss. 300 Exception 2, 304 Pt. II & 301 — Exceeding right of private defence — Doctrine of transferred malice — Applicability — *Even after right of private defence ceased to be available to accused persons, one of the accused R firing gunshot at one of the members of the prosecution party but that accidentally hitting an outsider causing her death — Held, act of the accused was covered by S. 304 and in view of accidental injury caused to an outsider, doctrine of transferred malice under S. 301 attracted — Court should lean in favour of convicting the accused under Pt. II of S. 304 if it is in doubt as to which one of the two parts of S. 304 IPC would be attracted as this would be consistent with the basic tenet of extending benefit of doubt in criminal jurisprudence — Accordingly, held, accused R guilty under S. 304 Pt. II* (Para 31). *Kashiram* v. *State of M.P.*, (2002) 1 SCC 71: 2002 SCC (Cri) 68: AIR 2001 SC 2902.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 17-10-2001]

Dev Raj v. State of H.P., 1994 Supp (2) SCC 552: 1994 SCC (Cri) 1489: AIR 1994 SC 523; Yogendra Morarji v. State of Gujarat, (1980) 2 SCC 218: 1980 SCC (Cri) 394: AIR 1980 SC 660; Tarachand v. State of Haryana, (1971) 2 SCC 579: 1971 SCC (Cri) 593: AIR 1971 SC 1891, relied on

[7438] — S. 300 Exception 4 — Applicability — Sudden fight must be with person who is killed. *Narayanan Nair Raghavan Nair* v. *State of Travancore-Cochin*, AIR 1956 SC 99: 1956 Cri LJ 278, 280.

Bench Strength **3**. Coram: **Vivian Bose**, *B. Jagannadhadas* and *B.P. Sinha*, JJ. [Date of decision: 26-9-1955]

[7439] — Ss. 301 and 100 — Causing death of a person other than person whose death was intended — *Appellant firing one shot from his gun in exercise of his right of private defence — Bullet missing the target and hitting an innocent person fatally — Held, S. 301 does not apply and the appel-*

lant is protected under S. 100. Wassan Singh v. *State of Punjab*, (1996) 1 SCC 458: 1996 SCC (Cri) 119: (1996) 1 An LT (Cri) 17.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.B. Majmudar**, JJ. [Date of decision: 28-11-1995]

[7440] — Ss. 301 and 302, 304 — Scope and application — Grave and sudden provocation — What is — *B remarking that father and uncle of the accused were dishonest — Accused rushing to his house at some distance and bringing a loaded gun — Firing at B and missing the aim; again firing at B and hitting his own uncle who while trying to pacify the accused came in between causing his death — Held, accused's act cannot be attributed to any grave and sudden provocation — Offence not under S. 304 (Pt. I), but one under S. 302 r/w S. 301 IPC*

In a Dharmada Committee *B* made derogatory remarks against father and uncle of the accused, inasmuch as he stated that they were monopolising all the seats and were dishonest. The accused got excited, said that *B* was creating trouble and it was necessary to look to him, left the meeting and brought a loaded double-barrelled gun from his house a furlong away from the place of meeting. By that time the meeting had ended and *B* and others were moving at the road. Accused shot at *B*, but missed his aim. In the meantime *M*, the uncle of the accused rushed towards his nephew (the accused) in order to prevent him from using the gun. The accused pushed him back and fired at *B*. Unfortunately *M* came between the gun and *B* and was shot in the back, later dying as a result of the injury.

Held :

It is true that what is grave provocation in one set of society may not be grave provocation in another. But the words uttered by *B* to the effect that they were dishonest cannot be regarded as grave provocation under the circumstances. In any case the provocation was far from being sudden. The appellant goes to his house which is about a furlong away and fetches the gun. There was sufficient time for him to cool down. His action was deliberate. He asked those who were near *B* to move away because he wanted to shoot *B*. One shot missed its aim. *M* came up to prevent him from firing another shot. The appellant pushed him and then fired the second shot. All this cannot be attributed to any grave and sudden provocation. The offence, therefore, is not one under S. 304, Part I. *Gyanendra Kumar* v. *State of U.P.*, (1972) 4 SCC 819: AIR 1972 SC 502: 1972 Cri LJ 308.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar**, JJ. [Date of decision: 25-11-1971]

[7441] — S. 301 [S. 302 r/w S. 34] — Transfer of malice — Failure to establish identity of unintended victim, despite ample opportunity and means to do so — Effect

Dismissing the appeals,

Held :

The trial court had convicted all the appellants on the primary charge under Section 302 read with Section 120-B IPC, but the High Court has acquitted them under that provision and convicted them under Sections 302/34, etc. IPC instead. This aspect would have to be examined in the background of the defence story that had been projected and as the entire police operation had been conducted in a secret manner as no outsider had any access to what was going on in the matter relating to *M*. (Para 57)

Admittedly, the target was *M*, concededly a notorious criminal with a bounty on his head, as he had been involved in a large number of very serious criminal matters. The incident happened on account of a mistake as to the identity of *J* who could pass off as *M* and it is nobody's case that the police party had intended to eliminate *J* and his friends. The courts below have been very clear on this score and have observed that keeping in mind the background in which the incident happened it was not the outcome of an act in self-defence but was pursuant to the common intention to kill *M*. The possibility of a hefty cash reward and accelerated promotion acted as a catalyst and spurred the police party to rash and hasty action. (Para 58)

As to the role of ACP *R* and Inspector *A*, the High Court has found that it was *R* who was the leader of the police party in his capacity as ACP and therefore, it was not necessary for him to be in the forefront of the attack on the Esteem car (in which *J*, *P* and *T* were sitting) and Inspector *A* who had admittedly knocked at the window could be treated likewise as being the next officer in the hierarchy. The site plan has been seen and it is noticed that ACP *R* was sitting in his Police Gypsy about 15 m away from the car when the incident happened. It has come in evidence that when Inspector *A* had conveyed the fact of *J*'s and *T*'s presence at Patparganj, the ACP had got together a police party of heavily armed officers, briefed them, and they had thereafter moved on to Connaught Place. It has been found as a matter of fact that when Inspector *A* had followed the car to Dena Bank, *J* had been left behind in the car alone for quite some time but Inspector *A* and his two associates had made absolutely no attempt to apprehend him at that stage or to countercheck his identity as Inspector *A* had *M*'s photograph with him. Even more significantly the Inspector made no attempt to identity the other two occupants *P* and *T* whatsoever, although admittedly he was in close wireless contact with ACP. This is the pre-incident conduct which is relevant. (Para 59)

The facts as brought out reveal a startling state of affairs during the incident. It is the case of the defence that the car had been surrounded to immobilise the inmates and to prevent them from escaping and that it was with this intention that Inspector *A* had knocked on the driver's window asking the inmates to get out but he had been answered by firing from inside the car. This plea cannot be accepted for the reason that the defence has already been rejected. Moreover, PW 37 testified that there were no bullet marks on the tyres and they remained intact even after the incident, despite 34 shots being fired at the car, and 29 bullet holes, most of them of entry thereon. On the other hand, the appellants presupposed that one of the inmates was *M*, the wanted criminal and that the firing was so insensitive and indiscriminate that some of the shots had hit Constables *C* and *K* comprising the attacking police party. The post facto conduct of the appellants is again relevant. Inspector *A* gave a report on 1-4-1997 immediately after the incident, which was followed by a report by ACP *R* the next day giving the counter-version. This has been found to be completely untenable. (Paras 60 and 61)

The High Court was, therefore, justified in holding that in the light of the above facts, it was not necessary to assign a specific role to each individual appellant as the firing at the car was undoubtedly with a clear intent to annihilate those in it and was resorted to in furtherance of the common intention of all the appellants. Therefore the appellants were liable to conviction under Sections 302/34, etc. IPC. (Paras 61 and 62)

The cumulative effect of the evidence reveals the starkly patent fact that the defence story as projected was a palpably false one and the police officials involved having realised almost immediately after the incident that they had made a horrific mistake, immediately set about creating a false defence. The trial court and the High Court have accordingly opined on the basis of the overall assessment that the defence version was a concoction and that the prosecution story that it was the unprovoked firing by the appellants which had led to the death of *J* and *P* and grievous gunshot injuries to *T* had been proved on record. This finding also completely dislodges the defence case that the accused were nevertheless entitled to claim the benefit of Exception 3 to Section 300 of the Penal Code. Section 300 Exception 3 presupposes that a public servant who causes death, must do so in good faith and in due discharge of his duty as a public servant and without ill will towards the person whose death is caused. In the light of the fact that the positive case set up by the defence has been rejected by the trial court and the High Court, the question of any good faith does not arise. On the contrary, the appellants had fired without provocation at the car killing two innocent persons and injuring one. The obligation to prove an Exception is on the preponderance of probabilities but it nevertheless lies on the defence. Even on this touchstone the defence cannot succeed. (Paras 43 and 44)

There is no fault with the judgments of the trial court and the High Court. (Para 106). *Satyavir Singh Rathi, ACP* v. *State*, (2011) 6 SCC 1.

Bench Strength **2**. Coram : **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision : 2-5-2011]

Abdul Sayeed v. State of M.P., (2010) 10 SCC 259: (2010) 3 SCC (Cri) 1262, relied on

[Ed.: It would seem that once the common intention to murder *M* was established on the part of the accused police officers, the actions of the police party certainly falling under clauses Secondly to Fourthly of Section 300 (if not Section 300 Firstly), then by application of Section 301 they stood guilty under Section 302 r/w S. 34 of murdering *J* and *P*.]

[7442] — Ss. 301, 302 and 307 — Transfer of malice — *Accused raiding house of PW 2 with the intention to kill him — PW 2 taking shelter in another house — Accused going in front of that house and opening fire hitting deceased who was then standing by the side of a door of a room and causing her death — While PW 2 admitting that he could not state as to who shot at the deceased, PW 3 deposing that it was appellant 1 — Husband of the deceased however categorically stating that the deceased was not shot at by any of the accused-appellants and that both PWs 2 and 3 were not in his house at the time of the occurrence — But trial court and High Court without placing any reliance on the evidence of deceased's husband convicting all the appellants under Ss. 302/149, 307/149 and 148 — Held on facts, appellant 1 had shot at the deceased even though he aimed at only PW 2 — Therefore, under the doctrine of transfer of malice under S. 301, appellant 1 alone must be convicted under Ss. 302 and 307 simpliciter and sentenced to life imprisonment — Remaining appellants entitled to be acquitted. Jagpal Singh* v. *State of Punjab*, 1991 Supp (1) SCC 549: 1991 SCC (Cri) 721: AIR 1991 SC 982.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 6-12-1990]

[7443] — S. 301 and S. 302 r/w S. 301 or 304-A — Firing gun towards fleeing persons in a locality with shops and houses killing an innocent boy and causing injuries to another person — *Held,* *S. 301 clearly attracted — Evidence of independent natural eyewitnesses corroborated by other eyewitnesses and also from injuries suffered by the deceased and injured person and site plan — Existence of petromax lamp near about the place of occurrence proved by positive evidence — Reason given by the complainant for not mentioning the existence of petromax lamp in FIR found to be convincing and natural — In circumstances appellant rightly held guilty of offence under S. 302 r/w S. 301 — Plea that the gun was fired in the air just to frighten the complainant and his companions not maintainable. Abdul Ise Suleman* v. *State of Gujarat*, 1994 Supp (2) SCC 9: 1994 SCC (Cri) 668: AIR 1994 SC 1910: (1994) 2 Crimes 962: (1994) 1 GCD 467.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 14-2-1994]

[7444] — Ss. 301, 304-A and 307 — Accused intending to kill 'A' killed 'B' who came in the way — *Conviction under S. 301 for murder held proper — Case did not lie under S. 304-A or S. 307 in such situation. Hari Shankar* v. *State of Mysore*, (1979) 4 SCC 501: 1980 SCC (Cri) 107.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision: 20-4-1979]

[7445] — S. 301 r/w Ss. 302/307 [Ss. 300 Firstly to Fourthly] r/w S. 34 — Police killings by staging fake encounter — Transfer of malice — Common intention/object to murder one *M*, established — One *J* and another *P* accidentally killed instead in furtherance of common intention to murder *M* in a case of mistaken identify — Conviction of accused police officers for murder with aid of S. 34, held, justified — Transfer of malice — Failure to establish identity of unintended victim, despite ample opportunity and means to do so — Effect — *Team of 15 heavily armed police personnel headed by appellant ACP **R**, on mistakenly identifying victim **J** as a notorious criminal **M**, surrounding car in which **J**, **P** and **T** were travelling as it stopped at a red light, fired into it indiscriminately from all sides, shooting dead innocent occupants of the car **J** and **P** and causing grievous injuries to third occupant, **T** — Police taking stand of firing in self-defence — High Court holding that though conviction of ten police personnel (appellants) under Ss. 302/120-B by trial court could not be sustained, but convicting them under Ss. 302/34 and maintaining sentences awarded by trial court — Sustainability of — Held, courts below were very clear that incident was not the outcome of an act in self-defence but was pursuant to common intention to kill a notorious criminal, **M** — Possibility of a hefty cash reward and accelerated promotion acted as a catalyst and spurred the police party to rash and hasty action — On examination of site plan, evidence, pre-incident conduct, state of affairs during the incident and post facto conduct of appellants, plea of self-defence rejected — Appellants presupposed that one of the inmates of the car was **M**, the wanted criminal, and firing was so insensitive and indiscriminate that some of the shots had hit two constables comprising their own party — Moreover, there had been no attempt by accused prior to firing, though there was ample opportunity to do so, to cross-check identity of **J**, and even of **P** and **T**, though Inspector **A** had a photo of **M** with him — 34 shots were fired at the car, and 29 bullet holes were discovered thereon, most of them of entry — Post-incident conduct i.e. appellant Inspector **A**'s report immediately after the incident followed by a report by appellant ACP the next day, gave the counter-version — Cumulative evidence reveals defence story was palpably false and police officials involved having realised almost immediately after the incident that they had made a horrific mistake, immediately set about creating a false defence — Trial court and High Court rightly held that defence version was a concoction and prosecution story of unprovoked firing by appellants, which had led to deaths of two persons and grievous gunshot injuries to one, had been proved on record — Regarding role of appellants, ACP **R** and Inspector **A**, High Court found that ACP was leader of police party and therefore, it was not necessary for him to be in forefront of attack on car; and Inspector **A** who had admittedly knocked at window of car before the firing began could be treated likewise as being next officer in hierarchy — Hence, High Court rightly held that it was not necessary to assign a specific role to each individual appellant as firing at car was undoubtedly with a clear intent to annihilate those in it and was resorted to in furtherance of common intention of all appellants — Therefore appellants liable to conviction under Ss. 302/34, etc.*

Dismissing the appeals,

Held :

The trial court had convicted all the appellants on the primary charge under Section 302 read with Section 120-B IPC, but the High Court has acquitted them under that provision and convicted them under Sections 302/34, etc. IPC instead. This aspect would have to be examined in the background of the defence story that had been projected and as the entire police operation had been conducted in a secret manner as no outsider had any access to what was going on in the matter relating to *M*. (Para 57)

Admittedly, the target was *M*, concededly a notorious criminal with a bounty on his head, as he had been involved in a large number of very serious criminal matters. The incident happened on account of a mistake as to the identity of *J* who could pass off as *M* and it is nobody's case that the police party had intended to eliminate *J* and his friends. The courts below have been very clear on this score and have observed that keeping in mind the background in which the incident happened it was not the outcome of an act in self-defence but was pursuant to the common intention to kill *M*. The possibility of a hefty cash reward and accelerated promotion acted as a catalyst and spurred the police party to rash and hasty action. (Para 58)

As to the role of ACP *R* and Inspector *A*, the High Court has found that it was *R* who was the leader of the police party in his capacity as ACP and therefore, it was not necessary for him to be in the forefront of the attack on the Esteem car (in which *J*, *P* and *T* were sitting) and Inspector *A* who had admittedly knocked at the window could be treated likewise as being the next officer in the hierarchy. The site plan has been seen and it is noticed that ACP *R* was sitting in his Police Gypsy about 15 m away from the car when the incident happened. It has come in evidence that when Inspector *A* had conveyed the fact of *J*'s and *T*'s presence at Patparganj, the ACP had got together a police party of heavily armed officers, briefed them, and they had thereafter moved on to Connaught Place. It has been found as a matter of fact that when Inspector *A* had followed the car to Dena Bank, *J* had been left behind in the car alone for quite some time but Inspector *A* and his two associates had made absolutely no attempt to apprehend him at that stage or to countercheck his identity as Inspector *A* had *M*'s photograph with him. Even more significantly the Inspector made no attempt to identity the other two occupants *P* and *T* whatsoever, although admittedly he was in close wireless contact with ACP. This is the pre-incident conduct which is relevant. (Para 59)

The facts as brought out reveal a startling state of affairs during the incident. It is the case of the defence that the car had been surrounded to immobilise the inmates and to prevent them from escaping and that it was with this intention that Inspector *A* had knocked on the driver's window asking the inmates to get out but he had been answered by firing from inside the car. This plea cannot be accepted for the reason that the defence has already been rejected. Moreover, PW 37 testified that there were no bullet marks on the tyres and they remained intact even after the incident, despite 34 shots being fired at the car, and 29 bullet holes, most of them of entry thereon. On the other hand, the appellants presupposed that one of the inmates was *M*, the wanted criminal and that the firing was so insensitive and indiscriminate that some of the shots had hit Constables *C* and *K* comprising the attacking police party. The post facto conduct of the appellants is again relevant. Inspector *A* gave a report on 1-4-1997 immediately after the incident, which was followed by a report by ACP *R* the next day giving the counter-version. This has been found to be completely untenable. (Paras 60 and 61)

The High Court was, therefore, justified in holding that in the light of the above facts, it was not necessary to assign a specific role to each individual appellant as the firing at the car was undoubtedly with a clear intent to annihilate those in it and was resorted to in furtherance of the common intention of all the appellants. Therefore the appellants were liable to conviction under Sections 302/34, etc. IPC. (Paras 61 and 62)

The cumulative effect of the evidence reveals the starkly patent fact that the defence story as projected was a palpably false one and the police officials involved having realised almost immediately after the incident that they had made a horrific mistake, immediately set about creating a false defence. The trial court and the High Court have accordingly opined on the basis of the overall assessment that the defence version was a concoction and that the prosecution story that it was the unprovoked firing by the appellants which had led to the death of *J* and *P* and grievous gunshot injuries to *T* had been proved on record. This finding also completely dislodges the defence case that the accused were nevertheless entitled to claim the benefit of Exception 3 to Section 300 of the Penal Code. Section 300 Exception 3 presupposes that a public servant who causes death, must do so in good faith and in due discharge of his duty as a public servant and without ill will towards the person whose death is caused. In the light of the fact that the positive case set up by the defence has been rejected by the trial court and the High Court, the question of any good faith does not arise. On the contrary, the appellants had fired without provocation at the car killing two innocent persons and injuring one. The obligation to prove an Exception is on the preponderance of probabilities but it nevertheless lies on the defence. Even on this touchstone the defence cannot succeed. (Paras 43 and 44)

There is no fault with the judgments of the trial court and the High Court. (Para 106). *Satyavir Singh Rathi, ACP* v. *State*, (2011) 6 SCC 1.

Bench Strength **2**. Coram : **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision : 2-5-2011]

Abdul Sayeed v. State of M.P., (2010) 10 SCC 259: (2010) 3 SCC (Cri) 1262, relied on

[**Ed.**: It would seem that once the common intention to murder *M* was established on the part of the accused police officers, the actions of the police party certainly falling under clauses Secondly to Fourthly of Section 300 (if not Section 300 Firstly), then by application of Section 301 they stood guilty under Section 302 r/w S. 34 of murdering *J* and *P*.]

[7446] — Ss. 302/301 or 304 Pt. I/Pt. II — Motive — Intention to cause death — Apparent from facts though on failure to attack intended victim his brother was attacked — *The malice was merely diverted from one brother to the other — Appellant armed with a sword chased A and when A escaped, he inflicted a serious abdominal injury to A's brother who was standing there, as a result of which his intestine came out of the wound and the victim succumbed to the injury subsequently in hospital — Held, appellant was rightly convicted under S. 302 — Alteration of conviction under S. 304 Pt. I or Pt. II not called for — Appellant chased A with a sword only with the intention to cause his death but A having escaped, his malice changed from one brother to another and he struck the fatal sword-blow in the abdominal region of A's brother with the same intention of causing death*

The fact of voluntarily causing injury to the deceased by the accused has been fully substantiated by the relevant evidence. The only question is whether offence under Section 302 IPC is made out or Section 304-I or 304-II IPC is made out. (Para 7)

Here the intention of the accused-appellant is apparent. He chased *A* with a sword with the intention to inflict serious injury but on his failure to catch hold of *A*, he caused death of his brother. Nobody chases any person with a sword for any benevolent purpose. Infliction of fatal abdominal injury to the deceased was nothing but change of malice from one brother to another brother. It is the intention which was predominantly present in his mind when the accused chased *A* and therefore, this intention he satisfied by inflicting the murderous blow on the deceased on a vital part of his body. Therefore, under these circumstances, the conviction of the appellant under Section 302 IPC is well founded and there is no ground to interfere in this appeal. Under these circumstances, there is no merit to convert the offence under Section 302 IPC to either under Section 304-I IPC or under Section 304-II IPC. (Paras 8 to 10). *Rahimbux* v. *State of M.P.*, (2008) 12 SCC 270: AIR 2008 SC 3111.

Bench Strength **2**. Coram: **A.K. Mathur** and *Altamas Kabir*, JJ. [Date of decision: 12-5-2008]

Kulwant Rai v. State of Punjab, (1981) 4 SCC 245: 1981 SCC (Cri) 826; Randhir Singh v. State of Punjab, (1981) 4 SCC 484: 1981 SCC (Cri) 856; Jagtar Singh v. State of Punjab, (1983) 2 SCC 342: 1983 SCC (Cri) 459; Gokul Parashram Patil v. State of Maharashtra, (1981) 3 SCC 331: 1981 SCC (Cri) 731; Chowa Mandal v. State of Bihar, (2004) 13 SCC 231: 2005 SCC (Cri) 154; Ramu v. State of U.P., (2004) 12 SCC 250: 2004 SCC (Cri) Supp 214; Balbir Singh v. State of Punjab, 1995 Supp (3) SCC 472: 1995 SCC (Cri) 951; Virsa Singh v. State of Punjab, AIR 1958 SC 465: 1958 SCR 1495, distinguished

[7447] — Ss. 304 Pt. I and 302 — Accused giving knife blow to the deceased resulting in his death — Injury sufficient in the ordinary course of nature to cause death but evidence showing that the blow was aimed at another person but it landed on the stomach of the deceased — *Accused having no dispute with the deceased — Held, in the circumstances of the case, the accused is liable to be convicted under S. 304 Pt. I and not under S. 302 — Sentence of 7 years' RI imposed. State of Rajasthan* v. *Satyanarayan*, (1998) 8 SCC 404: 1998 SCC (Cri) 1539: AIR 1998 SC 2060: 1998 Cri LJ 2911.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 21-1-1998]

38. Witnesses

See also 'D.4.(e) Appreciation of Evidence — Credibility of witness', and

'D.11.(c) Conduct/Reaction/Behaviour of witness', in Vol. 2

Synopsis

(a) Accomplice/Approver
(b) Antecedent Character/Background/Status of Witness
(c) Chance witness
(d) Child/Young witness
(e) Eyewitness
(f) Hostile witness
(g) Independent witness
(h) Inimical witness
(i) Injured witness
(j) Interested/Partisan witness
(k) Material witness
(l) Medical witness
(m) Natural witness
(n) Witness Protection and Support
(o) Related witness
(p) Rustic/Village/Rural Witness
(q) Sole/Solitary witness
(r) Tutored/Pressurised witness

(a) Accomplice/Approver

See also CRIMINAL TRIAL — '251.(b) Accomplice/Approver', pp. 233 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also 'B.5.(c) Testimony, confession or actions of co-conspirators', in Vol. 2

[7448] — S. 302 — Accused with a co-accused getting a knife prepared — Injuries could be caused to the deceased by the knife — *The murder committed 9 weeks after the knife was got prepared — Knife recovered at the pointing out of the co-accused with blood stains over it — Approver's statement about the guilt of the accused is not corroborated*

Where there is evidence of a witness that a knife with which the injuries found on the body of the deceased could be caused was got prepared by the appellant and a co-accused 9 weeks before the murder and the knife was recovered with blood stains at the instance of the co-accused the approver's evidence is not corroborated for the conviction of the appellant under Ss. 302/34. *Bhiva Doulu Patil* v. *State of Maharashtra*, AIR 1963 SC 599: (1963) 3 SCR 830: (1963) 1 Cri LJ 489.

Bench Strength **3**. Coram: **J.L. Kapur**, *A.K. Sarkar* and *M. Hidayatullah*, JJ. [Date of decision: 29-8-1962]

[7449] — S. 302 — An accomplice competent to give evidence but it is almost always unsafe to convict on his testimony alone

The combined effect of Ss. 133 and 114, Illustration (*b*) of the Evidence Act is that according to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. *Bhiva Doulu Patil* v. *State of Maharashtra*, AIR 1963 SC 599: (1963) 3 SCR 830: (1963) 1 Cri LJ 489.

Bench Strength **3**. Coram : **J.L. Kapur**, *A.K. Sarkar* and *M. Hidayatullah*, JJ. [Date of decision : 29-8-1962]

[7450] — S. 302 — Approver's evidence — Approver though a competent witness is not always a reliable witness — *Approver's statement inconsistent with his statement made to the police about the part played by one of the accused in the commission of the murder — Held, approver though a competent witness could not be relied upon*

If this was a case where the statements made by the approver on subsequent occasions merely added details which were not included in the first statement, it may perhaps have been a different matter. It is true that omissions have not always the same significance as contradictions; but in the present case it is patent that the two sets of statements are wholly inconsistent and irreconcilable and that obviously leads to a very serious infirmity in the character of the witness. Every person who is a competent witness is not a reliable witness and the test of reliability has to be satisfied by an approver all the more before the question of corroboration of his evidence is considered by criminal Courts. *Sarwan Singh Rattan Singh* v. *State of Punjab*, AIR 1957 SC 637: 1957 SCR 953: 1957 Cri LJ 1014.

Bench Strength **3**. Coram : *B. Jagannadhadas*, *B.P. Sinha* and **P.B. Gajendragadkar**, JJ. [Date of decision : 10-4-1957]

See also AIR 1959 SC 1199: 1959 Cri LJ 1492

[7451] — S. 302 — Approver's evidence — Test for appreciation — *Before relying on approver's evidence it must be shown that he is a reliable witness and receives sufficient corroboration*

An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious stain in his evidence and Courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence. Such independent corroboration need not cover the whole of the prosecution story or even all the material particulars. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

The appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver. *Sarwan Singh Rattan Singh* v. *State of Punjab*, AIR 1957 SC 637: 1957 SCR 953: 1957 Cri LJ 1014.

Bench Strength **3**. Coram : *B. Jagannadhadas*, *B.P. Sinha* and **P.B. Gajendragadkar**, JJ. [Date of decision : 10-4-1957]

R. v. Baskerville, (1916) 2 KB 658, approved

This was noticed in AIR 1963 SC 1850: 1963 (2) Cri LJ 671, 694 and AIR 1966 SC 1273: 1966 Cri LJ 949, 956

See also AIR 1967 SC 792: 1967 Cri LJ 671 and (1970) 2 SCC 122

Explained in Jnanendra Nath case, AIR 1959 SC 1199: 1959 Cri LJ 1492 that the situation is different if the approver is not unreliable but his testimony is merely tainted

Again in Major E. Barsay v. *State of Bombay*, (1962) 2 SCR 195: AIR 1961 SC 1762: 1961 (2) Cri LJ 828, explaining the latter part of the above observations it was stated that:

> *In Sarwan Singh* v. *State of Punjab*, AIR 1957 SC 637, the Supreme Court did not lay down that the evidence of an approver and the corroborating pieces of evidence should be treated in two different compartments, that is to say, the courts shall have first to consider the evidence of the approver do hors the corroborated pieces of evidence and reject it if it comes to the conclusion that his evidence is unreliable; but if it comes to the conclusion that it is reliable then it will have to consider whether that evidence is corroborated by any other evidence. In most of the cases the said two aspects would be so interconnected that it would not be possible to give a separate treatment, for as often as not the reliability of an approver's evidence, though not exclusively, would mostly depend upon the corroborative support it derives from other unimpeachable pieces of evidence

[7452] — S. 302 — Approver's evidence must be corroborated in material particulars and must be shown to be reliable — *Such corroboration must be concerning the crime and approver's story connecting the accused with crime*

The approver's evidence must show that he is a reliable witness and that is the test which is common to all witnesses. The moment there is corroborative evidence which connects or tends to connect an accused with the crime such corroborative evidence relates to the identity of the accused in connection with that crime. It is the approver's evidence which is the direct evidence of the crime. There should be corroboration in materials particulars not only concerning the crime but corroboration of the approver's story by evidence which connects or tends to connect an accused with the crime. It is this corroborative evidence which determines the mind of the Court or a jury that the approver's evidence that the accused committed the crime is true. *Jnanendra Nath Ghose* v. *State of W.B.*, AIR 1959 SC 1199: (1960) 1 SCR 126: 1959 Cri LJ 1492.

Bench Strength **2**. Coram : **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision : 8-5-1959]

[7453] — S. 302 — Approver's statement — Corroboration in material particulars and qua each accused is essential — *Approver making confessional statement to S — Statement of S is no corroboration of the approver's statement. Bhiva Doulu Patil* v. *State of Maharashtra*, AIR 1963 SC 599: (1963) 3 SCR 830: (1963) 1 Cri LJ 489.

Bench Strength **3**. Coram : **J.L. Kapur**, *A.K. Sarkar* and *M. Hidayatullah*, JJ. [Date of decision : 29-8-1962]

[7454] — S. 302 — Conviction of appellant under, by trial court and High Court — No eyewitness to the occurrence — *Prosecution case based solely on uncorroborated testimony of approver which on facts appearing to be involuntary — Evidence regarding recovery of deceased's wearing apparel doubtful — Deceased's body could not be traced — Various discrepancies found in evidence led by prosecution — Held on facts, conviction not proper — Accused-appellant entitled to acquittal — CrPC, 1973, Ss. 374 and 386. Abdul Sattar* v. *UT, Chandigarh*, 1985 Supp SCC 599: 1985 SCC (Cri) 505: AIR 1986 SC 1438.

Bench Strength **2**. Coram: *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision: 24-9-1985]

[7455] — S. 302 — Evidence of accomplice — Accomplice a competent witness and conviction can in theory be based on his sole testimony and is not illegal — *S. 114, Illustration (b) of Evidence Act incorporates a rule of prudence — This rule of prudence regarding corroboration of evidence of an accomplice has become rule of law — Corroboration to the evidence of accomplice on material particulars is therefore necessary*

The Evidence Act in S. 133 provides that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The effect of this provision is that the court trying an accused may legally convict him on the single evidence of an accomplice. To this there is a rider in Illustration (*b*) to S. 114 of the Act which provides that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This cautionary provision incorporates a rule of prudence because an accomplice, who betrays his associates, is not a fair witness and it is possible that he may, to please the prosecution, weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that courts, before they act on accomplice evidence, insist on corroboration in material

38.(a) Accomplice/Approver *(contd.)*

respects as to the offence itself and also implicating in some satisfactory way, however small, each accused named by the accomplice. In this way the commission of the offence is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the inclusion by the accomplice of an innocent person is defeated. This rule of caution or prudence has become so ingrained in the consideration of accomplice evidence as to have almost the standing of a rule of law.

Every detail of the story of the accomplice need not be confirmed by independent evidence although some additional independent evidence must be looked for to see whether the approver is speaking the truth and there must be some evidence, direct or circumstantial which connects the co-accused with the crime independently of the accomplice. One such circumstance may be the making of a number of confessions without a chance for prior consultation between the confessing co-accused. But before even a number of such confessions can be used each such confession must inspire confidence both in its content and in the manner and circumstances of its making. If there be any suspicion of false implication the confession must be discarded as of no probative value. This may result from a variety of circumstances. Where there is a single retracted confession corroborating other accomplice evidence, the caution must necessarily be still greater and the probative value smaller. Even if there is more than one such confession and they are proved to be given independently and without an opportunity for a prior concert, the probative value may increase but the need for caution remains because a number of suspects may be prompted by the same or different motives to embroil a particular individual. It is only when false implication is excluded after close scrutiny that confession of a co-accused can be used to lend assurance to other evidence. *Haroon Haji Abdulla* v. *State of Maharashtra*, AIR 1968 SC 832: (1968) 2 SCR 641: 1968 Cri LJ 1017.

Bench Strength **2**. Coram : **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision : 14-12-1967]

[7456] — S. 302 — Murder Trial — Accomplice's evidence as basis of conviction for murder — Practice of requirement of corroboration — Tests — *Whether, on facts, justified — Evidence Act, 1872 — Ss. 133 & 114, Ill. (b)*

An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected brevi manu. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the Court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, as determined by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based.

Every approver comes to give evidence in some such manner seeking to purchase his immunity and that is why to start with he is an unreliable person and the rule of caution calling for material corroboration is constantly kept in mind by the Court by time-worn judicial practice.

On facts, there is nothing in the approver's evidence to show that his statement otherwise is unreliable, unnatural or improbable. There is nothing to show that he had on any earlier occasion made any contradictory statement on any material point. His story while revealing the actual incidents stands amply corroborated by the facts deposed to by the independent witnesses in certain material and clinching aspects connecting the accused with the crime. In fact the approver's evidence is not only reliable but the same stands corroborated in several material parts by other reliable evidence from an independent source. Motive for the crime is also shown . *Ravinder Singh* v. *State of Haryana*, (1975) 3 SCC 742: 1975 SCC (Cri) 202: AIR 1975 SC 856: (1975) 3 SCR 453: 1975 Cri LJ 765.

Bench Strength **3**. Coram: *V.R. Krishna Iyer*, **P.K. Goswami** and *R.S. Sarkaria*, JJ. [Date of decision: 7-2-1975]

[7457] — S. 302 — Sentence — Conviction based on approver's evidence corroborated by independent sources — *Tendency of accomplices to minimise their role and shift and assign the dominant role to the accused present in the present case*

— Death sentence reduced to life imprisonment. Subramanian v. *State of T.N.*, (1975) 3 SCC 414: 1975 SCC (Cri) 40: AIR 1975 SC 139: 1975 Cri LJ 226.

Bench Strength **2**. Coram: *Y.V. Chandrachud* and **R.S. Sarkaria**, JJ. [Date of decision: 12-11-1974]

[7458] — Ss. 302 and 34 — Approver — Approver's testimony against the accused, absolving himself and appearing unnatural and incapable of inspiring confidence — *Such testimony in absence of independent corroboration, held, cannot sustain conviction — Evidence Act, 1872 — Ss. 133 and 114 Ill. (b)*

It is established as a rule of prudence that conviction can be based on the testimony of accomplice only if it is thought reliable as a whole being intrinsically natural and reliable and if it is corroborated by independent evidence, either direct or circumstantial, connecting the accused with the crime.

In the present case the only evidence against the accused was that of the approver. He claimed to be a spectator at every moment but did not participate at any stage. Apart from it the initial story appears also to be absolutely unnatural as according to him, he did not know anyone of the accused persons but a month before the incident they took him into confidence and told him to join them. The evidence of the witness as a whole does not appear to be natural and does not inspire confidence. Apart from it as there was no corroboration at all from any other independent circumstance or source of evidence, the conviction of the appellants could not be maintained. *Chandan* v. *State of Rajasthan*, (1988) 1 SCC 696: 1988 SCC (Cri) 238: AIR 1988 SC 599: 1988 Cri LJ 842.

Bench Strength **2**. Coram: **G.L. Oza** and *L.M. Sharma*, JJ. [Date of decision: 12-1-1988]

[7459] — Ss. 302 and 34 — Approver's evidence — Found reliable and trustworthy by the trial court and affirmed by High Court — *Supreme Court in appeal by special leave not to take a different view when the discrepancies pointed out have been considered and disposed of by the courts below — Further, held, that the approver's evidence was adequately corroborated from independent sources against both the appellants — Convictions upheld — Evidence Act, 1872 — Ss. 133 and 114, Ill. (b). Subramanian* v. *State of T.N.*, (1975) 3 SCC 414: 1975 SCC (Cri) 40: AIR 1975 SC 139: 1975 Cri LJ 226.

Bench Strength **2**. Coram: *Y.V. Chandrachud* and **R.S. Sarkaria**, JJ. [Date of decision: 12-11-1974]

[7460] — Ss. 302 and 120-B — Accomplice — Independent corroboration in respect of material particulars of evidence of accomplice needed as a rule of law and practice — *Nature and extent of corroboration would depend on facts and circumstances of each case — On facts, accused could not be convicted solely on the basis of uncorroborated testimony of accomplice and accused entitled to benefit of doubt — Evidence Act, 1872 — Ss. 133 and 114 Ill. (b)*

The appellant and two other persons 'N' and 'R' were arrested and charged under Ss. 302 and 120-B, IPC for murder of the appellant's husband. 'R' later became approver. The facts which required sequentially to be established were that appellant's married life was in a serious disarray; that she and 'N' were on terms of illicit intimacy; that she also submitted herself to 'R' in an extra-marital relation; that on the day preceding the day of occurrence she implored 'N' and 'R' to free her from her cruel husband by doing away with him; that she agreed that she would, thereafter, live with 'N' as his wife, and that after coming to know of the death of her husband she deliberately misled her mother-in-law into making a report to the police containing false and misleading information in an attempt to draw a red herring across the trail. The evidence of prosecution witnesses on the first two points stated above had been discarded by the Sessions Court. It was also not suggested that after the murder of the deceased, the appellant began to live with 'N'. There was considerable lapse of time between the death of the deceased and their arrest. There was no evidence to show that, in the interregnum, there was any liaison between the two. Moreover, the incriminating testimony of the approver pertaining to the case that on the day preceding the day of the occurrence appellant wept and implored 'N' and 'R' to do away with her husband and that appellant also agreed that she would, thereafter live with 'N' had not been put to the appellant in the course of her examination under S. 313, CrPC. Though the appellant was about 15½ years of age at the time of the occurrence, the trial court on the basis of the approver's testimony as corroborated by other evidence, held her as well as 'N' guilty of the offences they were charged with and sentenced them to imprisonment for life. The High Court dismissed their appeals and confirmed the convictions and the sentences. Before the Supreme Court it was urged on behalf of the appellant that the evidence of the approver insofar as the complicity of appellant was concerned, lacked corroboration on material particulars and that no conviction could be sustained on such uncorroborated testimony of accomplice. Allowing the appeal

38.(a) Accomplice/Approver *(contd.)*

Held :

An accomplice, by long legal tradition, is a notoriously infamous witness, one who being particeps criminis, purchases his immunity by accepting to accuse others. In indictments, particularly of serious crimes, the counsel of caution and the rule of prudence enjoin that it is unsafe to rest a conviction on the evidence of a guilty partner in a crime without independent corroboration on the material particulars. Judicial experience was thus, elevated to a rule of law. "It is a practice which deserves all the reverence of law". However, the nature and extent of the corroboration must necessarily vary with the nature and circumstances of each case. Enunciation of any general rule, valid for all occasions, is not practicable.

In the present case the controversy is whether the approver's testimony as to the appellant's complicity in the conspiracy could safely be held to have been corroborated by independent evidence on the material particulars. On a consideration of the entire matter it appears that the approver's evidence in that regard lacks corroboration on certain material particulars necessary to connect the appellant. A little more reassurance than is afforded by the state of evidence in the case is perhaps, necessary to convict the appellant. Moreover, the incriminating circumstances in the evidence of the approver appearing against the appellant should have been put to the appellant in her examination under S. 313, CrPC. Appellant was not afforded an opportunity to submit an explanation to it. That part of the evidence must for that reason, be excluded from consideration. Appellant, in the circumstances, would be entitled to the benefit of doubt. *Balwant Kaur* v. *UT, Chandigarh*, (1988) 1 SCC 1: 1988 SCC (Cri) 1: AIR 1988 SC 139: 1988 Cri LJ 398.

Bench Strength **2**. Coram: *A.P. Sen* and **M.N. Venkatachaliah**, JJ. [Date of decision: 3-11-1987]

[7461] — Ss. 302 and 201 — Appreciation of evidence — Accomplice's evidence — If corroborated in material particulars, can constitute the basis for conviction — *Accomplice becoming approver having been validly granted pardon under S. 306 CrPC, and withstanding cross-examination in committal as well as sessions court — His testimony regarding causing death of the deceased by A-1 corroborated in material particulars by other evidence — Circumstantial evidence sufficient to connect A-1 with commission of the crime — Held on facts, courts below rightly convicted A-1 under S. 302 — Evidence Act, 1872, S. 133 — CrPC, 1973, S. 306*

PW 1 has been proved to have been validly granted the pardon under Section 306 of the Code of Criminal Procedure and the appellant-accused afforded sufficient opportunity of cross-examining him both in the committal as well as in the sessions case. He has withstood the cross-examination and proved the factum of the death of the deceased by A-1 and the destruction of his body by all the accused persons. An accomplice is a competent witness and a conviction can be based upon his testimony if it is otherwise corroborated in material particulars. Both the trial court as well as the High Court have found on facts that the death of the deceased was a case of homicide for which A-1 was responsible. The whole of the deposition of PW 1 is a vivid explanation of the manner in which the offence was committed by A-1 in the presence of A-2 and A-3. There is no reason to disbelieve the statement of PW 1. Besides his ocular testimony there is sufficient corroborative evidence which connects A-1 with the commission of the crime of murder of the deceased. Counsel appearing for A-1 could not refer to any alleged weak link to the circumstances relied upon by the courts below to show that the testimony of PW 1, an approver, had not been corroborated. The circumstantial evidence produced in the case is sufficient to connect the accused with the commission of the crime. It does not lead to any other inference than one of his involvement in the crime. There is no reason to disagree with the findings of the trial court as well as the High Court insofar as the involvement of A-1 in the commission of the crime of murder is concerned. (Paras 18 and 19). *State of Kerala* v. *P. Sugathan*, (2000) 8 SCC 203: 2000 SCC (Cri) 1474: AIR 2000 SC 3323.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **R.P. Sethi**, JJ. [Date of decision: 26-9-2000]

[7462] — Ss. 302/34, 120-B, 364 & 201 — Case based on approver's evidence which was weak and untenable — *Approver kept improving his story from time to time — Only conviction under S. 201 can stand based on recovery of dead body at the instance of the accused. Baldev Singh* v. *State of Punjab*, (1979) 4 SCC 145: 1979 SCC (Cri) 929: AIR 1979 SC 1280: 1979 Cri LJ 871.

Bench Strength **3**. Coram: *Jaswant Singh, P.S. Kailasam* and **A.D. Koshal**, JJ. [Date of decision: 29-9-1978]

(b) Antecedent Character/Background/ Status of Witness

See also CRIMINAL TRIAL — '251.(c) Antecedent character/Background/status of witness', pp. 239 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7463] — Ss. 302, 325, 323 r/w S. 149, Ss. 147 & 148 — Murder trial — Conviction justified — Credibility of witnesses — Related witness and witness with criminal antecedents — *Seven accused alleged to have formed unlawful assembly and in pursuance of common object thereof murdered the deceased and also caused injuries to his brother, PW 1 — Prosecution relying on testimonies of PWs 1 & 2 to support its version — FIR lodged immediately after occurrence by PW 1, wherein A-1 & A-2 (appellants) were clearly named, even their father's name, caste and town they belonged to was clearly mentioned, and specific acts attributed to each of them — PW 1 knew A-1 & A-2 even before the incident and was candid enough to admit that except for those two, he could not say as to which weapons were wielded by other accused — Besides, PW 1 had clearly identified all accused in court — Further, substantive part of his evidence had remained unshaken throughout viz. when he was examined in 1989 for the first time and ten years later in 1998, and his cross-examination in 1999 — Furthermore, he had lost his brother, and hence, could not be expected to let off persons, who were, in fact, guilty of assaulting his brother — As far as PW 2 is concerned, there was nothing to disbelieve insofar as his evidence relating to main incident was concerned — He had no dispute with accused but was rather friendly with them — He candidly admitted that he did not go to police station which was probably because PW 1 had already gone there — Material omissions found in his testimony insignificant — Source of light in which he identified the accused was categorically stated by him and his testimony had remained unshaken throughout — Thus, even when he was of criminal character, and his statement was recorded later, his evidence was inspiring confidence, hence, keeping caution in mind, same could not be rejected — Besides, testimonies of PWs 1 and 2 found corroborating each other where active role played by A-1 and A-2 was obvious — Hence, impugned judgment convicting A-1 and A-2 under S. 302 calls for no interference* (Paras 2, 19 to 30 and 38). *Murli* v. *State of Rajasthan*, (2009) 9 SCC 417: (2009) 81 AIC 43 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 18-8-2009]

(c) Chance witness

See also CRIMINAL TRIAL — '251.(d) Chance witness', pp. 241 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also 'D.38.(m) Natural witness', below

[7464] — S. 302 — Chance witness — Murder on road — Testimony of independent witnesses — *Challenge to, on the ground that they did not explain how they happened to be at the alleged place of occurrence — Held, not maintainable*

PWs 4 and 9 were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. (Para 13)

In a murder trial by describing the independent witnesses as "chance witnesses" it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". (Para 13)

The expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence. (Para 13). *State of A.P.* v. *K. Srinivasulu Reddy*, (2003) 12 SCC 660: AIR 2004 SC 3305.

Bench Strength 2. Coram : *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision : 18-12-2003]

[7465] — S. 302 — Chance witnesses — *PW 3 and PW 7 (two young girls) not ordinarily residents of the village though in all likelihood could be visiting it — Therefore, they can be called chance witnesses — Further, PW 3 and PW 7, accompanying the deceased while he was going to lodge a complaint — Such unusual behaviour of young girls instead of men accompanying the deceased not explained by prosecution — Further, the witnesses stating that all the accused were hiding behind a nullah, thereby trying to hide their identity and then subsequently stating that the accused suddenly coming in front of the deceased and shooting him — Witnesses also contradicting their own statement as to the manner in which the deceased was shot, whether*

38.(c) Chance witness *(contd.)*

sitting or standing — No reliance placed on their evidence (Para 7). *Bhim Singh* v. *State of Haryana*, (2002) 10 SCC 461: 2003 SCC (Cri) 1469: AIR 2003 SC 693: 2003 Cri LJ 857.

Bench Strength 3. Coram : **N. Santosh Hegde**, *Shivaraj V. Patil* and *B.P. Singh*, JJ. [Date of decision : 11-12-2002]

[7466] — S. 302 — Long-standing enmity of serious nature existing between the two eyewitnesses (PWs 3 and 4) and family of accused persons — Murder of brother of PW 3 — Conviction of appellants under S. 302 based on testimony of chance witnesses PWs 3 and 4 — Propriety — *I and his six sons including the two appellants charged under S. 302 r/w S. 120-B IPC for having hatched a conspiracy to commit murder of P — Trial court disbelieving the part of story related to hatching conspiracy and acquitting all accused persons except the appellants — Testimony regarding the manner in which the gunshots were fired, found inconsistent with medical evidence — Delay in sending FIR to Magistrate not explained — Both the eyewitnesses were chance witnesses — Grave doubt expressed about their presence at the place of the incident — Further, testimony of defence witnesses, held on facts, could not just be thrown overboard — Thus, conviction of appellants set aside — CrPC, 1973, S. 157(1)*

PWs 3 and 4, the two eyewitnesses, deposed that they were going to Shivpuri on their bicycles and when they reached Agra-Bombay Road at about 1.30 or 2 p.m., they saw that the motorcycle on which the deceased *P* was coming was hit by the jeep driven by the appellant *B*. They further stated that when *P* fell down with the motorcycle, appellant *G* fired a shot from his rifle on the chest of *P* and appellant *B* fired a gunshot on *P* placing his gun just below the temporal region of the deceased.

Allowing the appeal and setting aside the conviction under Section 302 IPC,

Held :

PW 3 is the brother of the deceased. There is a long-standing enmity of a serious nature existing between the two eyewitnesses and the family of the accused persons. The incident is of the month of June in its latter part. In the part of the country related to the instant case, June-end suffers from scorching heat. Ordinarily, people do not come out and travel long distances under the midday sun, except in cases of urgency or dire need. There was no such reason with either of the two witnesses to go to Shivpuri on bicycles in the hot summer season during the scorching heat of the midday sun. It is a strange coincidence that as soon as they reach the road they find *P* on a motorcycle followed by the two accused in a jeep coming from the opposite direction. Having been hit and injured, the deceased would get up and run away from the accused persons and if he was to be shot at, he would be hit from behind and not from the front as the injury on the chest suggests. Considering the distance from which .315 bore Mauser rifle is stated to have been fired by the accused *G*, it is held that in the ordinary course the bullet would not remain embedded in the body and the wound of entry must have been followed by a wound of exit unless the gun was fired from a long distance but that is not the prosecution case as narrated by the eyewitnesses. According to PW 3, *B* had fired his .12 bore gun by placing the barrel just below the temporal region of the deceased. But the injury is found on the neck and not below the temporal region. Further, the witnesses deposed to having pointed out their cycles fallen on the ground and the bushes behind which the witnesses were hiding themselves to SHO, but the site plan does not show the presence of cycles or the bushes although it mentions the place wherefrom the two witnesses claim to have seen the incident. (Para 13)

According to SHO, it was a telephonic message received by him at Shivpuri Police Station which prompted him to move to the place of the incident. There is no record of such telephonic message. That apart, no explanation is forthcoming why there was a delay of two days in forwarding the copy of the FIR to the Area Magistrate. (Para 14)

The eyewitnesses claim the motorcycle to have been hit by the left side of the bumper of the jeep but the report of the forensic science laboratory is indicating that the dent caused by the motorcycle is on the right side of the bumper. (Para 15)

Both the eyewitnesses are chance witnesses. They do not assign any convincing reason for being at the place of the incident at that abnormal hour of the day in full summer. PW 4 was suffering from pain in the legs. He would not cycle to Shivpuri except for urgency or pressing need, which there was none. (Para 16)

Further, having examined the testimony of the defence witnesses, four in number, originating from the residents of the village, it is held that the same cannot just be thrown overboard. (Para 18)

In view of the abovesaid circumstances, the conviction of the two accused-appellants, which rests on the testimony of the said two witnesses, cannot be sustained. (Para 18). *Baldev Singh* v. *State of M.P.*, (2003) 9 SCC 45: AIR 2003 SC 2098: 2003 Cri LJ 880.

Bench Strength 2. Coram: **R.C. Lahoti** and *Brijesh Kumar, JJ.* [Date of decision: 6-1-2003]

[7467] — S. 302 — Murder Trial — Chance witness — Murder on road — *Testimony of independent witness, a rickshaw-puller — Challenge to, on the ground that he did not explain how he happened to be at the alleged place of occurrence — Held, not maintainable*

In a murder trial by describing the independent witnesses as "chance witnesses" it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite an unsuitable expression in a country where people are less formal and more casual. (Para 17)

On facts, PW 5 was an independent witness. There was not even a suggestion to the witness that he had any animosity towards any of the accused. (Para 17). *Chanakya Dhibar* v. *State of W.B.*, (2004) 12 SCC 398.

Bench Strength **2**. Coram : *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision : 19-12-2003]

[7468] — S. 302 — Murder Trial — Chance witnesses — *Where incident taking place on street, passersby such as milk and vegetable vendors are natural witnesses and not chance witnesses*

If a murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed on a street, only passersby will be witnesses. The evidence of street hawkers and street vendors cannot be discarded or viewed with suspicion merely on the ground that they are chance witnesses. *Rana Partap* v. *State of Haryana*, (1983) 3 SCC 327: 1983 SCC (Cri) 601: AIR 1983 SC 680: 1983 Cri LJ 1272.

Bench Strength **2**. Coram: *D.A. Desai* and **O. Chinnappa Reddy**, JJ. [Date of decision: 12-5-1983]

[7469] — S. 302 r/w S. 34 — Case based on testimony of chance eyewitnesses (PWs 3 and 4) — Also closely related — Conviction — Propriety — *Land dispute between PW 4 and appellant's cousin (J) — Deceased S helping PW 4 whereas appellant helping J — Informant PW 3 (father of S) receiving information at about 7 p.m. from his wife (PW 6) that S left the house with accused at 5 p.m., but did not return — PW 3 becoming apprehensive of safety of S — Searching for S along with PW 4 — On the way, they witnessing the murder of S between 9 to 10 p.m. — Information given to police at 11.20 p.m. — PW 4 stating the time of occurrence to be 7 p.m. — PW 5 at the instance of PW 3 making announcement over loudspeaker before 5.30 p.m. about missing of S — Non-examination of persons gathered after occurrence — Serious doubt about PWs 3 and 4 observing details of attack in the manner narrated — Evidence of PW 6 about what she stated to PW 3, doubtful — On such facts, held, PWs 3 and 4 were introduced as eyewitnesses only after the dead body was found — Conviction and sentence against appellant set aside*

It remains unexplained as to why the prosecution came forward with an inconsistent and distorted version of the time at which PW 3 came to know about his missing son and the actual timing of the occurrence. It may be that some allowance has to be given for the variation in time but the variation in this case is so vast (7.00 p.m. to 10.00 p.m.) that it cannot be attributed merely to the inability of the witnesses hailing from the village to give correct time. PWs 3 and 4 are not illiterate persons, though living in a village. It is difficult to assume that they will not have the idea of time. (Paras 8 and 9)

The time of incident assumes some importance in the instant case for the reason that the report was given to the police at about 11.20 p.m. If the occurrence had been witnessed at 7.00 p.m. as per PW 4's version, there would then be a gap of 3½ hours to 4 hours. Probably to cover up this delay, PW 3 has come forward with the story that the incident happened between 9.00 and 10.00 p.m. (Para 10)

The evidence of the persons who gathered immediately after the occurrence on hearing the alleged cries of PWs 3 and 4 would have been a valuable piece of evidence to serve as corroboration of the account given by the direct witnesses, especially when the presence of the alleged eyewitnesses at the spot was too much of a coincidence. No reason is forthcoming for not examining them. This is another serious lapse which casts a doubt on the prosecution case. (Para 11)

Further, there is serious doubt whether PWs 3 and 4 could have observed the details of attack in the manner in which they narrated. Standing at a respectable distance for fear of being assaulted, it is doubtful whether they were in a position to observe each and every detail of the alleged occurrence, that

38.(c) Chance witness *(contd.)*

too in the moonlight. As far as PW 3 is concerned, there is any amount of doubt as regards his eyesight. (Para 12)

If the version of PW 6 (wife of PW 3) is truthful, one would expect PW 3 contacting the two accused or their leader. It was nobody's case that PW 3 went to the houses of those persons and tried to make inquiries. That apart, the statement of PW 6 was recorded about three months later, for which no explanation is forthcoming. (Para 13)

Thus, the overall picture on a critical examination of the prosecution evidence is that PWs 3 and 4 were introduced as eyewitnesses only after the dead body was found. (Para 14). *Harjinder Singh* v. *State of Punjab*, (2004) 11 SCC 253: AIR 2004 SC 3962: (2004) 21 AIC 887 (SC): 2004 Cri LJ 3854.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 27-7-2004]

[7470] — Ss. 302/149 — PW 2 happened to see the incident while he was going to his guava orchard situated on the western side of the place where the incident occurred — *High Court rejecting his testimony on the ground that he would not have passed through the place of occurrence — On facts, held, it could not be said that the attention of PW 2 would not have been drawn to the incident taking place on the next compound — Hence, High Court erred in rejecting his testimony. State of U.P.* v. *Shiv Charan*, (2002) 9 SCC 381.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Phukan*, JJ. [Date of decision: 15-1-2002]

(d) Child/Young witness

> *See also* CRIMINAL TRIAL — '251.(e) Child/Young witness', pp. 250 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also under 'D.38.(q) Sole/Solitary witness', below

[7471] — S. 302 — Child witness — Belated disclosure of the incident by — Conviction confirmed — *Deceased strangulated and buried under floor of his own house by his nephew (A-1 appellant) and deceased's wife (A-2) — Incident seen by deceased's ten year old daughter (PW 2) who was threatened by accused of dire consequences if she revealed the occurrence to anybody — Ten days after, when deceased's father (PW 1) came and asked about deceased, PW 2 narrated entire incident to him and also showed place where deceased was buried — FIR lodged thereafter — Body of deceased was then exhumed by police in presence of witnesses and panchayatdars — In post-mortem report, doctor opined that deceased died due to manhandling and throttling about 10-15 days prior to date of autopsy and that skull of the dead body could have belonged to a male whose photograph was shown (deceased) — Held, dead body of deceased having been discovered at instance of child witness and post-mortem report being in consonance with prosecution case regarding causing death by strangulation and throttling, testimony of child witness which stood test of cross-examination, cannot be disbelieved — There was no reason why child would falsely implicate her mother also in murder of her father. Balaji* v. *State*, (2010) 12 SCC 545: AIR 2010 SC 278: (2010) 85 AIC 209 (SC).

Bench Strength **3**. Coram: **Altamas Kabir**, *Cyriac Joseph* and *R.M. Lodha*, JJ. [Date of decision: 2-12-2009]

[7472] — S. 302 — Child witness — Evidence of — Conviction on the basis of — *Held, permissible if such witness is found competent to testify and the court after careful scrutiny of its evidence is convinced about the quality and reliability of the same — PW 11, a child witness, saw the appellant committing murder of two persons — Nothing to show that PW 11 or her father had any animosity against the appellant — PW 11 describing in detail the scenario implicating the appellant — Testimony of PW 11 found credible — Appellant's conviction placing reliance thereupon, held, justified — Evidence Act, 1872, S. 118*

In the present case, the learned trial Judge has elaborately analysed the evidence of PW 11 (child witness). There is no reason as to why she would falsely implicate the accused. Nothing has been brought on record to show that she or her father had any animosity so far as the accused is concerned. The prosecution has been able to bring home its accusations beyond the shadow of a doubt. Further, the trial court on careful examination was satisfied about the child's capacity to understand and to give rational answers. That being the position, it cannot be said that the witness (PW 11) had no maturity to understand the import of the questions put or to give rational answers. This witness was cross-examined at length and in spite thereof she had described in detail the scenario implicating the accused to be the author of the crime. The mere fact that the child was asked to say about the occurrence and as to what she saw, is no reason to jump to a conclusion that it amounted to tutoring and that she was deposing only as per tutoring what was not otherwise what she actually saw. (Para 8)

Evidence of PW 11 has credibility which reveals a truthful approach and her evidence to put it mildly, has the ring of truth. There are no exaggerations and she has stuck to her statement made during investigation in all material particulars. That being so, the trial court and the High Court were justified in placing implicit reliance on her testimony. In addition, the evidence to recovery and the report of the Forensic Science Laboratory provide additional support to the prosecution version. (Para 9). *Ratansinh Dalsukhbhai Nayak* v. *State of Gujarat*, (2004) 1 SCC 64: 2004 SCC (Cri) 7: AIR 2004 SC 23: 2004 Cri LJ 19.

Bench Strength **2**. Coram : *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision : 29-10-2003]

Arbind Singh v. State of Bihar, 1995 Supp (4) SCC 416: 1994 SCC (Cri) 1418, distinguished

[7473] — S. 302 — Child witness — Evidence of — Not disclosing names of accused at an early stage — Recoveries not corroborating the evidence — *Held, unsafe to rely on the evidence — Evidence Act, 1872, S. 118*

M, a female child aged about 11 years, the niece of the deceased, who it is alleged was sleeping close to the cot of the deceased on another cot at the time of murder stated that she saw her aunt being killed and that there was a threat to her life as well when one of the assailants suggested that she should also be killed while the other pleaded that she being a child be spared. According to her statement she all along kept pretending that she was sleeping. She did not disclose the names of the assailants who were known to her when she informed one *B* in the morning that her aunt had been killed. She disclosed the names of the assailants 4 days after the incident after she was interrogated by the police at the police station for two days. Her statement did not also corroborate certain recoveries made by the police.

Held :

A child witness aged about 11 years, who is alleged to be an eyewitness of an occurrence of murder can often be expected to give out a true version because of her innocence, there is always the danger in accepting the evidence of such a witness that, under influence, she might have been coached to give out a version by person who may have influence on her.

In this case there are a number of circumstances which show that her evidence is not reliable. It does not seem likely that a girl when her aunt was being killed and her own life was threatened could have continued to pretend that she was asleep. She did not name the assailants at the earliest opportunity, but named them 4 days after the incident and when she remained confined in the police station for two days. Her statement was also not corroborated by certain recoveries made. The witness cannot therefore be held to be reliable. *State of Bihar* v. *Kapil Singh*, AIR 1969 SC 53: (1968) 3 SCR 810: 1969 Cri LJ 279.

Bench Strength **3**. Coram : *S.M. Sikri*, *J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision : 18-4-1968]

[7474] — S. 302 — Child witness — Testimony of — Evidentiary value — Murder case — *J doing construction work at his house in a village asking his brother G to assist him — According to R, 11 or 12-year-old son of G, he along with G had gone to the construction site to sleep there — That at 11.00 p.m. he heard some noise and saw the two accused persons armed with guns coming towards them and that on being exhorted by one of them the other one shot G dead from a close range — That meanwhile J reached there and fired in the air through his licensed gun, the assailants fled but on seeing the dead body of G, R became unconscious and fell down — Having seen the assailants from a distance J being unable to identifying them not naming them in the FIR which he lodged the next morning — R regaining consciousness only after J had left for lodging FIR and thereafter R disclosing the names of the assailants — The said statement of R recorded under S. 161 of CrPC and reaffirmed by him before trial court — R searchingly cross-examined but no material found to discredit his testimony — In such circumstances, held, the trial court rightly accepted the evidence of R as truthful and credible and the absence of the names of the assailants in the FIR or in the inquest panchnama or absence of medical evidence regarding R's unconsciousness was inconsequential as at 11.00 p.m. in a village no medical help could be expected. Nikka Singh* v. *State of Punjab*, (1996) 11 SCC 283: 1997 SCC (Cri) 67: AIR 1997 SC 3676.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 8-10-1996]

[7475] — S. 302 — Child witness — Tutoring — Inference regarding — *Mere fact that the child was asked to say about the occurrence and as to what she saw, held, did not amount to tutoring — Evidence Act, 1872, S. 118* (Para 8). *Ratansinh Dalsukhbhai Nayak* v. *State of Gujarat*, (2004) 1 SCC 64: 2004 SCC (Cri) 7: AIR 2004 SC 23: 2004 Cri LJ 19.

Bench Strength **2**. Coram : *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision : 29-10-2003]

Arbind Singh v. State of Bihar, 1995 Supp (4) SCC 416: 1994 SCC (Cri) 1418, distinguished

38.(d) Child/Young witness *(contd.)*

[7476] — S. 302 — Murder — Prosecution case mainly based on testimony of minor son of deceased as eyewitness — Inconsistencies and contradictions found in his testimony in certain crucial aspects — *Two different versions given by the boy in respect of actual spot of offence — Further, while according to the boy he was examined and taken to the spot by police only 4-5 days after the incident, it was made to appear on police record that he was examined on the same day of the incident — Version of the boy also inconsistent with that of the IO as regards the actual time when police had reached the spot after the incident — Moreover, although in the FIR the informant had mentioned about the boy's presence, he had not mentioned therein that the boy had told him that the accused had killed his father — Held, though by itself, it may not be a significant omission, but coupled with other doubtful features emerging from the evidence of the boy and the IO, this aspect cannot be brushed aside — In view of the doubtful features and other infirmities in the prosecution evidence, it was not safe to rely on the evidence of the boy whose evidence needs to be scrutinised with due care and caution — Offence not made out. Zafar* v. *State of U.P.*, (2003) 3 SCC 51: 2003 SCC (Cri) 730: AIR 2003 SC 931: 2003 Cri LJ 1218: 2003 All LJ 555.

Bench Strength 2. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 15-1-2003]

Zafar v. State of U.P., 2000 Cri LJ 3786: 2000 All LJ 1583, reversed

[7477] — S. 302 — Murder trial — Child witness — Reliability of testimony of — *Competent, unless court considers otherwise — Court may rely upon evidence of child witness, in case her deposition inspires confidence of court and there is no embellishment or improvement — Every witness is competent to depose unless court considers that she is prevented from understanding the question put to her due to tender age, extreme old age, disease whether of body or mind — Only in case there is evidence on record to show that a child has been tutored, can court reject her statement partly or fully — An inference as to whether child has been tutored or not, can be drawn from contents of her deposition — Statement of PW 1 was affirmed by statements of other witnesses, proved circumstances and medical evidence — Her deposition being precise, concise, specific and vivid without any improvement or embroidery, is worth acceptance in toto — Conviction based on her testimony, restored — Oaths Act, 1873, S. 5 — Evidence Act, 1872, S. 118* (Paras 7 to 14 and 23). *State of M.P.* v. *Ramesh*, (2011) 4 SCC 786.

Bench Strength 2. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 18-3-2011]

Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547; Mangoo v. State of M.P., AIR 1995 SC 959: 1995 Cri LJ 1461; Panchhi v. State of U.P., (1998) 7 SCC 177: 1998 SCC (Cri) 1561; Nivrutti Pandurang Kokate v. State of Maharashtra, (2008) 12 SCC 565: (2009) 1 SCC (Cri) 454; Ratansinh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64: 2004 SCC (Cri) 7; Himmat Sukhadeo Wahurwagh v. State of Maharashtra, (2009) 6 SCC 712: (2009) 3 SCC (Cri) 1; State of U.P. v. Krishna Master, (2010) 12 SCC 324: (2011) 1 SCC (Cri) 381; Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516: (2008) 1 SCC (Cri) 109, relied on

[7478] — S. 302 — Murder Trial — Testimony of child witness when needs corroboration — Child witness is prone to tutoring and hence court should look for corroboration particularly when the evidence betrays traces of tutoring — *Husband charged with murder of his wife by hanging — Entire case hinging on the evidence of daughter of deceased aged 5 years at the time of the incident and 9 years at the date of deposition — Trial judge not undertaking a 'voir dire' though he noted that the witness was capable of understanding and answering questions — Witness not consistent in her version — Traces of tutoring found on certain aspects of case — Held, implicit faith and reliance cannot be placed on the evidence of such child witness as it was not corroborated by any independent and reliable evidence — Conviction under S. 302 and sentence of life imprisonment imposed by lower courts set aside — Evidence Act, 1872, S. 118. Arbind Singh* v. *State of Bihar*, 1995 Supp (4) SCC 416: 1994 SCC (Cri) 1418: AIR 1994 SC 1068.

Bench Strength 3. Coram: *A.M. Ahmadi*, *M.M. Punchhi* and *K. Ramaswamy*, JJ. [Date of decision: 3-11-1992]

[7479] — S. 302 — Reliability of testimony of — Testimony of PW 1, minor son of deceased corroborated in all material particulars — *The reason of PW 1 not disclosing to PW 3, his father and husband of deceased as to who the accused was, satisfactorily explained by PW 3 himself — Testimony of PW 1, held, cogent and credible*

The reason as to why PW 1 (the minor son) did not tell PW 3 (his father) has been explained by PW 3 himself. The said witness stated that PW 1 did not disclose him as to how the deceased (mother of PW 1 and wife of PW 3) caught fire because he himself had no time to ask about it and was busy in making arrangement for taking the injured to the hospital where she subsequently breathed her last. In view of the credible and cogent evidence of PW 1 and the dying declaration, there is no merit in the present appeal which deserves dismissal, which is directed. (Paras 13 and 15). *Kalawati* v. *State of Maharashtra*, (2009) 4 SCC 37: (2009) 2 SCC (Cri) 49: AIR 2009 SC 1932.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 11-2-2009]

P.V. Radhakrishna v. State of Karnataka, (2003) 6 SCC 443; Mohan Lal v. State of Haryana, (2007) 9 SCC 151: (2007) 3 SCC (Cri) 94, relied on

[7480] — S. 302 — Sole testimony of son of the deceased aged 16 years found reliable — Minor contradictions regarding number of blows inflicted and which side of pharsa used immaterial — *Medical evidence not in entire conflict with the ocular version — Mere fact that the witness was taken by the police to be produced as a witness, is not a ground to come to the conclusion that he was tutored — Held, in the circumstances, High Court was justified in reversing the acquittal. Mangoo* v. *State of M.P.*, AIR 1995 SC 959: 1995 Cri LJ 1461.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-1-1995]

[7481] — S. 302 — Village girl aged 11 years witnessing ghastly murder of her father — *Her agitated mental state should be kept in mind by court — Minor inconsistencies in her evidence inconsequential — Court should be cautious to find whether her testimony was tutored — Trial court finding her to be in a position to discern truth and falsehood — Hence failure to administer oath would not render her testimony unreliable — She having no motive against the accused, her testimony should be accepted*

A child witness being of tender age, court should be cautious of the possibility of tutoring. In the present case the trial court had found that the child witness was in a position to discern as to what was truth and what was falsehood, the failure to administrator oath would be of no consequence. She witnessed a ghastly murder where her father himself was killed. One cannot brush aside the agitated mood and the mind in which the tender child would have been. It must have been the rudest shock of her life. To expect her in that situation to give the details as to who chased accused 1 or 2 or to expect her to go to the scene of occurrence on that very night would be asking for too much. When she stated that two persons chased the accused, that should be enough. Her failure to inform her mother is not a factor which would make her evidence not creditworthy, because by then the mother had come to know of the murder. If it was a false case being foisted on the accused such natural imperfections would not have surfaced. Merely because she did not give details as to whether the deceased caught hold of the hair of the accused 1 etc. does not give rise to any doubt as to the occurrence. It will be too much to expect from a child to give such intricate details. She being a child witness and having no motive against the accused her evidence ought to have been accepted. *State of T.N.* v. *Karuppusamy*, 1993 Supp (1) SCC 78: 1993 SCC (Cri) 123.

Bench Strength **2**. Coram: *A.M. Ahmadi* and **S. Mohan**, JJ. [Date of decision: 31-3-1992]

[7482] — S. 302 — Witness — Child witness — Reliability — Age 11 years

While such a child witness can often be expected to give out a true version because of her innocence, there is always the danger in accepting the evidence of such a witness that, under influence, she might have been coached to give out a version by persons who may have influence on her. *State of Bihar* v. *Kapil Singh*, AIR 1969 SC 53, 56: (1968) 3 SCR 810: 1969 Cri LJ 279.

Bench Strength **3**. Coram : *S.M. Sikri*, *J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision : 18-4-1968]

[7483] — Ss. 302 and 34 — Bride burning — Witnesses — Eyewitnesses — Natural witness — Child witness — *Deceased's brother aged 12 years deposing that when the accused persons sprinkled kerosene on the body of his sister and threw upon her a lit matchstick, he poured some water on her and thereafter rushed to inform his parents — Accused-appellants contending that it was not natural that the said witness would be staying with her sister — They further contending that he was a child witness and had stated as taught by his parents — Evidence on record showing that the deceased's husband and members of his family were hostile to her — Deceased's husband had been staying at the house of the deceased's parents after they had got him released from jail — In such circumstances, held, there was nothing unnatural in the sending of the deceased's brother by his father to be there with his daughter at her in-laws' house — Moreover, the statement of the deceased's brother having been recorded by the police on the date of the incident itself when he was alone in the house, the latter part of the appellants' contention also rejected — Further held, nothing could be shown in his cross-examination that although aged about 12 there was any infirmity in his understanding of the facts perceived and his ability to narrate the same correctly — This observation, held, was also applicable to the statement of PW 2 who was a student of 8th standard — These days a child of 8th standard acquires sufficient understanding to perceive the facts and to narrate the same — Evidence Act, 1872, S. 118*

The evidence on record shows that *R*, the husband of Sindhubai and members of his family had been unhappy with her and they had been

38.(d) Child/Young witness *(contd.)*

quarrelling with her. Prior to the incident, *R* was staying at the house of the parents of the deceased after he was got released from jail by her father. In such circumstances there was nothing unnatural if the parents sent PW 1 *U* also to be there with their daughter at her in-laws' house. So far as the other criticism, that his father had told him whatever he had to depose in the court, it is relevant that the witness has stated that he was interrogated by the police and his statement was recorded on the date of incident itself and that he was alone in the house since his parents had gone to Amravati Hospital. In case any different statement was given by the witness in court it could very well be brought to the notice of the witness and he could be confronted with his previous statement. Nothing has been brought in his cross-examination that being aged about 12 years there was any infirmity in his understanding of the facts perceived and his ability to narrate the same correctly. This observation shall also hold good insofar as the statement of PW 2 is concerned, since he was then studying in 8th standard. As a matter of fact, a student of 8th standard, these days acquires sufficient understanding to perceive the facts and to narrate the same. (Para 7). *Dhanraj* v. *State of Maharashtra*, (2002) 7 SCC 425: 2002 SCC (Cri) 1775: AIR 2002 SC 3302.

Bench Strength **2**. Coram: *R.C. Lahoti* and **Brijesh Kumar**, JJ. [Date of decision: 16-9-2002]

[7484] — Ss. 302 & 201 — Murder of wife by appellant husband in his house alleged — Prosecution case mainly based on evidence of two children of the deceased, aged 6 years and 10 years, claimed to be eyewitneses — *But there was strong reason to infer from the facts that the prosecution suppressed the earliest version of the two child witnesses — That apart, an analysis of the version of these witnesses revealed that the same was against the natural course of conduct and probabilities and, therefore, their evidence did not inspire confidence and was unsafe to act upon — Evidence of other witnesses which was in the nature of corroborating evidence also found to be untrustworthy — Moreover, their earliest statements had been suppressed — Held, once evidence of the eyewitnesses is discarded as unworthy of credence, it is difficult to sustain the conviction of the accused even though circumstances raise strong suspicion against him — Hence accused appellant entitled to benefit of doubt*

The accused appellant was charged under Section 302 IPC for the alleged murder of his wife at their house by hanging her from the beam with a rope. The trial court convicted him under Sections 302 and 201 IPC and sentenced him to life imprisonment. On appeal, the High Court confirmed the conviction and sentence and dismissed the appeal. The High Court as well as the Sessions Court mainly relied on the evidence of their two children aged 6 years and 10 years on the date of the incident. The High Court only observed that the evidence of the child witnesses inspired confidence and their testimony remained unshaken in cross-examination. It was further observed that the evidence of these witnesses is corroborated by medical evidence without appreciating the fact that the doctor was unable to say from the ligature marks or other features whether the death was suicidal or homicidal.

On reappreciation of evidence, allowing the accused's appeal,

Held :

The evidence of the two children who claimed to be the eyewitnesses does not inspire confidence. The judgment of the High Court is sketchy and slipshod. There was no critical evaluation of the evidence of the two child witnesses and there was no consideration of material aspects bearing on the veracity of the version given by the two child witnesses. In these circumstances, it is not possible to approve the conclusions of High Court though concurrent they are. Accordingly, the appellant's conviction and sentence is set aside. (Paras 8, 11 and 12). *Orsu Venkat Rao* v. *State of A.P.*, (2004) 13 SCC 243: 2005 SCC (Cri) 166: AIR 2004 SC 4961: (2005) 99 Cut LT 72: 2004 Cri LJ 4656: (2005) 1 Mah LJ 371.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 15-10-2004]

[7485] — Ss. 302 & 307 — Murder by gunshot firing — Material omissions found in evidence of PWs — Identification of accused persons by PW not acceptable — *Evidence of another PW, a child witness, regarding identification of the accused in absence of corroboration, would be risky to accept — No explanation given for non-examination of a material witness who was injured in the incident — Presence of two police officers on the ground floor when the incident occurred on the first floor of the building of the deceased not acceptable as their failure to make proper inquiries, or to go upstairs and to see the place of occurrence was contrary to natural human conduct — Medical evidence not supporting the evidence of the eyewitnesses — According to ballistic expert metallic bullets recovered from the body of deceased were not fired from the pistols recovered from possession of accused —*

One of the accused, one PW and another person also sustaining gunshot injuries — No explanation forthcoming from prosecution for these discrepancies — In the circumstances held, the occurrence did not take place as alleged by the prosecution

Evidence of a child witness must be evaluated carefully as a child may be swayed by what others tell him and is an easy prey to tutoring. Wisdom requires that evidence of a child witness must find adequate corroboration before it is relied on. In the present case it was difficult to accept that the deceased's daughter who was aged 9½ years could have identified the other accused, who was not known to her, during the occurrence. (Para 9). *State of U.P.* v. *Ashok Dixit*, (2000) 3 SCC 70: 2000 SCC (Cri) 579: AIR 2000 SC 1066: 2000 Cri LJ 1436: 2000 All LJ 700.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.N. Phukan**, JJ. [Date of decision: 16-2-2000]

Panchhi v. State of U.P., (1998) 7 SCC 177: 1998 SCC (Cri) 1561, relied on

[7486] — Ss. 302 and 307 r/w S. 34 — Injured child eyewitness — Murder trial — *On facts, trial court relying on the evidence of PW 2, injured child eyewitness, convicting respondent-accused under Ss. 302 and 307 r/w S. 34 IPC — High Court directing acquittal primarily on the basis that PW 2 was not in the condition to give statement — Reference was made to the seriousness of the injuries sustained by him — Sustainability — Held, High Court proceeded on surmises — Evidence of PW 17, the doctor, showed that PW 2 was in a position to give statement as he had regained consciousness — Herein, High Court had not indicated any plausible reason to discard evidence of PW 2 — It did not examine the acceptability, credibility and truthfulness or otherwise of PW 2's evidence by analysing evidence vis-à-vis other factors and materials on record — In the circumstances, impugned judgment of High Court set aside and matter remitted for consideration afresh* (Paras 4, 5 and 8 to 10). *State* v. *Rakiappan*, (2008) 15 SCC 715: (2009) 3 SCC (Cri) 1166: (2009) 74 AIC 162 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 21-10-2008]

[7487] — Ss. 302 and 323 — Conduct of minor son on murder of his mother and brother by his father — Appellant attacking his wife and two sons with knife — Wife and one son *A* died on spot — Other son, PW 1 received injuries — *Appellant running away when PW 1 raised hue and cry and neighbours and relatives arrived there — Appellant remained absconding — Held, PW 1 lodged complaint giving full details and naming his father as accused — Complaint was written by PW 10 an independent witness from neighbouring village — Conduct of PW 1 is natural, probable and convincing — Cross-examination not shaking credibility of PW 1 — Denial by PW 1 that he named his father under suspicion — PWs 2, 3, 4, 6, 7 and 8 stating that they rushed to spot on hearing hue and cry and stating that they were informed by PW 1 that his father attacked with knife — PW 4 stating that A telling him before his death that appellant attacked him — PW 4 could be first person to have visited spot — IO submitting charge-sheet showing appellant as absconder — Ocular evidence supported by medical evidence — No material to show that appellant was falsely implicated or that appellant's neighbours and relatives deposing falsely against him — Motive is irrelevant when direct evidence is available* (Paras 13 to 18, 20 and 21). *Bipin Kumar Mondal* v. *State of W.B.*, (2010) 12 SCC 91: AIR 2010 SC 3638: 2010 Cri LJ 3880.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-7-2010]

Matru v. State of U.P., (1971) 2 SCC 75: 1971 SCC (Cri) 391; Rahman v. State of U.P., (1972) 4 SCC (N) 6; State of M.P. v. Paltan Mallah, (2005) 3 SCC 169: 2005 SCC (Cri) 674, relied on

[7488] — Ss. 302/34 — Appellant husband killing his wife — Daughter and son of the appellant appearing as eyewitnesses — *Son reaching the place of occurrence only after the appellant had run away — Witnesses not informing anybody about the appellant having stabbed the deceased — Their evidence showing that they were tutored and under the influence of the police — Daughter gave evidence in accordance with her statement recorded under S. 162, CrPC — Held, no reliance can be placed on their evidence. Chhagan Dame* v. *State of Gujarat*, 1995 SCC (Cri) 182: AIR 1994 SC 454.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 23-3-1993]

[7489] — Ss. 302/34 — Competence of witness to testify — Age, whether a determinative factor — Testimony of child witness — Admissibility of — Murder trial — *Held, Evidence Act does not prescribe any particular age as a determinative factor to treat a witness to be a competent one — Child of tender age can be allowed to testify if he or she has intellectual capacity to understand questions and give rational answers thereto — Evidence of child witness is not required to be rejected per se, but the court, as a rule of prudence, should consider such evidence with close scrutiny and only on being convinced about the quality and reliability thereof, can*

38.(d) Child/Young witness *(contd.)*

record conviction based thereon — Herein, testimony of PW 1 (eyewitness and wife of deceased) stands corroborated by testimony of PW 2 (eyewitness and daughter of deceased), aged 14 years, on all material points — Prompt answers from PW 2, to the questions put to her during cross-examination, can be accepted, even though she was aged about 14 years as to when the occurrence had taken place — Evidence Act, 1872, S. 118 (Paras 18 to 23)

In the present case, a perusal of the statement of PW 2 (eyewitness and daughter of the deceased) goes to show that she had no idea of directions, distance, area, etc. She remained silent to some questions put to her such as what was the area of her father's field or whose fields were situate around the field of her father. However, she was a rustic village girl aged about 14 years and such a girl cannot always be expected to have an alert mind so as to be able to answer all questions such as directions, area, and distance with precision. (Paras 18, 19, 22 and 23)

It is not the case of the prosecution that the conviction has to be based on the sole testimony of PW 2. The testimony of PW 2 was used by the prosecution only to the extent that the same corroborates the evidence led by the prosecution through PW 1 (eyewitness and wife of the deceased) and was also in conformity with the medical evidence. From her deposition it appears that PW 2 had deposed whatever she had seen and the same corroborated the testimony of PW 1 on all material points. (Para 23). *Virendra* v. *State of U.P.*, (2008) 16 SCC 582: (2008) 71 AIC 33 (SC).

Bench Strength **2**. Coram: *Dr. Arijit Pasayat* and **Dr. M.K. Sharma**, JJ. [Date of decision: 17-10-2008]

Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341: 1997 SCC (Cri) 685; Ratansinh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64: 2004 SCC (Cri) 7, relied on

[7490] — Ss. 302/34 — Credibility of witnesses — Murder of three persons — Appellant convicted by courts below under Ss. 302/34 and sentenced to death while co-accused absconded and declared proclaimed offender — *Sole eyewitness was a girl aged 7 years injured in the same incident who deposed before the trial court 5 years after the incident — Her evidence regarding involvement of appellant was doubtful in absence of anything to show that she had ever seen or known him prior to the occurrence and in view of unexplained delay of 3 days in examining her under S. 161 CrPC and in view of non-mention by her as to how the third deceased was killed when appellant had no motive to kill him — As regards evidence of father of the child witness, not only most of his statements made in examination-in-chief were not stated when he was examined under S. 161 CrPC, assertions made by him in the course of his deposition were also false, hence his evidence must be discarded — Another PW was declared hostile and though he had lodged FIR but nothing much turned on his evidence as he was not an eyewitness — Though a motorcycle and a wristwatch were seized from the place of occurrence, but no evidence produced to connect appellant with those items — Held, it would be unsafe to convict the appellant on the sole testimony of the child witness — Though the girl might have witnessed the occurrence, she did not know the appellant — CrPC, 1973, S. 161 — Evidence Act, 1872, S. 118* (Paras 24 to 29). *Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689: 2005 SCC (Cri) 893: AIR 2005 SC 913: 2005 Cri LJ 955.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **B.P. Singh**, JJ. [Date of decision: 18-1-2005]

[7491] — Ss. 302/34 — Evidence of child witness — Minor son (aged 11 years) eyewitness of the incident in which his mother was killed and his father sustained injuries — *He was taken by three persons (including one related to the accused) where he was purported to have made a statement on the basis of which FIR was recorded — According to that statement, there was a quarrel between his parents followed by assaults as a result of which both of them were injured and his mother succumbed to the injuries — But subsequently a supplementary statement of the boy recorded by a police officer of the rank of Dy SP wherein he disclosed that accused-appellants had assaulted his parents and his mother succumbed to the injuries — Before trial court he denied to have made the first statement and stated that at the police station his signature was obtained on a blank piece of paper — His statement made before the Dy SP was supported by medical evidence and also evidence of his father — Held, that statement was his correct version and acceptable — Courts below having recorded a clear finding that previous enmity between the parties was the motive of the crime, there was no material to disturb the concurrent finding that the appellants were the perpetrators of the crime — Hence conviction and sentence under Ss. 302/34 upheld — Evidence Act, 1872, S. 118. Majid* v. *State of Haryana*, (2001) 10 SCC 6: AIR 2002 SC 382: 2002 Cri LJ 938.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Phukan**, JJ. [Date of decision: 11-12-2001]

[7492] — Ss. 302/34 and 201/34 — Charge of murder against wife of the deceased (appellant) and her paramour — *Testimony of sole eyewitness, son of the deceased and the appellant, found to be consistent, cogent and trustworthy — Injury on the nose of the child witness caused by the co-accused when he raised alarm seeing his father being assaulted by his mother and the co-accused corroborating his testimony — Medical evidence also lending credence to his testimony — No merit in the plea that the child having seen his mother having sexual intercourse with the co-accused, being angry, falsely implicated them — Recovery of dead body on disclosure statements made by the appellant and her co-accused — Deceased last seen alive with the appellant — False information given by the appellant to the villagers that her husband had gone back to his unit — Extra-judicial confessions of the appellant and her co-accused — Held, in the circumstances of the case, the prosecution has established the case against the appellant and her paramour. Sewa Kaur* v. *State of Punjab*, 1997 SCC (Cri) 252: AIR 1997 SC 1843: 1997 Cri LJ 1833.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *K.T. Thomas*, JJ. [Date of decision: 7-11-1996]

[7493] — Ss. 302/120-B — Murder of five members of a family in their home — Prosecution case based on testimony of child witness who claimed to have seen the occurrence — *Testimony of child witness having several material contradictions — Testimony sought to be corroborated by the evidence regarding recovery of the crime weapon from accused — But such recovery in the case of this nature would not be of much consequence — In the circumstances held, prosecution evidence insufficient and therefore, appellant entitled to benefit of doubt — Evidence Act, 1872, S. 27. Nirmal Kumar* v. *State of U.P.*, 1993 Supp (1) SCC 510: 1993 SCC (Cri) 289: AIR 1992 SC 1131.

Bench Strength **2**. Coram : *K. Jayachandra Reddy* and *R.C. Patnaik*, JJ. [Date of decision : 18-2-1992]

[7494] — Ss. 302/149 and 436/149 — Sentence — Death sentence — Commutation of — *Conviction based on sole testimony of child witness — Murder of six persons to take revenge for a carnage involving the kith and kin of the appellants — Sole eyewitness a 9 years' old child whose parents, uncle and sisters killed in the incident — Such child witness could not tell the names of four out of eight appellants — Murder committed in a premeditated and calculated manner with extreme cruelty and brutality for which normally sentence of death is wholly justified — But in the specials facts of the case sentence of death commuted to the sentence of imprisonment for life — Rule of rarest of rare cases considered — Appellants also awarded 6 years' RI for offence under Ss. 436/149 and a composite fine of Rs 15,000 against each of the appellants for offences under Ss. 302 and 436/149 — Sentences directed to run consecutively — Amount of fine, if realised, directed to be paid to the child — Victimology — Evidence Act, 1872, S. 118. Raja Ram Yadav* v. *State of Bihar*, (1996) 9 SCC 287: AIR 1996 SC 1613.

Bench Strength **2**. Coram: **G.N. Ray** and *B.L. Hansaria*, JJ. [Date of decision: 11-4-1996]

Suresh v. State of U.P., (1981) 2 SCC 569: 1981 SCC (Cri) 559: AIR 1981 SC 1122, followed

[7495] — Ss. 304 Pt. I or 302 — Causing death of wife by hitting a single blow with a hammer on her face — *Incident taking place in the early hours of the day and the sole child eyewitness, deceased's son PW 1, rushing to his uncle's (PW 2's) house in the night and narrating what he had seen — PW 2 giving information and FIR registered — PW 1 deposing before the court that while he was in the room appellant demanded earrings of the deceased and on her refusal he snatched and put them in his trouser pocket and that pursuant to the quarrel, appellant hit his mother with the hammer — During course of investigation bloodstained hammer and earrings recovered — Medical report showing that though deceased suffered multiple injuries on her nose, chin and upper part of the face but they could have been caused by a single blow and doctor who conducted post-mortem not disputing this fact — Held, evidence of the child, PW 1 reliable and the contention that he was tutored by relatives cannot be accepted — Evidence regarding recovery of the hammer and earrings corroborated the evidence of PW 1, and PW 2 supported the case of PW 1 — On facts held, it was possible that there had been a sudden quarrel and in the heat of passion appellant hit the deceased which resulted in her death — Therefore, the offence would fall under S. 304 Pt. I and not under S. 302 — Appellant having already undergone imprisonment for seven years and nine months, sentence already undergone would be sufficient to meet the ends of justice* (Paras 2, 3 and 4). *Jasram* v. *State of M.P.*, (2005) 12 SCC 176.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 1-3-2005]

(e) Eyewitness

See also CRIMINAL TRIAL — '251.(i) Eyewitness', pp. 274 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also 'D.4.(e) Appreciation of Evidence — Credibility of witness', in Vol. 2

[7496] — S. 302 — Generally — Oral testimony of eyewitnesses must be corroborated in some way by circumstantial evidence

As a matter of prudence and caution, the trial court may require some sort of corroboration to the testimony of the eyewitnesses before convicting the accused for murder. Such corroboration is not to be of the kind required in the case of an approver or accomplice but corroboration by some circumstances which would lend assurance to the evidence before the court and satisfy it that the particular accused persons were really concerned with the murder. *Lachhman Singh* v. *State*, AIR 1952 SC 167: 1952 SCR 839: 1952 Cri LJ 863, 865.

Bench Strength 2. Coram : **Fazl Ali** and *Vivian Bose*, JJ. [Date of decision : 21-3-1952]

Followed in 1954 Cri LJ 580, 581: AIR 1954 SC 204

***Explained in AIR 1965 SC 328: 1965 (1) Cri LJ 350** as not laying down a rule that in all cases the testimony of interested witnesses must be corroborated*

[7497] — S. 302 — Eyewitness — Presence of PW at the time and place of occurrence — Proof — *Name of PW was Raja @ Perumal while name of his elder brother was only Raja — FIR mentioning name of Raja as eyewitness — Contention by appellant that it was the elder brother who had witnessed the occurrence but was not examined by the prosecution — Immediately after the incident Raja @ Perumal referred to as an eyewitness by IO in inquest report — During course of investigation, police also recording statement of Raja @ Perumal — Statement of PW disclosing his presence at the spot of the occurrence — Held, PW was witness to the occurrence* (Para 5). *Seeman* v. *State*, (2005) 11 SCC 142: 2005 SCC (Cri) 1893: AIR 2005 SC 2503: 2005 Cri LJ 2618.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and **P.P. Naolekar**, JJ. [Date of decision: 12-5-2005]

[7498] — S. 302 — Eyewitness version would be preferable to medical evidence unless the medical evidence completely rules out the eyewitness version. *Solanki Chimanbhai Ukabhai* v. *State of Gujarat*, (1983) 2 SCC 174: 1983 SCC (Cri) 379: AIR 1983 SC 484: 1983 Cri LJ 822: (1983) 2 GLR 870.

Bench Strength 2. Coram : *D.A. Desai* and **R.B. Misra**, JJ. [Date of decision : 22-2-1983]

[7499] — S. 302 — Eyewitness, brother of the deceased, throughout asserting that he knew the appellant by name and face — *His statement corroborated by another witness who brought him along with the victim on his rickshaw to the hospital — Injury received by the eyewitness during same occurrence establishing his presence at the scene of occurrence — Recovery of knife at the instance of appellant during investigation — No motive on the part of the eyewitness suggested for falsely implicating the appellant as the assailant of his brother — In facts and circumstances of the case High Court perfectly justified in setting aside the acquittal of the appellant — CrPC, 1973, Ss. 378 and 386. Ramsinh Bavaji Jadeja* v. *State of Gujarat*, (1994) 2 SCC 685: 1994 SCC (Cri) 609: 1994 Cri LJ 3067: (1994) 2 Punj LR 671: (1994) 1 MWN (Cri) 130: (1994) 1 GLH 329.

Bench Strength 2. Coram : *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision : 1-3-1994]

[7500] — S. 302 — Eyewitnesses — Place of residence of — Relevance — *Submission that the eyewitnesses examined by the prosecution were not residents of the locality where the incident took place and as such their presence on the spot at the time of the occurrence was highly doubtful — Suit for arrears of rent and eviction had been decreed in favour of the father of the deceased against accused* ***SK — SK's*** *movable properties also attached and given in custody of PW 1 but were not removed from the house — On the day of occurrence PW 1, PW 2 and PW 3 (brother and brother-in-law respectively of the deceased) had gone to see the house (where the deceased was alleged to have been murdered by the accused) — Held, the house belonged to the father of the deceased and there is nothing unnatural if his two sons went to see it as it was locked and nobody resided therein — Similarly, presence of PW 1 was also very natural as he was the "supurdgar" of movable properties and was responsible for its safety — Presence of these eyewitnesses at the place of occurrence was very natural and the mere fact that they did not belong to the same "mohalla" cannot be a ground to discard their testimony — Moreover, PWs 1 and 3 were residents of same police station and consequently their houses would not be at a great distance from the place of occurrence* (Para 6). *Munney* v. *State of U.P.*, (2006) 12 SCC 697: (2007) 2 SCC (Cri) 363: AIR 2006 SC 2902: (2006) 5 All LJ 690: (2006) 45 AIC 65 (SC): 2006 Cri LJ 4064.

Bench Strength 2. Coram : **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision : 3-8-2006]

[7501] — S. 302 — Eyewitnesses — Unnatural conduct of — Their presence at the time of occurrence — Doubt in respect of — *Accused* **B** *and deceased* **R** *walking with Forest Officer (PW 4) and Forest Guards (PWs 5 and 6) — As per the said PWs,* **B** *suddenly firing on the back of* **R** — **B** *also seen twisting and pressing the neck of* **R** — *PWs getting scared and instead of informing the villagers of the nearest village, running towards another village — After reaching that village, they boarding a bus and reaching a police station (which was 16 km away from place of occurrence) to lodge the report — They did not stop to inform the villagers of the villages through which they passed — Nor did they visit the place of occurrence after* **B** *had left — Thus, their conduct highly unnatural — Absence of motive to commit offence — No altercation between* **B** *and* **R** *on the way — No injury mark on the neck of* **R** — *Firing alleged to have been done by placing the gun on the back — But no blackening or charring of skin around the wounds — Concealment of true facts by the said PWs — Special report reaching the Magistrate ten days after its alleged dispatch — Prosecution case and veracity of eyewitnesses doubtful — Possibility of* **R**, *a history-sheeter, having been killed by one of his enemies not ruled out — On facts, held,* **B** *entitled to benefit of doubt*

It appears unnatural that the three eyewitnesses who were no other than Forest Officer and forest guards got so scared that they started running in such a manner that they did not even bother to go to the nearest Village Bandala, two furlongs away or to inform the villagers. Nor did they stop to inform the villagers of the villages through which they passed, so that they may visit the place of occurrence and find out whether the deceased was really dead. Normally, one would have expected them to visit the place of occurrence after the appellant had left if only to verify whether the victim was really dead, and to render help if necessary, since the deceased was known to them. In any event, their natural conduct would have been to inform the villagers of the nearest village so that they could go to the place of occurrence and render whatever help was possible. Their version that they kept on running and did not inform anyone about the occurrence, is not believable. The possibility therefore of having come to the place of occurrence much later, and being told about the occurrence by others, cannot be ruled out. (Para 17)

PWs 4 and 5 stated that the accused-appellant placed his gun on the back of the deceased and fired. But the medical evidence on record discloses that there was no blackening and charring of the skin around the wounds. Although PW 6 tried to salvage the situation by stating that at the time of firing the barrel of the gun was about 4-5 feet away from the back of the deceased, but this is inconsistent with the testimony of the other eyewitnesses. (Para 18)

That apart, there was no motive for the appellant to kill the deceased. Further, no mark of injury has been found on the neck of the deceased by the doctor. (Paras 20 and 21)

There is evidence on record led by the prosecution itself that the appellant and the deceased were with the eyewitnesses from the evening of the earlier day, and that the appellant had slept with the eyewitnesses at the house of one *AS*. However, the prosecution has projected a case through the eyewitnesses that they met accidentally while they were on their way from Kachnaria to Achhroni. Thus, the eyewitnesses have tried to conceal the true facts from the court. Moreover, from the evidence on record it does not appear that any altercation took place between the appellant and the deceased while on their way to Village Achhroni. (Para 22)

The prosecution has also failed to explain the delay in receipt of the special report by the Magistrate concerned. (Para 23)

The facts and circumstances create a serious doubt about the truthfulness of the prosecution case as well as the veracity of the eyewitnesses. The deceased had many enemies, and it appears that he may have been murdered by one of them, but the appellant was falsely implicated. (Para 24). *Badam Singh* v. *State of M.P.*, (2003) 12 SCC 792: AIR 2004 SC 26: 2004 Cri LJ 22.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-11-2003]

[7502] — S. 302 — Murder at railway platform before a large number of persons — *Eyewitnesses deposing that the appellant inflicted the injury and with the knife in hand rushed and boarded the train — Their presence at railway platform admitted by hostile witness — No reason to discard evidence of the eyewitnesses — Reversal of acquittal by High Court justified — No interference by Supreme Court called for. Vinay Kumar* v. *State of M.P.*, 1994 Supp (1) SCC 559: 1994 SCC (Cri) 719: AIR 1994 SC 830: 1994 Cri LJ 942.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 2-12-1993]

[7503] — S. 302 — Murder Trial — Mere failure of eyewitness to disclose name of assailant to doctor would not discredit him as an eyewitness — *Doctors are primarily not concerned with the culprit but with medical aid to the deceased — Evidence Act, 1872, S. 45*

38.(e) Eyewitness *(contd.)*

A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. Doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible. In the state of confusion the eyewitnesses in the present case may not have chosen to give details of the murder to the doctor. But that would not render their testimony unreliable. *Pattipati Venkaiah* v. *State of A.P.*, (1985) 4 SCC 80: 1985 SCC (Cri) 464: AIR 1985 SC 1715.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 16-8-1985]

[7504] — S. 302 — Presence of eyewitnesses at the place of occurrence found to be quite natural — *Their depositions amply corroborated by the evidence of doctor and post-mortem report — Delay in lodging FIR explained — On facts, plea of accidental firing because of the scuffle between the appellant and the deceased not acceptable — Merely because prosecution case against the co-accused was not accepted to be fully proved, the case against the appellant could not be dismissed — Conviction upheld — Arms Act, 1959, S. 27. Pupinder Pal Singh* v. *State of Punjab*, 1994 SCC (Cri) 1153.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 3-3-1994]

[7505] — S. 302 — Rule of corroboration cannot be introduced merely because the eyewitnesses are two women and the fate of seven men hangs on their testimony — *Nor the fact that the witnesses were related to the deceased material — Each case to be judged on its own facts. Dalip Singh* v. *State of Punjab*, AIR 1953 SC 364: 1954 SCR 145: 1953 Cri LJ 1465, 1467.

Bench Strength 3. Coram : *M.C. Mahajan*, **Vivian Bose** and *B. Jagannadhadas*, JJ. [Date of decision : 15-5-1953]

AIR 1952 SC 54, 59: 1952 Cri LJ 547, followed

[7506] — S. 302 — Testimony of the eyewitnesses who also suffered injuries in the incident, wholly reliable and not suffering from any inconsistency can be the basis of conviction. *Labhu Ram* v. *State of Punjab*, 1995 Supp (4) SCC 17: 1996 SCC (Cri) 15.

Bench Strength 2. Coram : **G.N. Ray** and *Faizan Uddin*, JJ. [Date of decision : 26-9-1995]

[7507] — Ss. 302 and 34 — Bride burning — Witnesses — *Eyewitnesses — Eyewitnesses (PW 2 and PW 5) deposing that when they arrived near the house of the deceased, they found her lying in the verandah — Since the said witnesses were not far away from the place of the incident (PW 2's house being only 50 ft away from the deceased's), the accused-appellants' contention that the said witnesses had not seen the main incident, rejected*

PW 2 has stated that his house is about 50 ft away from the house of Sindhubai. It cannot be said that the witness could not see the incident from a distance of fifty paces. They may have actually gone near the house of the deceased seeing the incident and may have seen her falling in the varandah while a little away from her house. It does not mean that they did not see the incident from the place where even they were stationed when the incident took place. There is therefore, no ground to discard the testimony of the three eyewitnesses examined in the case nor on the ground that other persons who may have collected at the spot were not examined by the prosecution as it is not always possible. (Para 8). *Dhanraj* v. *State of Maharashtra*, (2002) 7 SCC 425: 2002 SCC (Cri) 1775: AIR 2002 SC 3302.

Bench Strength 2. Coram: *R.C. Lahoti* and **Brijesh Kumar**, JJ. [Date of decision: 16-9-2002]

[7508] — Ss. 302 & 34 — Firing incident taking place suddenly and ending within a couple of minutes — *In the circumstances, persons present at the time of and around the place of occurrence cannot be expected to get a clear and lasting impression of all that happened — Hence, minor inconsistencies in their statements will not make them unreliable. Kedar* v. *State of M.P.*, (1982) 2 SCC 112: 1982 SCC (Cri) 367.

Bench Strength 2. Coram : *R.S. Pathak* and **A.D. Koshal**, JJ. [Date of decision : 19-3-1980]

[7509] — Ss. 302 and 307 — Murder inside a factory — Presence of eyewitness (employee of that factory) at the place and time of occurrence — Proof — *Sufficient materials produced to prove his presence — Fact that some more records which could have been produced, but not shown to be deliberately withheld, held, could not by itself cast any shadow of doubt on the veracity of the prosecution version* (Para 7). *Kamaljit Singh* v. *State of Punjab*, (2003) 12 SCC 155: AIR 2004 SC 69: 2004 Cri LJ 28.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

[7510] — Ss. 302/34 — Eyewitness — Testimony of — Credibility — Person witnessing incident from some distance, going to place where deceased had fallen after being shot, after few minutes — Whether this discredited possibility of his being an eyewitness — *Defence submission that PW 6 was not an eyewitness, as he had come to the place of occurrence 7-8 mins. after occurrence — Tenability — Held, defence submission is not based on accurate reading of deposition of witness — Witness had clearly stated that he saw deceased going on motorcycle on date of occurrence and that appellant-accused S had brought his motorcycle to left of motorcycle of deceased, whereupon appellant-accused U, pillion rider, had shot deceased in the head — Version given by witness does not admit of being understood to suggest that witness reached place of occurrence after occurrence had taken place — What witness had stated was that he went to place where deceased had fallen, 5-7 mins. after occurrence was over — Witnessing occurrence cannot be confused with going to place where deceased had fallen — On a careful reading of deposition of PW 6, no infirmity in the same is found, that may justify rejection of his version — Both courts below rightly accepted testimony of PW 6, while finding appellants guilty — Arms Act, 1959, S. 27* (Paras 65 and 70). *Sheo Shankar Singh* v. *State of Jharkhand*, (2011) 3 SCC 654.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **T.S. Thakur**, JJ. [Date of decision: 15-2-2011]

Jagmohan Singh v. State of U.P., (1973) 1 SCC 20: 1973 SCC (Cri) 169; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Farooq v. State of Kerala, (2002) 4 SCC 697: 2002 SCC (Cri) 876; Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498: (2009) 2 SCC (Cri) 1150; State of Maharashtra v. Prakash Sakha Vasave, (2009) 11 SCC 193: (2009) 3 SCC (Cri) 1289, followed

[7511] — Ss. 302/149, 201 and 148 — Brutal murder by a gang of seven persons — Disbelieving the evidence of eyewitnesses relied on by trial court, High Court acquitting the four accused persons only on an extraneous ground which was not based on any evidence and was raised before the High Court for the first time — *The said ground on which the presence of the two eyewitnesses at the time of occurrence considered doubtful by High Court was that there was fog at the time of occurrence due to which the eyewitnesses, who were said to be at a distance from the deceased, could not have seen what was actually happening — Held, the basic fact about the presence of fog leading to blurring of the vision of the eyewitnesses without being put to the witnesses during their cross-examination could not have been taken into consideration by the High Court — Further, the instantaneous recovery of the dead body of the deceased from the river by the eyewitnesses, held, showed that they had seen the spot where the dead body had been thrown into the river — Considering the said facts coupled with the trustworthy testimony of the eyewitnesses and medical evidence, the judgment of the trial court convicting the accused persons upheld — CrPC, 1973, Ss. 386 and 374(2)* (Paras 10, 11 and 12)

The deceased along with PW 1, PW 2 and one *D* left his house for his fields to start the diesel engine of his pumping set in order to irrigate his field. The said three persons were following the deceased and were about 15-20 paces behind him. While the deceased was proceeding towards his field, seven accused persons suddenly emerged from behind the *noonars* (*tilas* i.e. big mounds of earth). They were all armed with weapons. The accused fired gunshots at the deceased who on receiving the injuries fell down. The accused severed the head of the deceased and threw his dead body into a river. PW 1, PW 2 and *D*, on the basis of the trail of blood, reached the place wherefrom the dead body of the deceased was thrown into the river. PWs 1 and 2 were examined as eyewitnesses to the incident. The trial court convicted all the accused persons under Ss. 148, 302/149 and 201 IPC. In appeal, the High Court disbelieved the presence of the eyewitnesses to the incident at the scene, rejected their evidence and acquitted all the accused on an extraneous ground, which was based on no evidence and was raised before the High Court for the first time.

Allowing the appeals, the Supreme Court decided as above. *State of U.P.* v. *Man Singh*, (2002) 8 SCC 435: 2003 SCC (Cri) 82: AIR 2003 SC 62.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and **Arun Kumar**, JJ. [Date of decision: 24-10-2002]

(f) Hostile witness

See also CRIMINAL TRIAL — '251.(I) Hostile witness', pp. 293 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7512] — S. 302 — Hostile witness — Statement to police — Use of — *Held, statement to police is ordinarily not admissible in evidence in view of S. 162(1) CrPC, but as mentioned in proviso to S. 162(1) CrPC, it can be used to contradict testimony of witness — Herein, mother of appellant- accused also appeared as witness before trial court, and in her cross-examination, she was confronted with her statement to police, to whom she had stated*

38.(f) Hostile witness *(contd.)*

that her son (appellant) had told her that he had killed his daughter — On being so confronted with her statement to police, she denied that she had made such a statement — Held, her statement to police can be taken into consideration in view of proviso to S. 162(1), and her subsequent denial in court is not believable, because she obviously had afterthoughts and wanted to save her son (appellant) from punishment — In fact, in her statement to police, she had stated that dead body of deceased was removed from bed and placed on floor — Hence, her statement to police can be taken into consideration in view of proviso to S. 162(1) CrPC — CrPC, 1973, S. 162(1) and proviso thereto (Paras 15 and 16). *Bhagwan Dass* v. *State (NCT of Delhi)*, (2011) 6 SCC 396.

Bench Strength **2**. Coram : **Markandey Katju** and *Gyan Sudha Misra*, JJ. [Date of decision : 9-5-2011].

[7513] — S. 302 — Murder — Hostile witness — Effect of — *Appellant's father PW 4 and brother-in-law, PW 3 had turned hostile — Their evidence would have been merely to effect that appellant had found fault in his deceased stepmother's behaviour — PW 5 admitted in her statement that appellant was annoyed with deceased as he suspected her of being of low character — Held, factum of PWs 4 and 3 having turned hostile did not adversely affect prosecution story* (Para 13). *Arumugam* v. *State*, (2010) 12 SCC 155.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 28-7-2010]

[7514] — S. 302 — Murder trial — Witnesses — Hostile witness — When may be relied on — Principles summarised — *Held, evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence*

The evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. In the instant case, some of the material witnesses PWs 86 and 51 turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. PW 51 photographer, deposed that he was contacted by A-6 to cover the agitation. The photographs and negatives were exhibited in the court. He also photographed the burning bus. He reached the spot when the bus was burning. Students were shouting. These photographs were exhibited as Ext. P-78 and Ext. P-80. He watched the video prepared by him in the court and identified the same. In the cross-examination, he denied knowing some accused persons. However, they were shown in the photographs taken by him. He was declared hostile. (Paras 83, 84 and 76). *C. Muniappan* v. *State of T.N.*, (2010) 9 SCC 567: (2010) 5 CTC 794 (SC).

Bench Strength **2**. Coram: *G.S. Singhvi* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 30-8-2010]

Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389: 1976 SCC (Cri) 7; Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233: 1976 SCC (Cri) 566; Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59; Khujji v. State of M.P., (1991) 3 SCC 627: 1991 SCC (Cri) 916; State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360: 1996 SCC (Cri) 1278; Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543: 2003 SCC (Cri) 112; Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516: (2008) 1 SCC (Cri) 109; Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661; Sarvesh Narain Shukla v. Daroga Singh, (2007) 13 SCC 360: (2009) 1 SCC (Cri) 188; Subbu Singh v. State, (2009) 6 SCC 462: (2009) 2 SCC (Cri) 1106, relied on

[7515] — S. 302 — PW 1 (hostile witness) denying incident altogether and PW 2 eyewitness' evidence being ambivalent and uncertain — Effect

PW 1 driver of the alleged van had turned hostile, denied the incident altogether and did not support PW 2's ambivalent and uncertain evidence. The other ocular evidence too did not support the prosecution case. (Para 10). *Anil Kumar* v. *State*, (2009) 17 SCC 537.

Bench Strength **2**. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 4-8-2009]

[7516] — Ss. 302 and 307 — Conviction confirmed — All eyewitnesses turning hostile — Effect, if any — *Appellant-accused killed three persons (his real brother and two nephews) and injured three others (his father and nephews PWs 1 and 2), with a gun, on being denied his share in the immovable property by his father — Evidently, PWs 1 and 2 have no regard for truth and concealed material facts from court in order to protect appellant by resiling from their original stand, for reasons best known to them — Such unwarranted attitude of eyewitnesses disentitles any benefit to appellant, who committed a heinous crime — Again, gun used in crime recovered at appellant's behest — In spite of extensive cross-examination of PW 8 (investigating officer), defence could not elicit anything to discredit his deposition — Medical evidence shows that appellant caused very large number of injuries — Again, not putting certain questions to appellant under S. 313 CrPC did not materially prejudice appellant — Herein, FIR lodged promptly, naming appellant as person who committed offence — All eyewitnesses, including injured witnesses (before turning hostile),* *attributed commission of offence only to appellant in their statements under S. 161 CrPC — Complainant and eyewitnesses could not have falsely named appellant as being responsible for offence at initial stage itself — Conviction confirmed — Evidence Act, 1872, S. 27* (Paras 35 to 59). *Paramjeet Singh* v. *State of Uttarakhand*, (2010) 10 SCC 439.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-9-2010]

[7517] — S. 302 r/w S. 34 and S. 498-A r/w S. 34 — Murder trial — Hostile witness — Corroborated evidence severed from uncorroborated parts — Admissibility — *Corroborated part of evidence of hostile witness PW 4 regarding commission of offence, held, admissible*

As rightly observed by the High Court, though, PW 4 did not support the entire case of the prosecution and he had been treated as hostile witness, his evidence to the extent A-2 and A-4 participating in the commission of offence is proved. To this extent, the High Court has rightly accepted his testimony. (Paras 17 and 16). *Govindappa* v. *State of Karnataka*, (2010) 6 SCC 533.

Bench Strength **2**. Coram : **P. Sathasivam** and *H.L. Dattu*, JJ. [Date of decision : 11-5-2010]

[7518] — S. 302 r/w Ss. 149, 148, 147, 323/ 149 and 395 — Appreciation of evidence — Dacoity and murder — Hostile witnesses — Related witness — Closely related eyewitnesses turning hostile — Effect — *Two eyewitnesses closely related to deceased (widow and daughter of deceased) turning hostile — Held, that could not per se be a ground to discard the evidence of other eyewitnesses (PWs 1 and 3) — High Court did not discuss the evidence of PWs 1 and 3 to point out any vulnerability — High Court acted on surmises and conjectures — Acquittal by High Court, held, liable to be set aside* (Paras 8, 5 and 11). *State of U.P.* v. *Babu*, (2003) 11 SCC 280: 2004 SCC (Cri) 144: AIR 2003 SC 3408.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 24-9-2003]

Shakti Patra v. State of W.B., 1981 Supp SCC 24: 1981 SCC (Cri) 644; Aher Pitha Vajshi v. State of Gujarat, 1983 SCC (Cri) 607; George v. State of Kerala, (1998) 4 SCC 605: 1998 SCC (Cri) 1232, relied on

[7519] — Ss. 302/34 — Hostile witness — Appreciation of evidence — Conviction confirmed based principally on testimony of hostile eyewitness corroborated by other reliable evidence — *Appellant-accused (A-2 and A-3), along with others, shot deceased dead, on account of some previous enmity — Conviction of appellants under Ss. 302/34, upheld by High Court — Sustainability — Held, presence of PWs 7, 8 and 11 (eyewitnesses) at the time and place of occurrence, not doubtful — Evidence of PW 11 (eyewitness and brother of deceased) clearly nails appellants for murder of deceased — He is a truthful witness who can be safely relied upon, though he had turned hostile — His evidence is corroborated, insofar as A-2 is concerned, by PWs 7 and 8 — His evidence also gets corroborated from evidence of PWs 5 and 24 (doctor conducting post-mortem of deceased and SI, respectively) — Complicity of A-3 is also established by evidence of PW 11, which is duly corroborated by medical and other evidence, although PWs 7 and 8 have not specifically named him — Concurrent finding of courts below, that prosecution evidence is sufficient to establish guilt of A-3 as well, beyond any reasonable doubt, reliable — Fact that PW 11's statement was taken down by PW 24 (SI) at the place of occurrence within 20-25 minutes of incident, clearly established — Although defence pointed out certain discrepancies and omissions in PW 11's deposition, but, such discrepancies and omissions are only minor and not very material and do not shake his trustworthiness — Conclusions recorded by trial court and confirmed by High Court, concerning appellants, do not suffer from any factual or legal error — Hence, conviction of appellants, confirmed* (Paras 18 to 31). *Himanshu* v. *State (NCT of Delhi)*, (2011) 2 SCC 36.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 4-1-2011]

Prithi v. State of Haryana, (2010) 8 SCC 536: (2010) 3 SCC (Cri) 960, relied on

[7520] — Ss. 302/34 — Hostile witnesses — Witnesses found hostile against some accused, if natural and independent, held their testimony can be relied upon for sustaining conviction — *These witnesses had refused to support the prosecution of other accused who stood acquitted but were unwavering regarding involvement of the appellants — Their testimony unaffected by release of two more accused on technical ground of their names not finding mention in the FIR — No reason to falsely implicate the appellants suggested — Appellants therefore rightly convicted* (Para 5). *Alma* v. *State of M.P.*, 1991 Supp (2) SCC 409: 1991 SCC (Cri) 1052: AIR 1991 SC 1519.

Bench Strength **3**. Coram: *A.M. Ahmadi, V. Ramaswami* and *K. Ramaswamy*, JJ. [Date of decision: 26-4-1991]

[7521] — Ss. 302/34 and 326/34 — Hostile witness — *Testimony of, merely to the effect that he saw the four accused going away — Evidentiary value — In absence of any direct and reliable evidence of*

38.(f) Hostile witness *(contd.)*

participation of all the four accused, such testimony, held, of no use. Kathi Odhabhai Bhimabhai v. *State of Gujarat*, 1993 Supp (3) SCC 421: 1993 SCC (Cri) 1049: AIR 1993 SC 1193: 1993 Cri LJ 187.

Bench Strength **2**. Coram : *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision : 5-8-1992]

[7522] — Ss. 302/109 — Negative evidence of witness regarding presence of accused — Held can be overweighed by independent positive evidence of others corroborated by dying declaration — *Conviction upheld. Arumuga Nadar* v. *State of T.N.*, (1977) 1 SCC 466: 1977 SCC (Cri) 124: AIR 1976 SC 2588: 1977 Cri LJ 1998.

Bench Strength **3**. Coram: *P.N. Bhagwati*, *V.R. Krishna Iyer* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 11-10-1976]

[7523] — Ss. 302/149, 147 and 148 — Murder trial — Conviction confirmed — Opinion of doctor declared hostile — When reliable — *PWs 1 and 3 (wife and daughter of deceased) and PW 2 (independent witness), clearly stated that it was appellants along with other accused persons who assaulted deceased with farsa, lathi, etc. — Further, PW 6 (doctor who conducted post-mortem) found contusion and incised wounds on person of deceased — Merely because PW 6 declared hostile, held, his entire evidence is not wiped out, if otherwise worthy of reliance, and for purpose of nature of injuries and cause of death, his evidence was reliable — Also, eyewitnesses' accounts consistent and no material contradiction in their evidence to discredit their truthfulness — Appellants' conviction, hence confirmed* (Paras 10 to 14). *Suraj* v. *State of U.P.*, (2010) 7 SCC 515.

Bench Strength **2**. Coram : *G.S. Singhvi* and **C.K. Prasad**, JJ. [Date of decision : 6-7-2010]

[7524] — Ss. 302/149, 307/149 and S. 148 — Conviction based on the testimony of two eyewitnesses (PWs 1 and 7) who did not support the prosecution case — *No statement of PW 1 regarding actual participation of appellants in attack and absence of identification of accused persons by PW 7 — No acceptable explanation for the delay of about 50 days in recording the statement of PWs 1 and 7 after the incident — There was hardly any evidence worth acceptance regarding identification of the dead body — Thus, the findings of the courts below that the prosecution through the evidence of PWs 1 and 7 succeeded in establishing beyond reasonable doubt that the appellants were responsible for the murder of the deceased, held, could not be sustained — CrPC, 1973, S. 161* (Paras 4 to 6). *Jai Pal* v. *State of U.P.*, (2003) 9 SCC 41: AIR 2003 SC 1012: 2003 Cri LJ 1243.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 31-1-2003]

(g) Independent witness

See also CRIMINAL TRIAL — '251.(n) Independent witness', pp. 312 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also D.16.(c) Non-examination/failure to examine witness', in Vol. 2

[7525] — S. 302 — Murder trial — Witnesses — Independent witnesses not examined — Natural witnesses, friends of deceased conclusively proving murder — *Three-wheeler driver carrying the deceased to hospital and brother of deceased who only coming to see the deceased after the incident at hospital not examined*

On 13-1-2000, at about 10.30 p.m., when PWs 1 to 3, one *S* and the deceased (all friends) were having a party in PW 3's house, the accused knocked at the door, upon which, it was opened by *S*. The respondent-accused entered the room and asked as to who had called his name. Being so asked, PW 1 stated that nobody had called him and the respondent was asked to leave the room. While going out of the room, the respondent further told PW 1 to make the deceased understand otherwise his head would be smashed. Saying so, the respondent left the room. Thereafter, they bolted the room from inside and danced till 12 to 12.30 a.m. in the midnight when the deceased opened the door to go out for urination. As soon as the deceased stepped out, he was stabbed by the respondent-accused with a sharp-edged weapon in the chest. Thereafter the accused fled away before their attempt to nab him. PW 1 at that stage asked *S* to press the chest of the deceased so as to control the bleeding. He also brought cotton from the nearby house and gave first aid to the deceased. He also rushed out to arrange for a three-wheeler. The deceased was then taken to the hospital where he died at around 1.30 a.m. The High Court by the impugned order set aside the order of conviction passed by the Sessions Court for offences under Section 302 IPC.

Held :

It was submitted that the driver of the three-wheeler and also the brother of the deceased who had gone to the hospital were not examined and that the order of acquittal should not be interfered with as no independent witness was examined. There is no reason as to why and how the evidence of the aforesaid two persons was relevant. The brother of the deceased went to the hospital where the deceased was being given medical treatment and, therefore, whatever he heard of the occurrence was from a third party was, therefore, hearsay. So far as the driver of the three-wheeler is concerned, he only carried the deceased to the hospital and, therefore, his evidence was also not material. The order of conviction and sentence against the respondent in terms of the order passed by the trial court is therefore, restored. (Paras 27 and 30). *State of H.P.* v. *Rakesh Kumar*, (2009) 6 SCC 308: (2009) 2 SCC (Cri) 1028: 2009 Cri LJ 3060.

Bench Strength 2. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 6-5-2009]

[7526] — S. 302 — Prosecution failing to produce independent witnesses because they were afraid to give evidence — *Evidence adduced not to be disbelieved on that ground alone*

It is well known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds, independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits. *Darya Singh* v. *State of Punjab*, AIR 1965 SC 328: (1964) 3 SCR 397: (1965) 1 Cri LJ 350.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 25-4-1963]

[7527] — Ss. 302 & 100 — Murder in daylight on public road in inhabited area — No independent witness examined — Effect — *Accused and his brother belaboured the deceased's younger brother — Next day on appearing before the deceased's house asked to go away by the deceased which they did — Deceased and his brother following them and about 125 yds. away allegedly shot by the accused — Deceased and his brother alleged to be unarmed but kirpan recorded on deceased's person by doctor who conducted the autopsy — Defence plea of having acted in self-defence plausible — No independent witness examined by prosecution though murder occurred in daylight on public road in an inhabited area — Acquittal by High Court to stand. State of Punjab* v. *Sohan Singh*, 1993 Supp (1) SCC 312: 1993 SCC (Cri) 114: AIR 1992 SC 1247.

Bench Strength 2. Coram: **A.M. Ahmadi** and *M.M. Punchhi*, JJ. [Date of decision: 13-3-1992]

[7528] — Ss. 302 and 307 — Murder trial — Independent witnesses — No witness from immediate neighbourhood examined — Effect of — *So-called independent witnesses tend to stay far away — Prosecution has to depend upon witnesses who are friends or family members of victim — House of complainants was only 100 ft from place of occurrence — Presence of all witnesses was natural —* ***F*** *(injured) was a stamped witness, against whom no suspicion could be raised — Non-examination of witness from immediate neighbourhood held immaterial* (Para 21). *Mohd. Mian* v. *State of U.P.*, (2011) 2 SCC 721.

Bench Strength 2. Coram : **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision : 16-12-2010]

(h) Inimical witness

See also CRIMINAL TRIAL — '251.(p) Inimical witness', pp. 318 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7529] — S. 302 — Evidence of inimical witness should be scrutinised with caution — *If it is supported by other evidence, it cannot be discarded merely because of witnesses being inimically disposed towards the accused*

The evidence of the injured eyewitnesses cannot be discarded in toto on the ground of inimical disposition towards the accused or the improbability of narrating the details of actual attack. True, their evidence has to be scrutinized with caution taking into account the factum of previous enmity and the tendency to exaggerate and to implicate as many as possible. But on a perusal of the evidence tested in the light of the broad probabilities, the High Court was justified in reaching the conclusion that the prosecution witnesses are natural witnesses and they could not have concocted the case against the accused without any basis. The fact that the FIR was lodged almost immediately after the occurrence naming the appellant as the main assailant lends positive assurance to the credibility of the prosecution case as unfolded by the eyewitnesses,

38.(h) Inimical witness *(contd.)*

most of whom were injured. Both the trial court and the High Court found that there was sufficient light emitted by the tubelight in front of the house to identify the accused who were known persons. The fact that the incident occurred outside and inside the house cannot be doubted as there was blood both at the steps where the dead body lay and inside the house and weapons stained with human blood were found lying in the adjoining narrow lane and the injuries were found on almost all the inmates of the house. It is highly unlikely that within a short time of the occurrence the prosecution party could have come forward with a false version implicating the persons who were not at all seen, while leaving out the real culprits. The eyewitnesses' account of the attack by the appellant is quite consistent. Though certain doubts are sought to be created as to the genesis of the incident and the manner of attack, but the prosecution case is not belied on account of such factors. (Para 6). *Suresh Sitaram Surve* v. *State of Maharashtra*, (2002) 10 SCC 28: 2003 SCC (Cri) 1392: AIR 2003 SC 344: 2003 Cri LJ 475.

Bench Strength **3**. Coram: *S. Rajendra Babu*, **P. Venkatarama Reddi** and *B.N. Srikrishna*, JJ. [Date of decision: 25-11-2002]

[7530] — S. 302 and S. 149 — Murder trial — Inimical witness — Testimony of — Reliability — Solitary eyewitness to the occurrence — *11 persons belonging to* **Khati** *community variously armed alleged to have assaulted the deceased and complainant resulting in death of the deceased — Long-standing enmity between complainant and his family members on one side and persons of* **Khati** *community on the other established — Complainant able to get only a momentary glimpse of the accused in scooter light — Active participation of only four accused established through testimony of the complainant — Specific roles assigned to them by him and injuries sustained by him and the deceased could have been caused by the weapons with which the aforesaid four accused were alleged to have been armed — Held, in such circumstances, conviction of only these accused can be maintained — Further clarified that though the prosecution case is not doubted in its entirety but benefit of doubt is given to the remaining accused by way of abundant caution — Benefit of judgment also given to the non-appealing accused since no specific role had been attributed to him* (Paras 7 to 11). *Dev Narayan* v. *State of M.P.*, (2006) 13 SCC 187: (2007) 2 SCC (Cri) 672: (2006) 47 AIC 19 (SC).

Bench Strength **2**. Coram: **G.P. Mathur** and *A.K. Mathur*, JJ. [Date of decision : 11-10-2006]

[7531] — Ss. 302/34 — Witness inimical to one of the accused — *He deliberately omitting the name of other accused — His evidence found by High Court to be discrepant in material particulars — Held, in the circumstances of the case testimony of sole eyewitness not reliable — Conviction set aside. Jagdish Prasad* v. *State of M.P.*, 1995 SCC (Cri) 160: AIR 1994 SC 1251: 1994 Cri LJ 1106.

Bench Strength **2**. Coram : *S. Ratnavel Pandian* and *M. Fathima Beevi*, JJ. [Date of decision : 25-3-1992]

[7532] — Ss. 302/149 — Conviction justified — Eyewitnesses who were inimical towards the accused and his family members — Testimony of — Evidentiary value — *Although should not to be thrown out ipso facto, held, it should be scrutinised with caution — On facts, in view of various contradictions in the statements of such witnesses in respect of D and SS, Supreme Court giving them benefit of doubt and acquitting them — However, since two of the three such witnesses implicated M by categorically stating him to be first to assault the deceased with sword and causing injury which, according to the medical evidence, was sufficient in the ordinary course to cause death, conviction of M under Ss. 302/149 IPC upheld — In view of the said evidence, the inability of the third of such witnesses to say whether the first to assault the deceased was M or B and to identify either of them, held, inconsequential. Sajjan Singh* v. *State of M.P.*, (1999) 1 SCC 315: 1999 SCC (Cri) 44: AIR 1998 SC 2756.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 2-9-1998]

[7533] — Ss. 302/149 — Prosecution evidence based on interested and inimical witnesses — *Their evidence suffering from material contradictions and inconsistencies — Evidence regarding presence of light at the scene of occurrence found to be highly suspicious — Sole eyewitness of murder committing mistake in identifying the accused persons in court — Held, in the circumstances of the case, High Court not justified in reversing order of acquittal passed by the trial court. Radhakrishnan Nair* v. *State of Kerala*, 1995 Supp (1) SCC 217: 1995 SCC (Cri) 345.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 7-12-1994]

[7534] — Ss. 302/149 — Testimony of inimical witness — Reliability, to sustain conviction — *Appellants alleged to have abducted S on 19-11-1989 and since thereafter none had seen him — Prosecution proceeding on the basis that he was murdered — Intense enmity between the parties resulting in several murders — PW 1 (informant,* *eyewitness and sister of* **S**) *stating that soon after the occurrence she returned to her village and reported the matter to* **N** *and* **C** *(and none other) who accompanied her to the police station but PW 6 (SHO) refused to record the information because he was favouring appellants on political considerations — She also claiming to have sent a letter to the President on 22-11-1989 (waiting for the police to take action) — She thereafter filing a written complaint to SSP on 4-12-1989 on basis of which a case was registered by PW 6 — However, PW 6 categorically stating that he had received no complaint prior to registration of the case and that neither* **N** *nor* **C** *had met him prior to that —* **N** *and* **C** *not examined by the prosecution — Apart from the vague allegations that police were favouring the appellants no evidence brought forth to establish that — On the contrary, some of the appellants illegally detained by the police were ultimately released by the warrant officer appointed by the High Court in the habeas corpus petition — Defence specifically pleading that* **S** *was mentally handicapped and may have gone somewhere and taking advantage of his disappearance they had been falsely implicated on account of the enmity — Held, considering the intense enmity existing between the two groups, this was pre-eminently a case in which the rule of caution must strictly be applied — Further, in case of inconsistent evidence between two PWs benefit thereof must go to the accused — Besides non-examination of* **N** *and* **C** *creates a serious doubt whether any effort had been made by PW 1 on the date of occurrence to lodge the report at the police station, and that too when* **N** *belonged to the same group — Moreover, conduct of PW 1 in waiting 3 days before sending the telegram to the President and thereafter for 12 days before filing a written complaint to SSP creates serious doubt as to whether any occurrence took place as alleged by the prosecution — Hence held, though* **S** *had disappeared on 19-11-1989 but the circumstances of the case indicate that PWs 1 and 2 may not have seen the occurrence in which he had been either abducted or killed, and taking advantage of his disappearance a false case was belatedly concocted against the appellants — Appellants entitled to benefit of doubt* (Paras 24 to 30). *Avtar Singh* v. *State of Punjab*, (2006) 12 SCC 524: (2007) 2 SCC (Cri) 105: AIR 2007 SC 31: (2006) 47 AIC 941 (SC): 2007 Cri LJ 13.

Bench Strength **2**. Coram : **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision : 13-10-2006]

***Distinguished in** Hari v. State of Maharashtra, (2009) 11 SCC 96 at p. 101*

(i) Injured witness

See also CRIMINAL TRIAL — '251.(q) Injured witness', pp. 328 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7535] — S. 302 — Murder — Injuries received by eyewitnesses establishing their presence at the scene of the occurrence — *Eyewitnesses specifically stating that after reaching the spot on hearing cries they prevented the accused from giving further blows to the deceased — Such part of statement not contradicted by their police statements — Merely because the witnesses had not specifically stated before the police that the appellant gave fatal blow to the deceased their testimony cannot be discarded — Conviction of the appellant sustained. Amrik Singh* v. *State of Punjab*, 1998 SCC (Cri) 944.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 17-3-1998]

[7536] — S. 302 — Murder by inflicting barchha blows and injuries caused to the father and mother of the victim — *Prompt lodging of the FIR and receipt of its copy by the Magistrate within 3 hours of its lodging indicating that the witnesses received injuries at the time of the occurrence and assault on the deceased — Injured witnesses examined by the doctor within two hours of the assault and there being no time or occasion for the witnesses to have manufactured the injuries on themselves — In the circumstances of the case, finding of the trial court that injuries on eyewitnesses could be manufactured not justified — Evidence of injured father of the deceased found to be cogent and consistent with the earlier version contained in the FIR — His testimony corroborated by the medical evidence and recovery of the weapon of offence on the basis of disclosure statement of the accused — Nature of weapon and seat of injury indicating that the intention of the accused was to commit murder — Conviction of accused, held, well merited and calls for no interference by the Supreme Court. Inder Singh* v. *State of Punjab*, 1995 Supp (2) SCC 124: 1995 SCC (Cri) 542: 1995 Cri LJ 2627.

Bench Strength **2**. Coram : *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision : 23-2-1995]

[7537] — S. 302 — Murder trial — Conviction based on the testimony of injured eyewitnesses — *Held, testimony of an injured witness is credible and has significant relevance — Evidence Act, 1872, Ss. 3 and 5 — CrPC, 1973, S. 164*

38.(i) Injured witness *(contd.)*

There is no substance in the plea that the prosecution version is not acceptable. It is to be noted that the trial court and the High Court found the evidence of the injured eyewitnesses to be credible. The testimony of an injured witness has significant relevance. Though they were examined at length nothing brittle in their testimony could be noticed. The evidence of DW 1 is highly improbable as was rightly held by the trial court and the High Court. If she had been injured in the incident, it was not explained as to why she did not report the matter to the police immediately and the medical examination was done after about two days. This conduct of DW 1 who happened to be the wife of the accused has been rightly taken note of by the trial court and the High Court. (Para 7). *Sukhdev* v. *State of Punjab*, (2007) 15 SCC 364.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 21-6-2007]

[7538] — S. 302 — Related injured eyewitnesses (wife and sister of deceased) — *Their presence at the scene of occurrence was not disputed, describing the incident in a clear and graphic manner and categorically asserting that respondent gave three blows with his axe on the head of the deceased — Though the witnesses were subject to searching cross-examination nothing material could be elicited from them which may cast a doubt on their credibility — Trial Judge who had the opportunity of marking their demeanour in the court assessed their evidence and did not find any good reason to discard their testimony — According to the doctor who conducted post-mortem examination, injury found on the head of the deceased was possible if the blow was struck with the blunt side of the axe and the said injury was sufficient in ordinary course of nature to cause death — Besides, small abrasions on the left side of forehead and on the roof of nose were also found by the doctor — Reading the statement of the two eyewitnesses that the respondent had inflicted three axe-blows on the head of the deceased and the evidence of the doctor, held, there was no serious contradiction between the two which may form the basis of discarding testimony of the eyewitnesses — High Court erred in rejecting the ocular evidence on ground of contradiction with medical evidence as well as on ground that the eyewitnesses were highly interested persons — Trial court, on discussion of the evidence of the witnesses examined on behalf of the defence had rightly discarded the defence version — Accordingly, judgment of trial court convicting respondent under S. 302 IPC and sentencing him to undergo rigorous imprisonment for life and a fine of Rs 1000 restored* (Paras 7, 9, 11 and 12). *State of Rajasthan* v. *Hanuman*, (2001) 1 SCC 337: 2001 SCC (Cri) 143: AIR 2001 SC 282: 2001 Cri LJ 485.

Bench Strength **2**. Coram: *S.S.M. Quadri* and **D.P. Mohapatra**, JJ. [Date of decision: 4-12-2000]

[7539] — Ss. 302 and 307 — Appreciation of evidence — Reliability of evidence of murder and injuries to another person by gunshot firing — *Motive being refusal to meet the ransom demand — Testimony of sole injured eyewitness (PW 7) corroborated by medical evidence as well as by his father (PW 1) and two brothers (PWs 3 and 5) who had rushed to the hospital immediately on receipt of the information about the incident and before whom PW 7 had disclosed about the occurrence and name of the accused-appellant — PWs 1, 3 and 5 examined by police on the same day in the hospital — Incident taking place in broad daylight and appellant having been introduced to PW 7 about 5-6 days before the incident, there was no improbability in identification of the appellant by PW 7 — Held, evidence of the injured eyewitness cannot be discarded merely because another eyewitness had not supported the prosecution case and was declared hostile — On the basis of such evidence, conviction of appellant under Ss. 302 and 307 upheld* (Paras 5, 6, 7 and 9). *Surendra Singh Rautela* v. *State of Bihar*, (2002) 1 SCC 266: 2002 SCC (Cri) 165: AIR 2002 SC 260: 2002 Cri LJ 555.

Bench Strength **2**. Coram: *M.B. Shah* and **B.N. Agrawal**, JJ. [Date of decision: 27-11-2001]

[7540] — Ss. 302 and 307 — Merciless assault — *R* and *B* succumbed to their injuries whereas PW 1 suffered as many as 24 injuries — Conviction of appellants under Ss. 302 and 307 whereas acquittal of all the other accused persons — Propriety of — *Testimony of the eyewitnesses disbelieved due to considerable inconsistency in their evidence — Participation of appellants in the commission of the crime established by the evidence of PW 1 — Held, High Court rightly found the appellants guilty on the basis of the evidence of PW 1 ignoring that part of his evidence which appeared to be in the nature of embellishment — But on facts, conviction of the appellants under S. 302 IPC altered to that under Ss. 302/34 IPC*

The High Court rightly disbelieved the evidence of the witnesses and came to the conclusion that they had not witnessed the occurrence. The High Court, however, found that so far as PW 1 was concerned, his presence at the place of occurrence could not be disputed. He was subjected to merci-

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less assault and had suffered as many as 24 injuries. Both the courts have concurrently found PW 1 to be a reliable witness and even though he sought to make an improvement in the course of his deposition by naming the other accused persons, for that reason his entire evidence cannot be rejected. The High Court has rightly ignored that part of his evidence which appears to be in the nature of embellishment. (Paras 7, 8 and 10)

However, considering the facts and circumstances of the case, the conviction of the appellants under Section 302 IPC is altered to that under Section 302 r/w Section 34 IPC. *Chittarmal* v. *State of Rajasthan*, (2003) 2 SCC 266: 2003 SCC (Cri) 514: AIR 2003 SC 796: 2003 Cri LJ 889.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 8-1-2003]

[7541] — Ss. 302, 307, 326, 324, 148 r/w S. 34 — Murder — Injured witnesses (PWs 1 and 2) — Consistent and natural testimony of — *Creditworthiness of PWs 1 and 2 considered bearing in mind the deficiencies pointed out by the defence — No material contradiction pointed out in the evidence of PWs 1 and 2 — Acquittal of other accused by High Court was on the basis that they were unarmed and not on ground of evidence of PWs 1 and 2 being fake — Evidence of PWs 1 and 2 regarding the involvement of accused A-1 and appellants, held on facts, reliable — Conviction of appellants, upheld* (Para 13). *Balram Singh* v. *State of Punjab*, (2003) 11 SCC 286: 2004 SCC (Cri) 149: AIR 2003 SC 2213.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *Ashok Bhan* and *B.P. Singh*, JJ. [Date of decision: 7-5-2003]

[7542] — Ss. 302, 307, 452 r/w S. 34 — Value of evidence of injured witness — *Held, evidence of such witness lends more credence as normally he would not falsely implicate a person thereby protecting the actual assailant — Hence, trial court was not justified in holding that since PW 11 was an injured witness, he may have reason to falsely implicate the accused* (Para 9). *Vijay Shankar Shinde* v. *State of Maharashtra*, (2008) 2 SCC 670: (2008) 1 SCC (Cri) 535: AIR 2008 SC 1198: 2008 Cri LJ 1632.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 15-1-2008]

[7543] — Ss. 302 and 307 r/w S. 34 — Injured child eyewitness — Murder trial — *On facts, trial court relying on the evidence of PW 2, injured child eyewitness, convicting respondent-accused under Ss. 302 and 307 r/w S. 34 IPC — High Court directing acquittal primarily on the basis that PW 2 was not in the condition to give statement — Reference was made to the seriousness of the injuries sustained by him — Sustainability — Held, High Court proceeded on surmises — Evidence of PW 17, the doctor, showed that PW 2 was in a position to give statement as he had regained consciousness — Herein, High Court had not indicated any plausible reason to discard evidence of PW 2 — It did not examine the acceptability, credibility and truthfulness or otherwise of PW 2's evidence by analysing evidence vis-à-vis other factors and materials on record — In the circumstances, impugned judgment of High Court set aside and matter remitted for consideration afresh* (Paras 4, 5 and 8 to 10). *State* v. *Rakiappan*, (2008) 15 SCC 715: (2009) 3 SCC (Cri) 1166: (2009) 74 AIC 162 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 21-10-2008]

[7544] — Ss. 302 and 324 — Acquittal by trial court reversed by High Court — Killing of deceased by gunshot wounds — *Prosecution witnesses also injured by gunshots — Their testimony consistent excepting minor discrepancies — Fact of their having suffered injuries thus sustained, absence of medical evidence therefore inconsequential — Alibi evidence adduced by accused not inspiring confidence — On facts, held, reversal by High Court of acquittal justified. Kashiram* v. *State of M.P.*, (1998) 7 SCC 450: 1998 SCC (Cri) 1683.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **M. Srinivasan**, JJ. [Date of decision: 16-10-1998]

[7545] — Ss. 302 & 325 r/w S. 149 — Murder — Appreciation of evidence — Conviction based on corroborated testimony of injured eyewitnesses — *Wife of deceased sustaining several injuries — She stating to have suffered those injuries while trying to rescue her husband from attack by throwing herself into a vortex — Assailants were ill-disposed towards the deceased — Incident taking place at 4.00 p.m. and hence there was sufficient light — FIR lodged by the wife promptly which reaching the Magistrate on the same night — Her testimony corroborated in material particulars by PWs to whom she had narrated the incident as soon as possible — Held, such evidence is admissible under S. 157 of Evidence Act — She was a witness of the occurrence — High Court was justified in convicting the assailants on the basis of her evidence — Evidence Act, 1872, S. 157*

The importance of the evidence of PW 10, the wife of the deceased, is that no court can possibly hold that she would not have witnessed the occurrence, for she herself sustained as many as eight

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38.(i) Injured witness *(contd.)*

injuries, some of them serious, during the occurrence. The fact that she gave the police prompt information which has reached the Magistrate on the very same night adds further credence to her version. Added to that, she narrated the incident to two PWs who reached the spot soon after the occurrence. Thus her testimony had been corroborated in all material particulars by those PWs and such evidence is admissible under Section 157 of the Evidence Act. (Para 3)

PW 11 was cited as an eyewitness and he turned hostile and the Public Prosecutor confronted him with his own previous statements and contradicted him. It is not safe to jettison the evidence of a witness like PW 10 as important as she is in the syndrome of the facts of this case, with the aid of a hostile witness's stance in the court. Such a course adopted by the trial court had been rightly deprecated by the High Court. (Para 4)

The defence suggestion that PW 10 would have possibly sustained those injuries at some other place and at some other time and not when she was accompanying her husband at the place of occurrence is too unconvincing and very far-fetched. No court can give any weight to such a theory. It is not possible to countenance the contention that PW 10 would have absolved those who have attacked her and turned against the five accused falsely. Such a theory will not fit in with logic and common sense. But unfortunately that version was found acceptable to the trial court and therefore the High Court has rightly repelled it. (Para 5)

PW 10 was a witness to the occurrence and if so she was able to see the assailants whose identity she knew even earlier. It is an admitted fact that the assailants were ill-disposed to the deceased as that is stated as a reason for false implication. The incident happened at 4.00 p.m. and hence there can be no possible contention that there was paucity of light for PW 10 to identify the assailants. The fact that PW 10 has so many injuries would probabilise her version that when she found her husband in great danger being attacked by the assailants she threw herself into a vortex for rescuing the father of all her little children from being killed like that. Such an instinctive protective reaction on the part of a wife is a highly probable conduct in the given situation. That accounts for the large number of injuries which she sustained at the spot itself. (Para 6)

Therefore, it is not possible to interfere with the conviction of the assailants under Sections 302, 325 r/w 149 and 148 and sentence of life imprisonment on the first count and lesser sentences for the lesser offence. (Para 1). *Jangir Singh* v. *State of Punjab*, (2000) 10 SCC 261.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 27-10-1999]

State of T.N. v. Suresh, (1998) 2 SCC 372: 1998 SCC (Cri) 751, relied on

[7546] — S. 302 r/w S. 149 — Murder trial — Injured witness — Not placing on record their medical reports — Effect — *Injured witnesses PW 7 and PW 8 narrated incident about how accused chased and ultimately caused death of A — Their evidence was corroborated by PW 9 and PW 12 — Their presence at spot proved — Presence of injured witnesses cannot be doubted because they did not place on record medical reports of their injuries* (Para 14). *Moniruddin Ahmed* v. *State of W.B.*, (2010) 12 SCC 238: 2010 Cri LJ 3448: (2010) 90 AIC 24 (SC).

Bench Strength **2**. Coram: **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 10-5-2010]

[7547] — Ss. 302/34 — Murder — *Even though the witnesses were related to the deceased and thus interested witnesses but they having sustained injuries in the incident, which was proved by the medical certificates issued by doctor who examined them, their presence at the place of occurrence cannot be doubted — Their evidence being consistent, held, there was no infirmity therein* (Para 5). *Majju* v. *State of M.P.*, (2001) 9 SCC 449: AIR 2001 SC 2939.

Bench Strength **2**. Coram: *U.C. Banerjee* and **K.G. Balakrishnan**, JJ. [Date of decision: 19-10-2001]

[7548] — Ss. 302/34, 302/149, 307/149, 326/149, 324/149, 147, 148 — Consistency in evidence — Sustainability of conviction — *Attack on prosecution party by accused party with swords and iron bars causing death and injuries to others — Testimony of injured eyewitnesses as well as independent witnesses before court consistent with their statements made before police and also corroborated by medical evidence — On facts held, conviction of such accused justified — This despite the fact that where testimony of injured witnesses was neither supported by medical evidence nor corroborated by it, their testimony was rejected* (Paras 22, 10 and 11). *Abdul Rashid Abdul Rahiman Patel* v. *State of Maharashtra*, (2007) 9 SCC 1: (2007) 3 SCC (Cri) 323.

Bench Strength **3**. Coram: **B.N. Agrawal**, *P.P. Naolekar* and *Dalveer Bhandari*, JJ. [Date of decision: 10-7-2007]

[7549] — Ss. 302/148 and 307/149 — Eyewitness — Injured witness — Seriously injured but surviving witness — *Testimony of, very reliable. Appabhai* v. *State of Gujarat*, 1988 Supp SCC 241: 1988 SCC (Cri) 559: AIR 1988 SC 696: 1988 Cri LJ 848: (1988) 1 Crimes 606.

Bench Strength 2. Coram: *M.M. Dutt* and **K. Jagannatha Shetty**, JJ. [Date of decision: 5-2-1988]

[7550] — Ss. 302/149 and 323/149 — Injured witness — Eyewitnesses residing near the place of occurrence — *Injuries received by them establishing their presence at the scene of occurrence — Their evidence found to be consistent and reliable — Their evidence cannot be discarded merely because they described the sticks in the hands of the assailants as 'shingadas' (a log of wood or a thick wooden stick) — So also their evidence cannot be discarded on ground that they stated generally about the assault and they did not specifically state which particular blow was given by which particular assailant*

When a person is attacked by a number of assailants it may become difficult for that person to say exactly whose blow had caused an injury to him. When a witness deposes generally about the assault on him and others it may become necessary to scrutinise his evidence carefully and to find out whether all the accused had taken part in the assault or not; but his evidence cannot be discarded altogether if otherwise it is believable. (Para 5). *Gajanan Amrut Gaykwad* v. *State of Maharashtra*, 1995 Supp (3) SCC 607: 1995 SCC (Cri) 1081: AIR 1996 SC 3332.

Bench Strength 2. Coram: *M.K. Mukherjee* and **G.T. Nanavati**, JJ. [Date of decision: 1-9-1995]

[7551] — S. 304 Pt. I r/w S. 34 — Evidence of injured witness — Conviction based on confirmed — *On facts, held, no fault can be found with conviction of appellant-accused, in light of the fact that prosecution story rests on evidence of three injured witnesses* (Para 11). *Gurdial Singh* v. *State of Punjab*, (2011) 2 SCC 768.

Bench Strength 3. Coram : **H.S. Bedi**, *P. Sathasivam* and *C.K. Prasad*, JJ. [Date of decision : 24-1-2011]

(j) Interested/Partisan witness

See also CRIMINAL TRIAL — '251.(r) Interested/Partisan witness', pp. 347 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also 'D.4.(e) Appreciation of Evidence — Credibility of witness', in Vol. 2, and

'D.38.(o) Related witness', below

[7552] — S. 302 — Conviction for murder based on sole testimony of interested witness (a relative) corroborated by medical and circumstantial evidence upheld. *State of U.P.* v. *Vinod Kumar*, (1992) 2 SCC 536: 1992 SCC (Cri) 505: AIR 1992 SC 1011: 1992 Cri LJ 1115.

Bench Strength 3. Coram : **S. Ratnavel Pandian**, *M. Fathima Beevi* and *Yogeshwar Dayal*, JJ. [Date of decision : 12-3-1992]

[7553] — S. 302 — Eyewitnesses interested — Need for corroboration — *The proposition that evidence of interested eyewitnesses needs corroboration is not of universal application. Mangal Singh* v. *State of M.B.*, AIR 1957 SC 199: 1957 Cri LJ 325.

Bench Strength 3. Coram : *N.H. Bhagwati*, **Syed Jafer Imam** and *P. Govinda Menon*, JJ. [Date of decision : 19-9-1956]

[7554] — S. 302 — Interested witness — Appreciation of evidence of witnesses belonging to the faction of the victims — *Evidence cannot be discarded on this ground alone — Judicial approach in dealing with such evidence has to be cautions*

There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would be unreasonable to contend that evidence given by the witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence, but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct. *Masalti* v. *State of U.P.*, AIR 1965 SC 202: (1964) 8 SCR 133: (1965) 1 Cri LJ 226.

Bench Strength 4. Coram : **P.B. Gajendragadkar, C.J.** and *K.N. Wanchoo*, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision : 4-5-1964]

38.(j) Interested/Partisan witness *(contd.)*

[7555] — S. 302 — Interested witness — Approach — *While admitting evidence of interested witness, standard of caution and precaution to be adopted by court, stated*

In cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim. (Para 23). *Jayabalan* v. *UT, Pondicherry,* (2010) 1 SCC 199.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 6-11-2009]

[7556] — S. 302 — Interested witnesses — Sons and daughter of the deceased in a murder trial — *Evidence admissible — Cannot be discarded on the sole ground of their close interest in the deceased*

The circumstance that the eyewitnesses in a murder trial are sons and daughter of the deceased does not detract from the value to be attached to their evidence, because, naturally enough, they are interested in seeing that the real murderer of their father is convicted of the offence and they cannot be expected to adopt a course by which some innocent person would be substituted for the person really guilty of the murder. None of these witnesses had any such enmity with the appellant as could induce him to give false evidence and to substitute him as the murderer in place of the person really guilty. In fact, their feelings would be strongest against the real culprit and, consequently, their evidence cannot be discarded on the mere ground of their close interest in the deceased. *Bhupendra Singh* v. *State of Punjab*, AIR 1968 SC 1438: (1968) 3 SCR 404: 71 Punj LR 98: 1969 Cri LJ 6.

Bench Strength **3**. Coram : *S.M. Sikri, J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision : 5-3-1968]

[7557] — S. 302 — Prejudiced witnesses — Appreciation of — *Witnesses normally convincing themselves that the accused were responsible for the crime — It is always possible for them to later satisfy themselves factually and make a false statement*

It is a case of moral certainty from the surrounding circumstances developing into the factual certainty in the minds of the prosecution witnesses that the accused were concerned with the murder. It is a case of the witnesses convincing themselves, however honest they may have been, that the accused were concerned with the crime without having clearly seen them or being able to see them. *Mohinder Singh* v. *State of Punjab*, AIR 1955 SC 762: 1955 Cri LJ 1542.

Bench Strength **3**. Coram : *Vivian Bose, T.L. Venkatarama Aiyar* and **B.P. Sinha**, JJ. [Date of decision : 13-9-1955]

[7558] — S. 302 — Prosecution case based on evidence of highly interested witnesses — *Their presence at the scene of occurrence doubtful — Witnesses making certain improvements regarding nature of weapon used — No other person of locality examined by the prosecution — Evidence of defence witness who resided near the place of occurrence found reliable — Held, in the circumstances, it is highly unsafe to convict the accused in appeal against acquittal — CrPC, 1973, Ss. 378 and 386. State of Haryana* v. *Inderaj*, 1995 SCC (Cri) 151: AIR 1994 SC 115.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 30-3-1993]

[7559] — S. 302 — Reliance on testimony of interested witness — Wife of deceased present at the occurrence — *Receiving injuries in the same incident which were corroborated by the injury record and by the doctor who examined her — Her testimony further corroborated by the deceased's nephew — Held, testimony need not be discarded. Ramji Singh* v. *State of Bihar*, (2001) 9 SCC 528: AIR 2001 SC 3853.

Bench Strength **2**. Coram: *R.C. Lahoti* and **Ashok Bhan**, JJ. [Date of decision: 12-10-2001]

[7560] — S. 302 — Reversal of acquittal by Supreme Court, on facts held, not justified where the main testimony against the respondent-accused was partisan and suffered from material omissions. *Rajagopal* v. *Sadaya Gounder*, 1984 Supp SCC 619: 1983 SCC (Cri) 128.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *Baharul Islam*, JJ. [Date of decision: 16-12-1982]

[7561] — Ss. 302 and 34 — Interested or Partisan witness — Persons in employment and related persons — Witnesses if interested — Credibility of testimony of — *Murder case — Shop owner murdered for cash, while returning home with cash bag at night after closing shop —*

PW 1 (salesman of deceased shop owner) accompanying deceased to his house and attack taking place near house of deceased — PW 2 (wife of deceased) present at home, sitting on first floor, who saw deceased and PW 1 coming home, as well as altercation of deceased with accused — Held, PWs 1 and 2 cannot be stated to be interested witnesses and should not be disbelieved merely because PW 1 was in employment of deceased and PW 2 was wife of deceased — It is but natural that deceased employer, who was carrying cash, would normally ask some of his trusted employees to come with him — Also, as per evidence, wife and daughter had come down to open the door for deceased, however, when they opened the door, firing had already taken place and deceased was lying on ground — In such circumstances, testimony of PWs 1 and 2, held, credible — Conviction upheld (Paras 11, 12 and 6). *Maqbool* v. *State of A.P.*, (2010) 8 SCC 359: (2010) 3 SCC (Cri) 867.

Bench Strength **2**. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision: 8-7-2010]

Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1: (2010) 2 SCC (Cri) 1385, relied on

[7562] — S. 302 and S. 34 — Partisan witness — Who is not — *Eyewitness belonging to the same village and being friends of the deceased — Held, not necessarily partisan witnesses. Naresh Mohanlal Jaiswal* v. *State of Maharashtra*, (1996) 11 SCC 547: AIR 1997 SC 1523.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 9-10-1996]

[7563] — Ss. 302 and 34 — Testimony of interested witness, cannot be rejected on the sole ground of interestedness but should be subjected to close scrutiny — *False implication of one of the accused by them made their evidence highly suspicious — Their version that three of the accused caught hold of the deceased while the remaining three inflicted 11 knife blows indiscriminately all over the body not acceptable — In the circumstance held, it was unsafe to rely on their evidence against any of the accused as that would result in miscarriage of justice — Hence conviction and sentences against all the accused set aside — Bombay Police Act, 1951 (22 of 1951), S. 135. B.N. Singh* v. *State of Gujarat*, (1990) 2 SCC 154: 1990 SCC (Cri) 283: AIR 1990 SC 1628: 1990 Cri LJ 1601: (1990) 1 GLH 256.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 7-2-1990]

[7564] — Ss. 302, 147, 148 and 149 r/w S. 34 — Murder trial — Witnesses — Evidence by partisan eyewitnesses — Admissibility — *Accused party having landed dispute and litigation with prosecution party — Accused party coming to fields of B and upon being obstructed, exchange of words taking place and accused murdering B's two sons (S and PR) in presence of B and other eyewitnesses — Evidence by partisan eyewitnesses, held, admissible* (Para 40.2). *Adalat Pandit* v. *State of Bihar*, (2010) 6 SCC 469.

Bench Strength 2. Coram : **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision : 14-5-2010]

Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226, relied on

Maranadu v. State, (2008) 16 SCC 529, distinguished

[7565] — Ss. 302, 148 and 302/149 — FIR lodged by partisan witness — That by itself not a ground to reject the entire prosecution case — *Version given in FIR assumes importance for scrutinizing later deposition in which other witnesses come forward with more details — On facts, presence of first informant at the scene of occurrence not in doubt — His evidence can be accepted in respect of those accused to whom overt acts have been attributed in the FIR — Mere delay in lodging FIR or conduct of the first informant in not informing the relatives of the deceased immediately cannot be a ground for rejecting his evidence outright* (Paras 5 and 6). *Mallappa* v. *State of Karnataka*, 1995 Supp (1) SCC 767: 1995 SCC (Cri) 414.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 20-1-1994]

[7566] — S. 302 and S. 302 r/w S. 149 — Conviction based upon evidence of interested eyewitnesses, held on facts — *Presence of eyewitnesses, who were the relatives of the deceased, at the place of murder, which was not a public place, satisfactorily explained and subsequently believed by the courts below — Dubious evidence of defence witnesses — Prosecution case having been proved beyond reasonable doubt, conviction of appellants relying upon evidence of interested witnesses, held, was not liable to be interfered with. Rampukar Yadav* v. *State of Bihar*, (2002) 9 SCC 680.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 8-2-2000]

[7567] — Ss. 302 and 302/34 — Murder — Doubt regarding the presence of eyewitnesses at the spot — Highly interested witnesses — *Entire dispute, in regard to the land, was with PW 1 (father of the deceased), but accused-respondents attacking*

38.(j) Interested/Partisan witness *(contd.)*

the deceased only and sparing PW 1 who was also present at the spot — Inconsistency between oral and medical evidence — Independent witnesses, though available, not examined — Bloodstained earth not collected from the place of the incident by IO — On facts, held, it was not safe to rely upon the evidence led by the prosecution to base conviction of the respondents — Evidence Act, 1872, S. 134

It is difficult to place reliance on the evidence of PWs 1, 2 and 4 because they are highly interested witnesses. (Para 7)

The entire dispute in regard to the land was with PW 1 and not with the deceased. Assuming that the assault started because of the questioning by the deceased in regard to the presence of the respondents in the field, the respondents had come prepared for an attack, armed with *lathis* and double-barrelled gun, hence, would not have gone on attacking only the deceased and used the firearm four times over and over on the deceased when PW 1 who should have been the main target of the attack was spared. This version of the prosecution case creates a serious doubt as to the presence of PW 1 at the spot. This coupled with the fact that the oral evidence is not in conformity with the medical evidence, compounds the suspicion of the Court as to the presence of PW 1 at the place of incident. The fact that the other eyewitnesses are partisan witnesses cannot be ruled out. Hence, any other independent witnesses not having been examined, even though available, further supports the suspicion as to the presence of these witnesses at the time of incident. (Para 7)

The defence has seriously questioned the prosecution case in regard to the place of incident as also the time of incident based on the stomach contents of the deceased. The investigating agency has not done their required job of collecting the bloodstained earth from the place of incident. (Para 7)

Thus, it is not safe to rely upon the evidence led by the prosecution to base conviction of the respondents. (Para 7). *State of U.P.* v. *Bhagwant*, (2003) 10 SCC 74: AIR 2003 SC 2293: 2003 Cri LJ 2337.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 22-4-2003]

[7568] — Ss. 302 and 307 — Murder trial — Conviction reversed — Credibility of witnesses — Interested witness — Motive to falsely implicate — *Appellant alleged to have hacked and attempted to kill PW 3 (wife of deceased), and when she fell down, he rushed towards the deceased who was sleeping and hacked him to death — Motive for crime alleged to be some land dispute — FIR merely stating that two unknown persons had entered the house and committed the crime — Statement (Ext. P-21) of PW 3 recorded by Judicial Magistrate in hospital wherein she did not name appellant but positively stated that she was attacked by some unknown persons aged about 20 years — Appellant at the relevant time was aged 50 years and well known to PW 3 — Thus, Ext. P-21 not corroborating testimony of PW 3, and it was obvious that she had later improvised and roped in appellant — Enmity between her husband (deceased) and appellant could be one possible reason for her to implicate appellant after deliberation — PW 4, daughter of deceased, and acquainted with appellant, also not revealing name of appellant at any point of time prior to her evidence in court — Moreover, her evidence found vague and unacceptable — Held, courts below failed to critically evaluate evidence of PWs 3 & 4, and to consider material contradictions having crucial bearing on veracity of their evidence — Hence, impugned judgment convicting appellant on basis of their evidence unsustainable* (Paras 2, 3, 10, 11, 14, 17, 18, 22 and 23). *Gajula Surya Prakasarao* v. *State of A.P.*, (2010) 1 SCC 88.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *J.M. Panchal*, JJ. [Date of decision: 10-11-2009]

[7569] — Ss. 302, 307, 143, 148, 504 and 149 — Murder trial — Admissibility of evidence of interested witnessess — *Held, truly, all three prosecution witnesses, relied upon by courts below, were interested witnesses — However, despite existence of their animosity, keeping in view relationship between rival parties (first informant and accused persons were cousins), it was unlikely that they would be falsely implicated* (Paras 5, 10 and 29). *Gurunath Donkappa Keri* v. *State of Karnataka*, (2009) 13 SCC 34: 2009 Cri LJ 2995.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 6-5-2009]

Donkappa Venkappa Keri v. State of Karnataka, Criminal Appeal No. 1254 of 2002 decided on 11-8-2005 (Kant), affirmed

[7570] — S. 302 & S. 436 r/w S. 34 — Credibility of witness — Interested/Related/Partisan witness — Conviction — Sustainability — *FIR lodged by PW 7 to the effect that her sons S & B were belaboured by seven accused and done to death and thereafter accused set fire to the tractor trolley, stack of onion and groundnut — PW 7 claiming to have witnessed the incident from* *distance but graphically describing roles played by appellants — She also assigning specific role to acquitted Accused 6 and some others — As far as injuries on person of accused* ***KC*** *were concerned, doctor had specifically certified that none of the injuries was serious in nature nor was any one of them sufficient to cause death in the ordinary course of nature and they were simple — In such circumstances, non-explanation thereof insignificant — Besides, PW 7 in her cross-examination had stated that she had not noticed any injury on accused* ***KC*** *and that he was not injured with sharp-edged weapon — Hence, doubtful as to whether the injuries had been caused at the time of occurrence as such — Also significant to note that accused* ***KC*** *chose to go to hospital after five hours of occurrence and the incident was reported not at the police station in which jurisdiction it had occurred — Besides, no sword was recovered, and if the deceased* ***S & B*** *were carrying the same and both of them had died, it could not have disappeared — Furthermore, recoveries made from appellant-accused and report of FSL sufficiently corroborating evidence of PW 7 — Hence, held, impugned judgment convicting appellant-accused on basis of evidence of PW 7 calls for no interference* (Paras 4, 12 to 17, 21, 23, 33 and 34). *Bheru Lal* v. *State of Rajasthan*, (2009) 9 SCC 119: (2009) 3 SCC (Cri) 1059: (2009) 81 AIC 33 (SC): 2009 Cri LJ 4118: (2009) 3 APLJ 127 (SC).

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *J.M. Panchal*, JJ. [Date of decision: 10-8-2009]

[7571] — Ss. 302, 452 and 324 — Benefit of doubt — Non-corroboration of testimony of interested witnesses by any independent witness — Effect — *Murder of four inmates of a house by an outsider by using a hacksaw blade — Some lacuna found in prosecution case remaining unexplained — Prosecution examining 8 witnesses of which 3 were doctors, two formal witnesses, investigating officer and two brothers of the deceased family — No independent witness examined by prosecution to corroborate the evidence of the two brothers, who were interested witnesses — Though independent witnesses were available at the place of occurrence but no explanation given for their non-examination — On facts held, evidence on record not leading to the only conclusion of guilt of the accused and a doubt arising regarding the prosecution case — Trial court erred in convicting the accused under Ss. 302, 452 and 324 and sentencing him to death and High Court also erred in confirming the conviction though it altered the sentence of death to that of imprisonment for life — Accused-respondent entitled to acquittal. Deepak Kumar* v. *Ravi Virmani*, (2002) 2 SCC 737: 2002 SCC (Cri) 470: AIR 2002 SC 1320.

Bench Strength **2**. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 1-2-2002]

Malempati Pattabhi Narendra v. Ghattamaneni Maruthi Prasad, (2000) 5 SCC 226: 2000 SCC (Cri) 953, relied on

[7572] — S. 302 r/w S. 149 — Murder trial — Interested witness — Testimony of — Conviction on the basis of — *Sixteen accused including the appellants alleged to have beaten the deceased indiscriminately with sticks, rods and axes — PW 2 (his father) also injured in the occurrence — When deceased managed to run inside the house they breaking open the door and assaulting him — He was even chased and beaten when he fled from the house — Deceased succumbing to the injuries while undergoing treatment — Trial court holding each accused guilty — However, in appeal filed thereagainst High Court upholding conviction of A-1, A-3, A-7, A-8, A-9, A-12 & A-13 and sentence of LI imposed by trial court, while acquitting the rest — Submission by appellants (A-7, A-8, A-9 & A-13) that conviction is based primarily on evidence of interested witnesses and hence unsustainable — Further, even if accusations were accepted in toto, offence under S. 302 not made out — Discussing the case law relating to interested- ness of witnesses to sustain conviction, such submission rejected — However, following the judgment in appeal filed by some of the co-accused wherein conviction was altered to S. 304 Pt. I r/w S. 149 IPC conviction of appellants in instant appeal also similarly altered* (Paras 3, 5 and 11 to 13). *Ponnam Chandraiah* v. *State of A.P.*, (2008) 11 SCC 640: (2008) 3 SCC (Cri) 993: 2008 Cri LJ 4298: (2008) 69 AIC 269 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 30-7-2008]

S. Sudershan Reddy v. State of A.P., (2006) 10 SCC 163: (2006) 3 SCC (Cri) 503, considered and relied on

[7573] — Ss. 302/149, 147, 148 and 325 — Appreciation of evidence — Conviction based on testimony of eyewitnesses (PWs 3 and 4) — Interested/Partisan witness — Careful approach adopted while analysing the evidence of — *PW 3 saw the accused person including the two appellants attacking deceased K — Apprehending danger to his life, PW 3 took refuge in the house of one S — Accused came there, dragged him out and assaulted him causing injuries to him —*

38.(j) Interested/Partisan witness *(contd.)*

Unwarranted delay in recording the statement of PW 3 — Non-mention of names of appellants in the said statement — Testimony of PW 3, held on facts, not reliable — Further, considering the conduct of PW 4 (a close relative of K) in not informing anybody about his having witnessed the incident and the delay in recording his statement, held, no reliance could be placed on his testimony — Recovery of weapons from a place easily accessible by other people and that too nine days after the incident, on facts, not reliable — Appellants acquitted (Para 6). *Maruti Rama Naik* v. *State of Maharashtra*, (2003) 10 SCC 670: AIR 2003 SC 3884: 2003 Cri LJ 4326.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 9-9-2003]

[7574] — Ss. 302/149 and 148 — Interested/Partisan witness — Only if evidence of, on careful sifting is found to be materially probable and reliable, held, can it form the basis of conviction without any further corroboration

Interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary, is that the evidence of interested witnesses would be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these question be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. However, these are only broad guide-lines which may often be useful in assessing interested testimony, and are not ironcased rules uniformly applicable in all situations.

On facts of the present case, the testimony of PW 1, the maternal uncle of the deceased and of PW 2, the son of the person who was being prosecuted along with the deceased for the murder of a person belonging to the opposing faction of the accused, was found to be reliable. *Hari Obula Reddy* v. *State of A.P.*, (1981) 3 SCC 675: 1981 SCC (Cri) 795: AIR 1981 SC 82.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *A.C. Gupta* and *P.S. Kailasam*, JJ. [Date of decision: 11-9-1980]

[7575] — Ss. 302/149 and 148 — Reliability of testimony — Murder trial — *Appellants contending that PWs 1 and 4 (eyewitnesses) were interested witnesses and as such no implicit reliance should be placed on their testimony — Held, undoubtedly, PW 1 is father of the deceased and PW 4 is a co-villager of PW 1 who corroborated testimony of PW 1 on all material aspects of the case and clearly recognised the accused persons who committed murder of the deceased — However, testimony of PWs 1 and 4 found to be satisfactory, consistent and credible by High Court — Both witnesses were subjected to searching cross-examination by defence, but no tangible material extracted from their evidence to create any shadow of doubt to disbelieve and discard their truthful testimony — Hence conviction justified — CrPC, 1973, Ss. 378(1) and 386(a)* (Para 34). *Indra Pal Singh* v. *State of U.P.*, (2008) 16 SCC 648: AIR 2009 SC 958: (2009) 74 AIC 244 (SC): (2009) 1 All LJ 666: 2009 Cri LJ 942.

Bench Strength **2**. Coram: **L.S. Panta** and *Aftab Alam*, JJ. [Date of decision: 2-12-2008]

[7576] — Ss. 302/149 and 148 — Testimony of partisan witness — Reliability — *Held, High Court erred in not placing reliance upon the evidence of eyewitnesses on the ground that they were interested and partisan witnesses — In a murder trial, sworn testimony of a witness cannot be rejected on this ground alone when the same is con-*

sistent with the prosecution case and supported by medical evidence as well as the objective finding of the investigating officer (Para 9). *Kamma Otukunta Ram Naidu* v. *Chereddy Pedda Subba Reddy*, (2003) 11 SCC 293: 2004 SCC (Cri) 155: AIR 2003 SC 3342.

Bench Strength 2. Coram : **B.N. Agrawal** and *B.N. Srikrishna*, JJ. [Date of decision : 19-9-2003]

(k) Material witness

See also CRIMINAL TRIAL — '251.(t) Material witness', pp. 386 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7577] — S. 302 — Material witness — Witness reaching the place of occurrence after the actual incident — Later taking part in fight which was an entirely different incident — *Is not a material witness in the case relating to the first incident. Narain* v. *State of Punjab*, AIR 1959 SC 484: 1959 Supp (1) SCR 724: 61 Punj LR 509: 1959 Cri LJ 537.

Bench Strength 2. Coram : *P.B. Gajendragadkar* and **A.K. Sarkar**, JJ. [Date of decision : 4-12-1958]

[7578] — S. 302 — Material witnesses — Meaning of and test — *Effect of non-production in a criminal trial*

The test whether a witness is material for the present purpose is not whether he would have given evidence in support of the defence. The test is whether he is a witness "essential to the unfolding of the narrative on which the prosecution is based". Whether a witness is so essential or not would depend on whether he could speak to any part of the prosecution case or whether the evidence led disclosed that he was so situated that he would have been able to give evidence of the facts on which the prosecution relied. It is not however that the prosecution is bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call all material witnesses. If a material witness has been deliberately or unfairly kept back, then a serious reflection is cast on the propriety of the trial itself and the validity of the conviction resulting from it may be open to challenge. *Narain* v. *State of Punjab*, AIR 1959 SC 484: 1959 Supp (1) SCR 724: 61 Punj LR 509: 1959 Cri LJ 537.

Bench Strength 2. Coram : *P.B. Gajendragadkar* and **A.K. Sarkar**, JJ. [Date of decision : 4-12-1958]

(l) Medical witness

See also CRIMINAL TRIAL — '251.(u) Medical witness', pp. 387 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also 'D.25.(i) Medical/Expert Opinion', and

'D.25.(j) Medico-Legal Cases/Doctors', in Vol. 2

[7579] — Ss. 302/34, 379/34 and 201 — Medical witness — Inconsistency — *Doctor who conducted the post-mortem opining that the deceased died due to asphyxia as a result of drowning — Professor of Forensic Medicines opining that the deceased died due to shock and haemorrhage — His opinion based on post-mortem certificate, inquest report and questionnaire — Held, in the circumstances, medical evidence inconclusive as to the cause of death and it would be highly unsafe to sustain the convictions on the basis of circumstantial evidence of this nature — Evidence Act, 1872, S. 45. Budha Satya Venkata S. Rao* v. *State of A.P.*, 1994 Supp (3) SCC 639: 1995 SCC (Cri) 127.

Bench Strength 3. Coram: *M.M. Punchhi*, *N. Venkatachala* and **K. Jayachandra Reddy**, JJ. [Date of decision: 7-10-1994]

(m) Natural witness

See also CRIMINAL TRIAL — '251.(v) Natural Witness', pp. 388 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also 'D.38.(c) Chance Witness', above

[7580] — S. 302 — Appreciation of evidence — Murder of a young girl aged 17 years — Motive being frustration in love — *In the circumstances of the case, High Court justified in relying on the evidence of the sister and maidservant of the deceased — Nature and dimension of injuries caused to the deceased and also the manner in which they were inflicted indicating that the intention of the appellant was to cause death of the deceased — Conviction under S. 302 recorded by the High Court upheld. Ashok Kumar Barik* v. *State of Orissa*, (1998) 8 SCC 539: 1998 SCC (Cri) 1520.

Bench Strength 2. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 5-11-1997]

[7581] — S. 302 — Conviction for murder upheld when based on the disinterested testimony of an eyewitness who was accompanying the deceased. *Shri Ram* v. *State of U.P.*, (1975) 3 SCC 495: 1975 SCC (Cri) 87: AIR 1975 SC 175: 1975 Cri LJ 240: 1976 MLJ (Cri) 78.

Bench Strength 2. Coram: **Y.V. Chandrachud** and *P.N. Bhagwati*, JJ. [Date of decision: 6-11-1974]

38.(m) Natural witness *(contd.)*

[7582] — S. 302 — Murder — Evidence of eyewitness found reliable and unshaken — *Being a resident of the building in the precincts of which the incident took place he was a natural, probable and disinterested witness — Evidence adduced by the defence found unreliable — No interference by the Supreme Court with the conviction of the accused is called for. Surajdeo Yadav* v. *State of Bihar*, 1997 SCC (Cri) 1070: AIR 1996 SC 3157: 1996 Cri LJ 2302.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 12-4-1996]

[7583] — S. 302 — Murder by firing gunshots — Motive as disclosed in FIR being land dispute — *Medical evidence, objective finding of investigating officer and ocular version of eyewitnesses supporting the prosecution case in material particulars — Presence of eyewitnesses not in doubt as the occurrence had taken place in the street in front of their houses — Their evidence consistent inter se as well as with the prosecution case as disclosed in FIR and in their statements before police — Held on facts, prosecution succeeded in proving its case beyond reasonable doubt. State of Punjab* v. *Mela Singh*, (2003) 12 SCC 464: AIR 2004 SC 257: 2004 Cri LJ 368.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Agrawal**, JJ. [Date of decision: 6-11-2003]

[7584] — S. 302 — Murder inside a house — Evidence of inmates — Evidentiary value — *Accused and a girl* R *developing a love affair but at the instance of her father* R *refusing to marry the accused — Accused, on the pretext of continuing parleys over their affair, taking* R *to the house of a lady* S *who was a family friend — Accused introducing* R *to* S *as his fiancee —* S *welcoming them in her drawing room and after supplying coffee withdrawing from there so as to enable them to have undisturbed talks — Accused whipping out a chopper from his bag and inflicting murderous blows on* R — Overhearing R*'s cry,* S *rushing to the drawing room and finding* R *bleeding — Accused admitting before* S *to have killed* R *and thereafter fleeing away — In such circumstances, held,* S *was the most natural and most probable witness to speak about the murder of* R *— Mere non-arrival of any neighbour to the scene or silence on the part of* S*, held, would not reduce the credibility of her evidence nor would justify to term her reaction as unnatural — In view of the evidence of the said eyewitness corroborated by other evidence, conviction of respondent by trial court under S. 302, restored. State of Karnataka* v. *K. Yarappa Reddy*, (1999) 8 SCC 715: AIR 2000 SC 185.

Bench Strength **2**. Coram: **K.T. Thomas** and *A.P. Misra*, JJ. [Date of decision: 5-10-1999]

Rana Pratap v. State of Haryana, (1983) 3 SCC 327: 1983 SCC (Cri) 601; Appabhai v. State of Gujarat, 1988 Supp SCC 241: 1988 SCC (Cri) 559, relied on

[7585] — S. 302 — Murder Trial — Chance witnesses — *Where incident taking place on street, passersby such as milk and vegetable vendors are natural witnesses and not chance witnesses*

If a murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed on a street, only passersby will be witnesses. The evidence of street hawkers and street vendors cannot be discarded or viewed with suspicion merely on the ground that they are chance witnesses. *Rana Partap* v. *State of Haryana*, (1983) 3 SCC 327: 1983 SCC (Cri) 601: AIR 1983 SC 680: 1983 Cri LJ 1272.

Bench Strength **2**. Coram: *D.A. Desai* and **O. Chinnappa Reddy**, JJ. [Date of decision: 12-5-1983]

[7586] — S. 302 — Murder Trial — Murder — Natural witnesses — *Held, the evidence of the eyewitnesses PWs 6 and 7, two ladies who lived in the vicinity, was cogent and convincing — Defence suggestion that the entire thing had been fabricated by the police and that these two witnesses were put up as eyewitnesses was without any substance — This was a simple case where the occurrence had taken place in the village at about evening time — PWs 6 and 7 who lived in the vicinity figured as natural witnesses — There was no reason why the police put up only two ladies as eyewitnesses — Hence the High Court was right in reversing the order of acquittal of the trial court and convicting the appellant under S. 302 IPC and sentencing him to imprisonment for life. Jaskaran Singh* v. *State of Punjab*, 1994 SCC (Cri) 1468: AIR 1994 SC 157.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 23-9-1992]

[7587] — S. 302 — Murder trial — Natural witness — Conviction confirmed — Families of accused and complainant close neighbours though living on different floors in small-sized flats — *Incident occurring on third floor while PWs 1 & 2 (mother and father of deceased) residing on fourth floor — However, attack preceded by scuffle and cries for help by victim which immediately attracted PWs 1 & 2 out of their apartment and they witnessing appellant inflicting knife-blows on deceased — Incident occurring between 8.30-9.00 p.m., hence, presence of witnesses at home natural — Moreover, appellant was thrown out of employment by PW 1 and thus, motive for commission of offence established — Plea that medical evidence* *falsified prosecution story since PWs stated that two injuries had been inflicted on deceased but doctor who conducted post-mortem had found eight injuries, rejected as there were only two effective injuries as internal injuries were result of two knife-blows — Thus, conviction of appellant under S. 302, who was main accused, calls for no interference* (Paras 13, 15 to 17 and 19). *Dilpesh Balchandra Panchal* v. *State of Gujarat*, (2010) 11 SCC 714: (2010) 3 Guj LR 1912: (2010) 90 AIC 98 (SC): (2010) 3 UPLJ 27 (SC).

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 29-4-2010]

[7588] — S. 302 — Murder trial — Natural witness — Persons present with deceased during time of fatal assault — Such witnesses, held, are natural witnesses

On 13-1-2000, at about 10.30 p.m., when PWs 1 to 3, one *S* and the deceased (all friends) were having a party in PW 3's house, the accused knocked at the door, upon which, it was opened by *S*. The respondent-accused entered the room and asked as to who had called his name. Being so asked, PW 1 stated that nobody had called him and the respondent was asked to leave the room. While going out of the room, the respondent further told PW 1 to make the deceased understand otherwise his head would be smashed. Saying so, the respondent left the room. Thereafter, they bolted the room from inside and danced till 12 to 12.30 a.m. in the midnight when the deceased opened the door to go out for urination. As soon as the deceased stepped out, he was stabbed by the respondent-accused with a sharp-edged weapon in the chest. Thereafter the accused fled away before their attempt to nab him. PW 1 at that stage asked *S* to press the chest of the deceased so as to control the bleeding. He also brought cotton from the nearby house and gave first aid to the deceased. He also rushed out to arrange for a three-wheeler. The deceased was then taken to the hospital where he died at around 1.30 a.m. The High Court by the impugned order set aside the order of conviction passed by the Sessions Court for offences under Section 302 IPC.

Allowing the appeal,

Held :

PWs 1 to 3 are the natural witnesses who have categorically deposed about the involvement of the accused in the incident. The bloodstained knife was also recovered at the instance of the accused from his house on the basis of the disclosure statement made by the respondent-accused. (Para 28)

The trial court found that the statements given by all the three witnesses corroborated each other on material particulars, that the flow of their version appeared to be quite natural and that there was no major discrepancy. (Para 13). *State of H.P.* v. *Rakesh Kumar*, (2009) 6 SCC 308: (2009) 2 SCC (Cri) 1028: 2009 Cri LJ 3060.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 6-5-2009]

[7589] — Ss. 302/34 and 326 — Homicidal death — Appeal against conviction by courts below — Natural witnesses — *Reliable and convincing evidence of eyewitnesses — Prompt lodging of FIR — Accused had strong motive for the commission of offence — Further, cautious approach adopted by High Court as it convicted only those persons against whom there was direct evidence of overt act so as to exclude any possibility of false implication — Fact that PWs were related to each other, not affecting the prosecution case adversely — There being no good reason to disturb the concurrent findings of courts below, conviction of appellants upheld*

The accused had a strong motive for the commission of the offence because it is not disputed that Accused 13 and others were being tried for the murder of the father and two uncles of PW 1. The case of the prosecution is that they were pressurising the members of the prosecution party to settle the dispute out of court while the prosecution witnesses were not willing to do so having regard to the fact that three of their family members had been murdered. (Para 9)

The prosecution examined as many as 6 eyewitnesses, namely, PWs 1, 2, 3, 4, 5 and 11. PW 1 is the first informant while PWs 2 and 3 are injured witnesses. They have fully supported the case of the prosecution and there is hardly anything in their testimony to discredit them. Further, there was no scope for fabricating a false case having regard to promptitude with which the first information report was lodged. The witnesses are natural witnesses as they all belong to the same family and were working together in the same field. (Paras 8 and 9)

In view of the natural presence of the prosecution witnesses and the consistency in their evidence, the mere fact that they are related to each other does not impress the Court. After all the deceased were also related to the witnesses as they belonged to the same family. Similarly many of the accused are also interrelated. (Para 10)

The approach of the High Court has been very cautious, and it has convicted only those persons against whom there is direct evidence of overt act so as to exclude any possibility of false implication. In

38.(m) Natural witness *(contd.)*

fact the High Court gave the benefit of doubt to some of the accused persons on the slightest inconsistency in the evidence of the witnesses. The trial court as well as the High Court, after detailed consideration of the evidence on record, have recorded the conviction of the appellants and there is no good reason to disturb the concurrent findings of courts below so far as the appellants are concerned. (Paras 8 and 10). *G. Laxmanna* v. *State of A.P.*, (2002) 8 SCC 333: 2003 SCC (Cri) 10: AIR 2002 SC 3685.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 10-10-2002]

[7590] — Ss. 302/149 — Conviction based on reliable testimony of neighbour who had witnessed the murder and of another person — *Infirmity in identification parade of the witness having earlier seen the accused in police lock-up, held, therefore immaterial — No other infirmity in the reasoning and conclusion of High Court — Conviction upheld — Evidence Act, 1872, S. 9. Mullagiri Vajram* v. *State of A.P.*, 1993 Supp (2) SCC 198: 1993 SCC (Cri) 496: AIR 1993 SC 1243: 1993 Cri LJ 169: 1993 (2) ALT (Cri) 242: (1992) 3 Crimes 671.

Bench Strength 2. Coram: *Kuldip Singh* and **N.M. Kasliwal**, JJ. [Date of decision: 15-10-1992]

[7591] — Ss. 304 Pt. II and 302 — Independent witness — Testimony of — Evidentiary value — Trial under S. 302 — *Father dying of "suja" injury given by son — Alarm raised by another son of the deceased, who was present there, attracting another person who was not connected with that family, to the spot — That person not having seen the actual occurrence but told about the same by the son who had raised the alarm — Being natural and independent witness, evidence of the said person accepted — However, on facts the accused, held, guilty under S. 304 Pt. II and not under S. 302 IPC. State of U.P.* v. *Hari Om*, (1998) 9 SCC 63: 1998 SCC (Cri) 979.

Bench Strength 2. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 2-12-1997]

(n) Witness Protection and Support

See also CRIMINAL TRIAL — '251.(ze) Witness protection and support', pp. 416 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7592] — Ss. 302 and 34 — Deficiency in criminal justice system in India to protect witnesses from being threatened by accused — Anguish expressed by Supreme Court therefor — *Instant case of brutal murder of college girl inside college campus by running a jeep over her by prime accused-appellant* **S** *and co-accused-appellants present in the jeep allegedly exhorting* **S** *for the same — Eyewitnesses, all classmates of deceased victim, present with her at the time of incident — They backing out from what was stated during investigation and statement made before police — PW 8 (eyewitness), at the end of her evidence, cried and requested the court not to call her again for evidence since they were disturbed for the entire year — Close reading of evidence showed that PW 8 was under tremendous pressure not to speak the truth — Held, unfortunately, in cases involving influential people, common experience is that witnesses do not come forward because of fear and pressure — Herein, plight of eyewitness girls, who were under pressure, depicts tremendous need for witness protection in the country if criminal justice administration has to be a reality*

It is a classic case of deficiency in the criminal justice system to protect the witnesses from being threatened by the accused. As appears from the record, the witnesses are the classmates of the deceased who were there with her. As it appeared from the evidence of witnesses, they backed out from what was stated during investigation. The statement made before the police during investigation is no evidence. Unfortunately, in cases involving influential people the common experience is that witnesses do not come forward because of fear and pressure. In a brutal manner, the accused *S* (prime accused), who was driving the vehicle, ran it over the girl and she lost her life. (Para 15). *Javed Alam* v. *State of Chhattisgarh*, (2009) 6 SCC 450: (2009) 2 SCC (Cri) 1085.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 8-5-2009]

(o) Related witness

See also CRIMINAL TRIAL — '251.(zh) Related witness', pp. 423 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

See also 'D.38.(d) Child/Young witness', and

'D.38.(j) Interested/Partisan witness', above

See also under 'D.38.(q) Sole/Solitary witness', below

[7593] — S. 302 — Eyewitness a close relative of the injured or the deceased — *Mere fact of relationship far from being the foundation of criticism of the evidence is often a sure guarantee of truth* *because ordinarily a close relation would be the last person to screen the real culprit and falsely implicate an innocent person. Dalip Singh* v. *State of Punjab*, AIR 1953 SC 364: 1954 SCR 145: 1953 Cri LJ 1465, 1468.

Bench Strength **3**. Coram : *M.C. Mahajan*, **Vivian Bose** and *B. Jagannadhadas*, JJ. [Date of decision : 15-5-1953]

[7594] — S. 302 — Murder — Conviction based on ocular evidence of PW 2 (brother of deceased) and PW 6 — *Strained relations were existing between PW 2 and his family members on one hand and accused-appellant and his family members on the other — Criminal litigation was also pending between the two families — In such circumstances, Supreme Court carefully scrutinizing the evidence of both the eyewitnesses and finding it to be reliable — Contradictions and inconsistencies pointed out by the defence in the statements of the eyewitnesses were not material ones and, hence, not affecting the prosecution case — Injuries 1 and 2 were individually sufficient in the ordinary course of nature to cause death — Recovery of crime article at the instance of accused — Medical evidence supporting the prosecution case — On facts, conviction of appellant under S. 302 upheld — Evidence Act, 1872, S. 27*

PW 1 and *R* were two real brothers. PW 2, PW 4, *J* and *S* (deceased who died in the incident) were all sons of PW 1. The accused-appellant was one out of the five surviving sons of *R*. The relationship between the families of PW 1 and *R* was not harmonious and criminal litigation was also pending between their families. On the date of the incident, PW 2 had gone to his field at about 5.30 a.m. for performing agricultural operations and engaging labour. At about 7.30 a.m., on the arrival of PW 4 (brother of PW 2) on the field, while PW 2 was returning to his home, he was intercepted by the appellant and his father who were armed with a *tabbal* and an axe respectively. PW 2 came back to his field and told PW 4 about the same. PW 4 asked PW 2 to go to the village through a different route. PW 2 while going through the different route saw the appellant jumping into a *nala* on that way. He also saw his brother *S* coming out of that *nala*. At this point of time the appellant dealt blows by *tabbal* on the person of *S*. Having dealt three blows on the person of *S*, the appellant ran towards PW 2. On seeing this, PW 2 ran for his life and entered the house of one *K*. On the appellant having escaped from the scene of the crime PW 2 came out and reached near his brother *S* who by that time had died. PW 6, whose field was situated close to the place of the occurrence, told that she had also seen the assault from her own field. Relying on the testimony of PWs 2 and 6, the Sessions Court convicted the appellant under S. 302 IPC and the High Court affirmed the same.

Dismissing the appeal,

Held :

A *tabbal* (crime article) was recovered at the instance of the accused from a place near the *nala* where it was hidden by him. Injuries 1 and 2 were individually sufficient in the ordinary course of nature to cause death of *S*. (Paras 7 and 6)

The conviction rests on the ocular evidence of PW 2 and PW 6. It is true that the relationship between PW 2 and his family members on the one hand and the accused and his family members on the other was strained and criminal litigation was also pending between the two. The testimony of PW 2, therefore, needs to be subjected to careful scrutiny. Having done so, PW 2 is held to be a witness of truth. (Para 8)

The version of PW 2 regarding the assault on his brother *S* and thereafter his having reached the house of *K* to save himself from a likely assault by the appellant on him finds support from the testimony of *K*. PW 6 could have seen the incident from her field situated near the place of occurrence. (Para 8)

The statements of both the eyewitnesses find support from the medical evidence. The learned Sessions Judge has carefully scrutinized the evidence of both the eyewitnesses and found it worthy of reliance. The High Court too has though in a very brief judgment observed that the guilt of the accused was proved beyond reasonable doubt by overwhelming evidence adduced by the prosecution. Thus, the conviction of the accused-appellant is well founded and cannot be interfered with. It is true that during the cross-examination of PW 2 and PW 6 the attention of the witnesses was invited to certain portions of the FIR and their police statements in an effort to demonstrate that there were inconsistencies. But, such contradictions and inconsistencies are not material. When an incident is narrated by the same person to different persons on different occasions some difference in the mode of narrating the incident is bound to arise. However, such differences do not militate against the trustworthiness of the narration unless the variations can be held to be so abnormal or unnatural as would not occur if the witness would have really witnessed what he was narrating. (Para 9). *Shyam Sunder* v. *State of Chhattisgarh*, (2002) 8 SCC 39: AIR 2002 SC 3292.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Brijesh Kumar*, JJ. [Date of decision: 16-9-2002]

38.(o) Related witness *(contd.)*

[7595] — S. 302 — Murder — Related witness — Corroborated testimony of related witness — Reliability — *Within 15 minutes of the occurrence police arrived at the scene and within 15 minutes thereof statement of an eyewitness recorded and on the basis of the same FIR registered — In the circumstances held, fact that one of the eyewitnesses named only two out of 15 accused who were known to him and could not name the accused-appellants would not show false implication of appellants — On the contrary, it would show that his testimony was natural, truthful and reliable — Merely because another eyewitness was related to the deceased, his testimony cannot be discarded when the same was corroborated by other PWs — Further, in view of shock in the minds of the eyewitnesses, if in the process when a large number of accused were involved, names of some not mentioned by one while the same mentioned by the other witness or there was slight variation in the role of the accused, that by itself would not result in failure of the prosecution — Prosecution case of dragging the dead body by the accused persons cannot also be disbelieved on ground of absence of several injuries showing such dragging as when a large number of persons were dragging the body after catching hold of the same, only a small portion may be touching the ground as a result whereof there may not be a large number of injuries on account of dragging — Factum of dragging stood established from evidence on record with corroboration from sketch map along with explanatory notes — Manner and vengeance with which the crime was committed shows that the accused were not bothered about others watching them and therefore, submission that the accused who were large in number having not caused any injuries to the eyewitnesses would show the improbability of their presence at the scene, has no substance — Hence, conviction and sentence upheld. Mundrika Mahto* v. *State of Bihar,* (2002) 9 SCC 183: AIR 2002 SC 2042: 2002 Cri LJ 2810.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Y.K. Sabharwal**, JJ. [Date of decision: 29-4-2002]

[7596] — S. 302 — Murder of two persons and injuries to another — *Presence of injured witness, daughter of the deceased established beyond doubt — Her evidence found natural and corroborated from medical evidence — Evidence of son of the deceased who rushed to the scene of offence after hearing the shouts of his father also found reliable — Assailants known to the witnesses — Evidence of son of the deceased corroborated from evidence of another witness who rushed to the scene of offence after getting information from son of the deceased — Held, in the circumstances, order of acquittal passed by the High Court liable to be quashed* (Para 5). *State of Rajasthan* v. *Major Singh,* (1999) 9 SCC 106: 1999 SCC (Cri) 467: AIR 1999 SC 1073: 1999 Cri LJ 1631.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **M.B. Shah**, JJ. [Date of decision: 17-2-1999]

[7597] — S. 302 — Murder trial — Appreciation of evidence — Conviction confirmed — Prior dispute between deceased and A-3 and some quarrel between children of deceased and grandsons of A-3 — *On date of incident, A-3, along with his three sons, accosting deceased, returning with his wife and son from jungle, and on exhortation by A-3 to kill deceased, appellant-accused (son of A-3) shot deceased with his gun, resulting in his death — Held, deceased died a homicidal death — PW 1 (informant eyewitness and wife of deceased) searchingly cross-examined, however, nothing could be elicited from her to establish false implication of appellant because of enmity — Her testimony gets complete corroboration from contents of FIR promptly lodged by her and by testimony of PW 2 (eyewitness and son of deceased) — PWs 1 and 2 being close relatives of deceased, would not allow real culprits to go scot-free and falsely implicate appellant — Moreover, appellant was also closely related to PW 1, therefore, she would never make an attempt to falsely implicate appellant — No major discrepancy could be brought to notice of court which would render testimony of eyewitnesses unreliable — Though defence examined three witnesses, evidence of none of them was of any assistance for establishing innocence of appellant — Hence, conviction confirmed* (Paras 15 to 25). *Kirpal Singh* v. *State of U.P.,* (2010) 3 SCC 347.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **J.M. Panchal**, JJ. [Date of decision: 23-2-2010]

[7598] — S. 302 — Murder trial — Credibility of injured/related witnesses — *Intensive cross-examination not shaking the evidence of related/injured witnesses — Held, relationship is not a factor to discard prosecution version and render it suspect — Trial court did its duty of analysing evidence in detail to rule out false implication*

The accused party and the prosecution party had political grudges against each other and it had intensified after *CP*(a member of the prosecution party) got elected as Sarpanch. On 14-1-1998 at about 7.00 a.m., A-6 and *K* and *CV* went to the fields to graze their cattle. After some time at about 7.30 a.m., *CS*, *MU*and *MA*also went to same fields for answering the calls of nature and they met A-6 and *K*and *CV* there. A quarrel and scuffle started between them over a cricket match. At about 12.00 noon, PW 3 father of PW 6 quarrelled with A-6 as A-2 had kicked his son in relation to the quarrel that took place in the fields.

PW 1, PW 2 and the deceased were trying to convince PW 3 to adjust the matter and not to quarrel. A-3 who was passing through the street heard the cries of PW 3 and picked up quarrel. At about 1.00 p.m., A-l and A-3 to A-19 armed with deadly weapons beat the deceased and also injured PWs 1 to 3. A-1 beat PW 1 with an iron rod on his head. A-12 also beat PW 1 with a stick on his shoulder. A-5 beat PW 2 with a stick on his head and hands. A-1 beat PW 3 with an axe on his head and A-11 beat PW 3 with a stick on his eyebrows. A-2 beat the deceased with a stick on his back. A-1 also beat the deceased with an iron rod on his head and all over the body. As a result, the deceased fell down with injuries and became unconscious. PWs 1 to 3 fell down with injuries. All the accused hurled stones against PWs 1 to 3 and the deceased. All the accused left the place thereafter.

By the impugned order, the High Court upheld the conviction of the appellants under Sections 147, 148, 323, 324, 307 and 302 IPC read with Section 149 IPC.

Dismissing the appeal,

Held :

The prosecution version is sufficient to fasten the guilt on the appellant-accused. Though the father of the deceased was not examined, three of the injured witnesses who had sustained injuries during the occurrence were examined. Though they were subjected to incisive cross-examination, nothing material was elicited to discard their evidence. Great emphasis was laid on the fact that PWs 1 to 3 are related to the deceased. Relationship is not the factor to discard the prosecution version and render it suspect. At the most, what the court is required to do is to analyse the evidence in some detail to rule out the possibility of false implication. In the instant case, the trial court has done that. Though it was urged that there was delay in lodging the FIR, the trial court and the High Court found that in fact there was no delay and Ext. P-1 was lodged promptly. The appeal is without merit, deserves dismissal. (Paras 12 to 14). *Kilari Malakondiaah* v. *State of A.P.*, (2008) 15 SCC 311: (2009) 3 SCC (Cri) 974: (2008) 72 AIC 13 (SC): (2009) 1 ECrN 910 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 21-11-2008]

State of M.P. v. Deshraj, (2004) 13 SCC 199, relied on

[7599] — S. 302 — Murder Trial — Family members of deceased — *On facts held, natural witnesses, occurrence having taken place in front of their house — Mere fact that their testimony that they fell over the body of the deceased for protecting him from further attack by the accused and that their clothes which became stained with blood were seized by police was an improvement of the case by the prosecution, would not, on facts, improbabilise their presence at the scene of occurrence. Ram Avtar Rai* v. *State of U.P.*, (1985) 2 SCC 61: 1985 SCC (Cri) 156: AIR 1985 SC 880: 1985 Cri LJ 902.

Bench Strength 2. Coram: **A. Varadarajan** and *Ranganath Misra*, JJ. [Date of decision: 12-2-1985]

[7600] — S. 302 — Murder Trial — Husband and sons of the witness murdered — *But no evidence of her previous ill-will or hostility against or a motive to falsely implicate the accused — Injuries sustained by her lending assurance of her presence at the time and place of the murder — Medical evidence supporting her testimony in regard to nature of weapons with which fatal injuries were inflicted — Other circumstances also corroborating her testimony — Held, testimony of the witness reliable. Govt. of A.P.* v. *Boya Jaggapuram Venkateswarlu*, 1980 Supp SCC 480: 1981 SCC (Cri) 444: AIR 1980 SC 1876: 1980 Cri LJ 1301.

Bench Strength 2. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 6-10-1980]

[7601] — S. 302 — Murder trial — Related witnesses — *Mother (PW 2, complainant) and son (PW 6) witnessing attack on the deceased — Case law relied upon to show that merely because eyewitnesses were family members, their evidence cannot be discarded* (Para 14). *Santosh Devidas Behade* v. *State of Maharashtra*, (2009) 13 SCC 680: (2009) 2 ECrN 1011 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-3-2009]

Vinay Kumar Rai v. State of Bihar, (2008) 12 SCC 202; Sonelal v. State of M.P., (2008) 14 SCC 692; Mohabbat v. State of M.P., (2009) 13 SCC 630, relied on

[7602] — S. 302 — Murder trial — Related witness — Testimony of — Conviction on basis of — *Held, sustainable — In the instant case, evidence of PW 3 (informant, eyewitness and son of deceased) and PW 5 was found cogent, credible and reliable — Hence, submission that PWs 3 and 5 being interested, their evidence should be discarded, rejected — Merely because the eyewitnesses are family members, their evidence cannot per se be discarded*

38.(o) Related witness *(contd.)*

Merely because the eyewitnesses are family members, their evidence cannot per se be discarded. When there is an allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. (Paras 8 and 10 to 12). *Daulatram* v. *State of Chhattisgarh*, (2008) 17 SCC 112: 2008 Cri LJ 4587: (2009) 1 ECrN 470 (SC): (2008) 70 AIC 1 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 19-9-2008]

Babulal Bhagwan Khandare v. State of Maharashtra, (2005) 10 SCC 404: 2005 SCC (Cri) 1553; Salim Sahab v. State of M.P., (2007) 1 SCC 699: (2007) 1 SCC (Cri) 425; Vinay Kumar Rai v. State of Bihar, (2008) 12 SCC 202: (2009) 1 SCC (Cri) 406; State of Rajasthan v. Teja Ram, (1999) 3 SCC 507: 1999 SCC (Cri) 436, relied on

[7603] — S. 302 — Murder trial — Witnesses — Related to deceased — Testimony of — Reliability — *Held, it is well settled that evidence of a witness is not to be rejected merely on grounds of being related to the deceased, in the absence of any infirmity in the said evidence* (Para 22). *Dharam Pal* v. *State of U.P.*, (2008) 17 SCC 337: AIR 2008 SC 920: (2008) 62 AIC 65 (SC): (2008) 1 All LJ 721: 2008 Cri LJ 1016.

Bench Strength 2. Coram: *C.K. Thakker* and **Tarun Chatterjee**, JJ. [Date of decision: 4-1-2008]

State of H.P. v. Mast Ram, (2004) 8 SCC 660: (2010) 1 SCC (Cri) 1165, followed

[7604] — S. 302 — PW, mother before whom all her four sons were dragged out and set on fire — *Her failure to give all the details of the occurrence when she gave statement to police — In that statement police officer recording only two sentences as she was then not in a mood to speak out details, the interval of time then being not sufficient for a mother to regain mental equanimity — In the circumstances, held, it would be unfair and uncharitable to her if that cryptic statement made by her before police is used to discredit the valuable testimony of this most natural eyewitness* (Para 7). *Manohar Lal* v. *State (NCT of Delhi)*, (2000) 2 SCC 92: 2000 SCC (Cri) 333: AIR 2000 SC 420: 2000 Cri LJ 581.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 17-12-1999]

[7605] — S. 302 — Related witness — Dying declaration and incriminating evidence by related witnesses (brother and sisters) corroborated by injuries found on deceased — Reliability of — *Dying declaration and evidence by related witness, held, reliable — Dying declaration was not tutored, prompted or product of imagination — Hence, conviction upheld — Evidence Act, 1872, S. 32(1)*

With regard to the issue of dying declaration raised by the appellant, it is a well-established legal position that a dying declaration can be made the sole basis of conviction of an accused provided the dying declaration is found to be true and voluntary and is not a result of tutoring or prompting or a product of imagination. The deceased was stated to be conscious when she was lifted from the bathroom. When PW 1 asked the deceased as to what had happened, she stated that the appellant-accused, her husband had beaten her and had, after pouring kerosene oil on her, set her on fire. They brought her to the hall and there she died. A fresh injury was also noticed on the forehead of the deceased just above her left eye on the face and her body was completely burnt. (Para 20)

The evidence of PWs 1 to 4 is clear and categorical in reference to the frequent quarrels between the deceased and the appellant. The marital life of the couple was not smooth and cordial but strained. These witnesses clearly stated that the appellant did not allow the deceased to spend her money (which she earned as a nurse). The appellant used to suspect her fidelity. (Paras 24 and 19)

PWs 1 to 4 have clearly and consistently supported the prosecution version with regard to the beating and the ill-treatment meted out to the deceased by the appellant on several occasions which compelled the deceased to leave the appellant's house and take shelter in her parental house with an intention to live there permanently. However, her parents persuaded her to return back. PWs 1 to 4 have unequivocally stated that the deceased feared threat to her life from the appellant. The aforesaid version narrated by the prosecution witnesses viz. PWs 1 to 4 also finds corroboration from the facts stated in the complaint. (Paras 24 and 19)

As per PWs 1 to 4, fifteen days prior to the occurrence, there was a quarrel between the couple with reference to the ear-piercing ceremony of their children. The appellant wanted to spend lavishly for that ceremony and wanted it to be conducted along with his brother's children, which the deceased objected to as she wanted it to be a simple affair involving minimal expenditure. (Para 19). *Jayabalan* v. *UT, Pondicherry*, (2010) 1 SCC 199.

Bench Strength 2. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 6-11-2009]

Paniben v. State of Gujarat, (1992) 2 SCC 474: 1992 SCC (Cri) 403; Jai Karan v. State of Delhi (NCT), (1999) 8 SCC 161: 1999 SCC (Cri) 1385; Muthu Kutty v. State, (2005) 9 SCC 113: 2005 SCC (Cri) 1202; Sham Shankar Kankaria v. State of

Maharashtra, (2006) 13 SCC 165: (2007) 2 SCC (Cri) 663; Mohanlal v. State of Haryana, (2007) 9 SCC 151: (2007) 3 SCC (Cri) 94; Vikas v. State of Maharashtra, (2008) 2 SCC 516: (2008) 1 SCC (Cri) 486, relied on

[7606] — S. 302 — Related witness — Relations of victim in a murder trial giving eyewitness account — Account given has to be carefully scrutinized — *Corroboration on material particulars not necessary — Principles governing the appreciation of evidence of relation witnesses detailed*

There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal Courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance-witnesses or whether they were really present on the scene of the offence. If the offence has taken place, as in the present case, in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eyewitnesses cannot be properly characterised as unlikely. If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. We do not think it would be possible to hold that such witnesses are no better than accomplices and that their evidence, as a matter of law, must receive corroboration before it is accepted. *Darya Singh* v. *State of Punjab*, AIR 1965 SC 328: (1964) 3 SCR 397: (1965) 1 Cri LJ 350.

Bench Strength **3**. Coram : **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision : 25-4-1963]

[7607] — S. 302 — Related witnesses — Conviction — Propriety — *Appellant G, along with his friend L, killing 13 members of his family including small kids when they were sleeping at night — Offence committed as family of G objected to the visits and stay of L at their house due to suspicion regarding unnatural relationship between L and wife of G — Evidence of three surviving eyewitnesses (one brother of G and two children of brothers who were killed) found reliable — Medical report supporting attack by the weapon used — On facts, held, conviction and sentence of G was proper* (Paras 5 and 7). *Gurmeet Singh* v. *State of U.P.*, (2005) 12 SCC 107: 2005 Cri LJ 4384.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Arun Kumar**, JJ. [Date of decision: 28-9-2005]

[7608] — S. 302 — Related witnesses — Testimony of — Can be acted upon if it is otherwise reliable

The close relationship of witnesses to the deceased is no ground for not acting upon that testimony if it is otherwise reliable in the sense that the witnesses were competent witnesses who could be expected to be near about the place of occurrence and could have seen the incident. *Gurcharan Singh* v. *State of Punjab*, AIR 1956 SC 460: 1956 Cri LJ 827.

Bench Strength **3**. Coram : *N.H. Bhagwati*, *T.L. Venkatarama Aiyar* and **B.P. Sinha**, JJ. [Date of decision : 2-11-1955]

[7609] — S. 302 — Related witnesses — Testimony of — Conviction on basis of — Sustainability — *Submission by appellant- accused that when independent witnesses had not supported the prosecution version, evidence of PWs 6 and 9 (son and wife respectively of deceased) should not be*

38.(o) Related witness *(contd.)*

relied upon to sustain the conviction — Held, merely because the eyewitnesses are family members their evidence cannot per se be discarded — Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible — In the instant case evidence of PWs 6 and 9 was corroborated by medical evidence — Blood found on the knife seized from the accused matched with the blood found on the underwear of the deceased — PW 6 in his evidence stated that he had sustained injuries at the hands of the accused — Impugned judgment confirming conviction under S. 302 calls for no interference (Paras 2, 3 and 12 to 16). *Sone Lal* v. *State of M.P.*, (2008) 14 SCC 692: (2009) 3 SCC (Cri) 417: AIR 2009 SC 760.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 22-7-2008]

State of Punjab v. Jagir Singh, (1974) 3 SCC 277: 1973 SCC (Cri) 886; Lehna v. State of Haryana, (2002) 3 SCC 76: 2002 SCC (Cri) 526; Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381: 2003 SCC (Cri) 32; Babulal Bhagwan Khandare v. State of Maharashtra, (2005) 10 SCC 404: 2005 SCC (Cri) 1553; Salim Sahab v. State of M.P., (2007) 1 SCC 699: (2007) 1 SCC (Cri) 425; State of Rajasthan v. Teja Ram, (1999) 3 SCC 507: 1999 SCC (Cri) 436, relied on

[7610] — S. 302 — Relations as witnesses — *Prejudice of witness against accused — Witnesses morally convincing that accused were responsible for the murder — Always possible for them to later satisfy themselves factually and make a false statement. Mohinder Singh* v. *State of Punjab*, AIR 1955 SC 762: 1955 Cri LJ 1542.

Bench Strength 3. Coram : *Vivian Bose, T.L. Venkatarama Aiyar* and **B.P. Sinha**, JJ. [Date of decision : 13-9-1955]

[7611] — S. 302 — Relative as witness — Corroboration — *Nature and extent of*

To base conviction on the sole testimony of a witness who was related to the deceased, the corroboration that is required in such cases is not what would be necessary to support the evidence of an approver but what would be sufficient to "lend assurance to the evidence before them, and satisfy them that the particular persons were really concerned in the murder of the deceased". *Karnail Singh* v. *State of Punjab*, AIR 1954 SC 204: 1954 SCR 904: 1954 Cri LJ 580, 581.

Bench Strength 3. Coram : *N.H. Bhagwati, B. Jagannadhadas* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision : 29-1-1954]

See also AIR 1952 SC 167, 169: 1952 Cri LJ 863
Followed in AIR 1965 SC 328: 1965 (1) Cri LJ 850

[7612] — S. 302 — Wife of deceased — Credibility of her testimony — *Her presence at place of occurrence cannot be disputed — It is highly improbable that she would shield the real culprit who murdered her husband and would falsely rope in another person. Dharamwati* v. *Jaibir*, 1990 Supp SCC 275: 1990 SCC (Cri) 708.

Bench Strength 3. Coram: **Kuldip Singh**, *P.B. Sawant* and *M. Fathima Beevi*, JJ. [Date of decision: 6-8-1990]

[7613] — Ss. 302, 149, 147 and 148 — First informant — Non-examination of — Effect — *All the prosecution witnesses repeating the version given in FIR — First informant not examined on the ground of being abroad — In such circumstances, the evidence of the said witnesses, who were all relatives and whose evidence suffered from many infirmities, held, not acceptable — Hence, interference with acquittal refused. Miran Bux* v. *Laloo*, 1993 Supp (3) SCC 379: 1993 SCC (Cri) 1041: AIR 1994 SC 1612.

Bench Strength 2. Coram : **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision : 23-7-1993]

[7614] — Ss. 302 and 201 r/w S. 149 — Gruesome murder of three persons — Dead bodies thrown in river — Related eyewitnesses — *Common object to murder the victims, held on facts, stood proved by convincing and cogent evidence — Defence plea that impartial and independent witnesses were withheld, on facts, lacking substance — Evidence of PWs convincingly, cogently and sufficiently establishing the participation and direct involvement of seven out of the twelve appellants in the crime — Hence, their conviction and sentence upheld — Benefit of doubt extended to five appellants as their presence not proved beyond reasonable doubt*

Common object has been always considered to be different from common intention and that it does not require prior concert and common meeting of minds before the attack. Common object could develop *eo instanti* and being a question of fact it can always be inferred and deduced from the facts and circumstances of a case projected and proved in a given case. The evidence on record sufficiently established that there was some prior animosity and there were faction-ridden groups in existence apparently over the exercise of right to fish in the area. From the nature of the weapons like *lathi*, dagger, spear-like iron rods, which seem to have been liberally used by the appellants, the chasing of the victims who ran for their lives and killing three of them by merciless attack and throwing their dead bodies in the running river rendering it almost difficult to retrieve immediately their bodies and some of them absconding from the locality for nearly about twelve days, would go to inevitably prove that by their joint armed attack, the common object to murder the victims was obvious and stood proved by convincing and cogent evidence. (Para 5)

There is no rule of any presumption that the evidence of a related witness will always be an interested one or that such witness will have only a hostile attitude towards the accused facing trial. The witnesses were said to be living in and around the place of occurrence and therefore their presence at the time, seems to be not only normal and natural, but their claim that they rushed to the place of occurrence on hearing the *halla* appears to be genuine and acceptable. Keeping in view the faction-ridden groups in the surrounding, no independent or impartial witness was likely to volunteer to give evidence even if there was anyone present at or near the place of occurrence and it is only the relatives, who were otherwise nearby and could have witnessed as legitimately claimed by them, would come to depose boldly. Except making a bald cry that independent and impartial witnesses were withheld, it was not even brought on record in some form or the other as to who such persons could be and who according to the defence stand, were otherwise present nearby, but were not examined and otherwise withheld. (Para 5)

The evidence of PWs 2, 8 and 9 convincingly, cogently and sufficiently establishes the participation and direct involvement of Appellants 1, 2, 4, 7, 8, 10 and 12 in the crime. Hence, their conviction and sentence is confirmed. But, the benefit of doubt is extended to Appellants 3, 5, 6, 9 and 11 in respect of whom the evidence of PWs 2 and 9 is sketchy and does not make out their presence beyond reasonable doubt. (Para 7). *Amzad Ali* v. *State of Assam*, (2003) 6 SCC 270: 2003 SCC (Cri) 1338: AIR 2003 SC 3587: 2003 Cri LJ 3545.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *Arijit Pasayat*, JJ. [Date of decision: 22-7-2003]

[7615] — Ss. 302 and 300 — Charge of committing murder of wife — Appreciation of evidence — Wife allegedly burnt at parents' house at dead of night — *Father and mother waking up and finding her to be completely burnt — Mother and sister stating that the deceased had made an oral dying declaration to them that her husband had set her on fire after pouring petrol on her — Mother further claiming to have seen the accused when she got up — No eyewitness to the occurrence — Medical report showing five burn injuries and mentioning the same to be the cause of death — In view of such extensive injuries and the occurrence of the death during the same night, the said evidence of the mother and elder sister, held, unacceptable. State of Orissa* v. *Parasuram Naik*, (1997) 11 SCC 15: 1997 SCC (Cri) 1177: AIR 1997 SC 3569.

Bench Strength **2**. Coram: *M.M. Punchhi* and **S.P. Kurdukar**, JJ. [Date of decision: 21-8-1997]

[7616] — Ss. 302 and 300 — Testimony of mother eyewitness — On facts, held, acceptable — Murder case — *Victim lying on a cot in the verandah, his mother in kitchen in the same verandah at a distance of only 10 feet — The mother seeing the accused persons including M standing near the victim — The mother stating that the accused persons abused the victim and then on being exhorted by some of them to kill the victim because of being the cause of all the litigation between them, M fired at, and injured, the victim — In view of the shortness of distance and that the abuses and the exhortation were bound to attract the mother's attention, her statement, held, acceptable — Omission on the part of the complainant, to whom she had narrated the incident soon after occurrence, to specifically state in his evidence that she had named M to have fired the shot, held, inconsequential as the FIR did mention the same and the victim's mother was the complainant's only source of information. Mohan Singh* v. *State of U.P.*, 1998 SCC (Cri) 389.

Bench Strength **2**. Coram: **G.T. Nanavati** and *G.B. Pattanaik*, JJ. [Date of decision: 20-11-1997]

[7617] — Ss. 302 and 307 — Testimony of son of deceased — Analysed with great care and caution — *Found credible — Held, High Court was justified in acting upon the same* (Para 7). *Kamaljit Singh* v. *State of Punjab*, (2003) 12 SCC 155: AIR 2004 SC 69: 2004 Cri LJ 28.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

[7618] — Ss. 302 and 449 — Related witness — Testimony of, cannot be discarded on ground of being related if his testimony is otherwise acceptable — *On facts, testimony of brother who witnessed the occurrence trustworthy and acceptable — Corroborated by recovery of driving licence of appellant from the scene of crime — Identity of accused not mistaken — Conviction for murder upheld on sole testimony of such related witness. Mohinder Singh* v. *State (Delhi Admn.)*, 1991 Supp (2) SCC 715: AIR 1991 SC 1045: 1991 Cri LJ 739.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 8-1-1991]

38.(o) Related witness *(contd.)*

[7619] — Ss. 302, 452 and 504 — Murder trial — Related witness — Conviction upheld — Eyewitness being close relative of deceased — Evidentiary value of — *In the murder trial, trial court relying on evidence of prosecution witnesses being the widow and son of deceased holding appellants guilty of murder — Held, presence of wife and son at the spot is quite natural because the occurrence took place inside the house of the deceased — Except for some minor discrepancies, nothing substantial has been brought in the cross-examination to discard their evidence — Medical evidence clearly substantiated the injuries at the places indicated by the wife*

G, author of the FIR heard hue and cry of *S* as a result of which he came out from his house and saw the appellant carrying a knife in his hand coming out of the house of the deceased and was running away. Behind him the co-accused was also running away. Thereafter, this person came to the house of the deceased and asked *S*, who is wife of the deceased, that how the incident had occurred, on which she replied that the co-accused had caught hold of the hands of the deceased and thereafter the appellant dealt several blows of knife on the person of the deceased as a result of which he died. During the trial nine witnesses were examined to further the prosecution version. Of them, PW 2 was the widow of the deceased and PW 3 his son, who claimed to be eyewitnesses. The trial court found the evidence of the eyewitnesses credible and cogent and held both the accused persons guilty. It did not find any substance in the plea of the accused persons that the evidence of eyewitnesses should be discarded as they are related to the deceased. The stand of innocence and the plea to discard the evidence of PWs 2 and 3 on the ground that they are related to the deceased were reiterated before the High Court which dismissed the appeals.

Dismissing the appeal,

Held :

The presence of PWs 2 (wife) and 3 (son) at the spot is quite natural because the occurrence took place inside the house of the deceased. Additionally, PWs 1 and 7 are immediate post-occurrence witnesses who have stated that when they reached the house of the deceased on hearing the cries for help of PWs 2 and 3, PW 2 told them that her husband has been assaulted by the present appellant. It is to be noted that except some minor discrepancies, nothing substantial has been brought in the cross-examination of PWs 2 and 3 to discard their evidence. PW 2's evidence is specific and clear to the extent that the present appellant gave first blow in the abdomen of the deceased and then near the navel and, thereafter, on the chest and in the neck. The medical evidence clearly shows the existence of the injuries at the places indicated by PW 2. (Para 10). *Ram Singh* v. *State of M.P.*, (2008) 15 SCC 798: (2009) 3 SCC (Cri) 1223: AIR 2009 SC 282: (2008) 72 AIC 220 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *J.M. Panchal*, JJ. [Date of decision: 13-10-2008]

Dalip Singh v. State of Punjab, AIR 1953 SC 364; State of Rajasthan v. Teja Ram, (1999) 3 SCC 507: 1999 SCC (Cri) 436, relied on

[7620] — Ss. 302/34 — FIR mentioning all necessary details about the assault including the role and weapon used by each accused — Evidence of the brother of the deceased found reliable and no material brought out during cross-examination to discredit him — *His evidence corroborated by his uncle who narrated the entire story in the same sequence without any omission or mistake — Held, in the circumstances of the case, the High Court was not justified in reversing conviction of all the four accused persons — Judgment and order passed by the trial court restored — However, in view of passage of time death sentence awarded to one of the accused commuted to imprisonment for life — CrPC, 1973, S. 354. State of U.P.* v. *Abdul*, (1997) 10 SCC 135: 1997 SCC (Cri) 804: AIR 1997 SC 2512: 1997 All LJ 1432: 1997 Cri LJ 2997.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 5-5-1997]

[7621] — Ss. 302/34 — Murder — Longstanding enmity — Witnesses close relatives — Effect — *Death caused by firearm injuries — Incident taking place in a hospital — FIR lodged by the eyewitness within half an hour — His evidence corroborated from the FIR itself where the date and time correctly recorded — His going straightway to the police station not unnatural — Plea of antedating the FIR not tenable — Non-production of the report of the doctor sent to the police not material because crime was already registered and police reached the place of incident within a short time — There being sufficient light it was not difficult for the witness, who had only one eye, to identify the assailants — Motive and issue of enmity rightly held proved in favour of the prosecution — Evidence of the eyewitnesses found trustworthy and rightly accepted notwithstanding the fact that they were close relatives of the deceased — Conviction upheld. Darshan* v. *State of U.P.*, 1997 SCC (Cri) 1207.

Bench Strength 2. Coram: *M.M. Punchhi* and **S.P. Kurdukar**, JJ. [Date of decision: 30-9-1997]

[7622] — Ss. 302/34 — Related eyewitnesses — Circumstance of sustaining injuries establishing their presence at the place and time of occurrence — *Also, their presence at the scene was natural — Testimony of related witness could be relied upon*

Presence of witnesses at the time of occurrence is beyond question having regard to the fact that all the three of them have sustained injuries by pellets on account of the gunshots fired at them in the course of the very same transaction at the very time and place of occurrence. The fact that they were related to the deceased victim does not detract from the value of their evidence having regard to the fact that their presence at the scene of offence was natural and their presence near the deceased has been established beyond doubt by reason of the fact that they themselves had sustained injuries attributable to firearms at the same time and on the same spot. Therefore, the concurrent findings of the trial court and High Court that the evidence of the three witnesses as regards their presence was reliable must be upheld. *Gurnek Singh* v. *State of Punjab*, 1988 Supp SCC 807: 1989 SCC (Cri) 10: AIR 1988 SC 2249.

Bench Strength **2**. Coram: **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision: 27-9-1988]

[7623] — Ss. 302/34 — Related witness — Testimony of — Evidentiary value — Wife of the deceased witnessing the accused grappling with, and giving, the deceased axe blows — *Held, most natural witness. Baboo* v. *State of M.P.*, 1993 Supp (3) SCC 411: 1993 SCC (Cri) 1047: AIR 1994 SC 1712.

Bench Strength **2**. Coram : **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision : 23-7-1993]

[7624] — Ss. 302/34 — Testimony of sole eyewitness, the father of the deceased — *Witness stating that he had given two reports, one at police station and other after the Thanedar came to the place of occurrence — Earlier report not brought on record nor any explanation offered for the same — No plausible explanation offered as to how the dead body was brought from the place of occurrence near the well to the babool tree near the school where post-mortem examination was conducted — Witness making several omissions and contradictions from his earliest version under S. 161 CrPC — Held, in the circumstances of the case, prosecution failed to prove charge of murder beyond reasonable doubt. Mohan Lal* v. *State of Rajasthan*, (1999) 9 SCC 209: 1999 SCC (Cri) 1144: AIR 2000 SC 3441.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *N. Santosh Hegde*, JJ. [Date of decision: 15-4-1999]

[7625] — Ss. 302/34, 120-B, 147 and 148 — Murder of *M* — Sole eyewitness PW 3 (an independent witness) who was close to *M* — Testimony of — Reliability — *Just being close to the deceased, held, said witness in the ordinary circumstances would not depose falsely against the accused — Further, he consistently deposed during the trial what he stated in FIR — Defence contending that PW 3 deposed that G and B fired at M, whereas medical evidence indicating only one gunshot injury — Statement-in-chief of PW 3 showing that out of the two shots fired, only one hit the deceased — Two empty cartridges seized by IO corroborating the testimony of PW 3 that two shots were fired — In the circumstances of the case, discrepancy appearing in statement-in-chief and cross-examination of PW 3 regarding the number of shots hitting M, held, was too tenuous a ground to reject or even doubt otherwise the credibility and truthful testimony of PW 3 — Place of occurrence established — Delay in lodging FIR, held on facts, inconsequential — Conviction of A-1, A-5, A-6 and A-7 upheld — But A-2, A-3 and A-4 acquitted as prosecution failed to prove its case against them beyond reasonable doubts* (Paras 3 and 8 to 13). *Gaya Yadav* v. *State of Bihar*, (2003) 9 SCC 122: AIR 2003 SC 1759: 2003 Cri LJ 1564.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 18-2-2003]

[7626] — Ss. 302/34 and 201 — Testimony of related witness — Reliability — Evidence of a such witness cannot be rejected merely because he is a close relative of the victim — *Foundation has to be laid if plea of false implication is raised — Then in such case, court has to adopt a careful approach while analysing the evidence*

Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. (Para 13)

Hence, the ground that the witness being a close relative and consequently, being a partisan witness, should not be relied upon, has no substance. (Para 16). *Sucha Singh* v. *State of Punjab*, (2003) 7 SCC 643: 2003 SCC (Cri) 1697: AIR 2003 SC 3617: 2003 Cri LJ 3876.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-7-2003]

38.(o) Related witness *(contd.)*

Dalip Singh v. State of Punjab, AIR 1953 SC 364: 1953 Cri LJ 1465; Guli Chand v. State of Rajasthan, (1974) 3 SCC 698: 1974 SCC (Cri) 222; Vadivelu Thevar v. State of Madras, AIR 1957 SC 614: 1957 Cri LJ 1000; Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226; State of Punjab v. Jagir Singh, (1974) 3 SCC 277: 1973 SCC (Cri) 886; Lehna v. State of Haryana, (2002) 3 SCC 76: 2002 SCC (Cri) 526; State of Rajasthan v. Teja Ram, (1999) 3 SCC 507: 1999 SCC (Cri) 436, relied on

[7627] — Ss. 302/149 — Murder — Reliability of related/injured witness — *Close relatives and injured witnesses would definitely not shield real culprits of crime, and name somebody else because of enmity*

Undoubtedly, all the eyewitnesses including the injured witnesses are closely related to the deceased. Thus, in such a fact situation, the law requires the court to examine their evidence with care and caution. Such close relatives and injured witnesses would definitely not shield the real culprits of the crime, and name somebody else because of enmity. The defence did not ask the injured witnesses as to how they received the injuries mentioned in the medical reports. (Para 41). *Ranjit Singh* v. *State of M.P.*, (2011) 4 SCC 336.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-10-2010]

Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270: (2008) 3 SCC (Cri) 472; Arjun Mahato v. State of Bihar, (2008) 15 SCC 604: (2010) 4 SCC (Cri) 695; Akhtar v. State of Uttaranchal, (2009) 13 SCC 722: (2010) 1 SCC (Cri) 1223, relied on

[7628] — Ss. 302/149 and 323 to 325 — Eyewitnesses — Related eyewitness — Inimical eyewitness — Testimony of, should be scrutinised with great care and caution — Evidentiary value, on facts — *Prosecution for causing injuries to two brothers one of whom later dying — Enmity between the deceased and one of the three eyewitnesses on one hand and the accused on the other, the other two eyewitnesses being the injured brother and the son of the deceased — FIR found fabricated and all the three witnesses making identical statements suffering from the same contradictions and omissions — In such circumstances, evidence of the said eyewitnesses, held, unreliable. Dharam Singh* v. *State of Punjab*, 1993 Supp (3) SCC 532: 1993 SCC (Cri) 1059: AIR 1993 SC 319: 1993 Cri LJ 150.

Bench Strength **2**. Coram : **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision : 22-10-1992]

[7629] — Ss. 302/149/34, 324 and 326 — Related witness — Murder and hurt — Injured daughter of the deceased present on the scene naming all the seven accused but attributing specific acts to only three, while the presence of the fourth one admitted by all prosecution witnesses — *Participation of the accused in crime as well as manner of assault and nature of weapons corroborated by medical evidence and recovery of blood-stained clothes and earth — FIR lodged promptly — Rest three of the accused although known to prosecution witnesses not identified by them — Parties on inimical terms — Mukhiya (one of the PWs) hostile to the accused, all the accused closely related to each other and the prosecution witnesses also related to each other — In such circumstances, the first mentioned four persons, held, guilty and the rest three granted benefit of doubt. Kapildeo Singh* v. *State of Bihar*, 1993 Supp (3) SCC 372: 1993 SCC (Cri) 1034.

Bench Strength **2**. Coram : **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision : 7-4-1993]

[7630] — S. 304 Pt. II — Related witnesses — Testimony — Conviction — Sustainability — *Submission that evidence of PWs 1, 2 and 5 should not be accepted as they were related to deceased — Held, relationship of PWs to deceased is of no consequence — Besides, PWs 6 and 10 were independent witnesses and there was no reason for them to falsely implicate the appellant — Evidence on record clearly showing that appellant was the author of crime — No infirmity in impugned order convicting appellant under S. 304 Pt. II discernible — Case law discussed* (Paras 6 to 8). *Thukaram* v. *State of Karnataka*, (2008) 15 SCC 493.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-3-2008]

Babulal Bhagwan Khandare v. State of Maharashtra, (2005) 10 SCC 404: 2005 SCC (Cri) 1553; Salim Sahab v. State of M.P., (2007) 1 SCC 699: (2007) 1 SCC (Cri) 425, relied on

[7631] — Ss. 304 Pt. II and 302 — *Evidence of real brother against the accused, held, reliable — Albeit on facts, held, S. 304 Pt. II attracted and not S. 302. State of U.P.* v. *Hari Om*, (1998) 9 SCC 63: 1998 SCC (Cri) 979.

Bench Strength **2**. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 2-12-1997]

(p) Rustic/Village/Rural witness

See also CRIMINAL TRIAL — '251.(zi) Rustic/village/rural witness', pp. 480 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7632] — S. 302 — Murder Trial — Rustic woman witness of ghastly murder — *Her agitated mental state should be kept in mind — Inconsequential and immaterial mistakes in identi-*

fication of any PW or as to who chased the accused would only show that she was not a tutored witness. State of T.N. v. *Karuppusamy*, 1993 Supp (1) SCC 78: 1993 SCC (Cri) 123.

Bench Strength **2**. Coram: *A.M. Ahmadi* and **S. Mohan**, JJ. [Date of decision: 31-3-1992]

(q) Sole/Solitary witness

See also CRIMINAL TRIAL — '251.(zm) Sole/Solitary witness', pp. 487 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7633] — S. 302 — Causing head injuries resulting in death — Prosecution case based on testimony of sole eyewitness closely related to deceased — *According to his testimony while one accused assaulted the deceased on head with crowbar two other accused also assaulted him with their respective weapons (crooked dao and kupi dao) — Deceased sustaining only two head injuries of almost same dimension — Held on facts, possibility of only one accused causing the head injuries with crowbar cannot be ruled out and therefore his conviction under S. 302 confirmed — But having regard to unnatural conduct of the sole eyewitness and infirmities in his evidence in respect of other two accused, it would be unsafe to rely upon his testimony without seeking independent corroboration and corroboration furnished by prosecution being negative in character, the two accused entitled to benefit of doubt. Anil Phukan* v. *State of Assam*, (1993) 3 SCC 282: 1993 SCC (Cri) 810: AIR 1993 SC 1462: 1993 Cri LJ 1796: 1993 (2) ALT (Cri) 54: (1993) 1 Crimes 1180.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 17-3-1993]

[7634] — S. 302 — Conviction based on testimony of sole eyewitness — Rule of caution explained — Minor discrepancies not fatal — *On facts, testimony corroborated and no reason for false implication shown — Conviction upheld*

Where the prosecution rests on the sole testimony of an eyewitness, the same should be wholly reliable. However, that does not mean that each and every type of infirmity or minor discrepancies would render the evidence of such witness unreliable. (Para 2)

On facts, even after carefully going through the evidence no serious infirmity is seen on the basis of which the testimony of the sole eyewitness could be rejected outright. Her testimony is amply corroborated. No reason for false implication is shown. (Paras 2 and 3). *Jayaram Shiva Tagore* v. *State of Maharashtra*, 1991 Supp (2) SCC 677: AIR 1991 SC 1735: 1991 Cri LJ 2192.

Bench Strength **2**. Coram : *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision : 7-12-1990]

[7635] — S. 302 — Conviction on evidence of solitary witness — *Evidence to be weighed not counted*

Court may convict if the evidence is wholly reliable. Court need not insist upon plurality of witnesses for, conviction for murder depends on the facts and circumstances of the case. The following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. *Vadivelu Thevar* v. *State of Madras*, AIR 1957 SC 614: 1957 SCR 981: 1957 Cri LJ 1000, 1005.

Bench Strength **3**. Coram: *B. Jagannadhadas*, **B.P. Sinha** and *P.B. Gajendragadkar*, JJ. [Date of decision: 12-4-1957]

Mohd. Sugal Esa v. The King, AIR 1946 PC 3: 222 IC 304 (PC) and Vemireddy Satyanarayan Reddy v. State of Hyderabad, 1956 SCR 247: AIR 1956 SC 379: 1956 Cri LJ 777, distinguished

Followed in AIR 1962 SC 424: 1962 (1) Cri LJ 473

Held, not applicable on facts in (1974) 3 SCC 397: 1973 SCC (Cri) 962

38.(q) Sole/Solitary witness *(contd.)*

[7636] — S. 302 — Conviction under, on the basis of testimony of an eyewitness — *Attack on deceased witnessed by an uninterested and independent witness, apart from others — Kirpan snatched from accused by that witness but while accused escaping, accused's turban remaining in his hand — FIR naming the accused and describing the incident lodged by him within 15 minutes and kirpan and turban deposited in police station — His testimony not shaken in cross-examination — Accused being known to him question of identification of no consequence — Held, his testimony cannot be discarded on the ground that he being an old and weak person could not have apprehended the armed accused — Conviction under S. 302 can be founded on the testimony of such witness alone. Narendra Singh* v. *State of U.P.*, (1987) 2 SCC 236: 1987 SCC (Cri) 350: AIR 1987 SC 1337: 1987 Cri LJ 1070.

Bench Strength **2**. Coram : *V. Khalid* and **G.L. Oza**, JJ. [Date of decision : 10-3-1987]

[7637] — S. 302 — Murder — Omission of vital details in FIR — Effect — Deceased allegedly assaulted and pushed into a dry well — First informant, although real brother of the deceased and claiming to be sole eyewitness, not mentioning in the FIR the manner of assault or the occurrence relating to pushing into the well — *In such circumstances, his evidence as eyewitness, held, unreliable — More so, when according to other prosecution witnesses he had enquired from the deceased as to how he had fallen in the well — He was falsely introduced as an ocular witness. Govind Narain* v. *State of Rajasthan*, 1993 Supp (3) SCC 343: 1993 SCC (Cri) 1012: AIR 1993 SC 2457: 1993 Cri LJ 2598.

Bench Strength **2**. Coram : *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision : 31-3-1993]

[7638] — S. 302 — Murder by knocking down the deceased by car — *Motive and genesis of occurrence admitted by defence — Injuries sustained by the deceased consistent only with prosecution case — Evidence of sole eyewitness found to be straightforward giving every detail of the incident — His testimony fully corroborated by damaged car found in the premises of the accused with missing plastic strip 'Maruti 800' which was found on the spot — Held, prosecution has proved its case beyond all reasonable doubt — Reversal of acquittal by High Court not justified. State of Haryana* v. *Manoj Kumar*, (1994) 1 SCC 495: 1994 SCC (Cri) 93: AIR 1994 SC 147: (1994) 1 Crimes 102: (1994) 31 ACC 34.

Bench Strength **2**. Coram: *K. Ramaswamy* and **N.P. Singh**, JJ. [Date of decision: 2-11-1993]

[7639] — S. 302 — Murder of *S* — Sole eyewitness PW 1 (wife of *S*) — Conviction of A-1 (father of *S*) and A-2 (brother of *S*) on the basis of testimony of PW 1 — Acquittal by High Court — Propriety of — *Doubt whether PW 1 witnessed the actual attack or she acted on suspicion, maybe strong suspicion, about the involvement of A-1 and A-2 — Her testimony quite artificial and highly improbable — Further, her conduct in implicating all the family members (A-1 to A-5) en bloc excepting the mother of S who was mentally unsound, held on facts, indicated her vindictiveness and tendency to implicate innocent persons as well — Thus, it was not safe to convict A-1 and A-2 on the basis of testimony of PW 1 — Acquittal upheld* (Para 17). *State of Orissa* v. *Babaji Charan Mohanty*, (2003) 10 SCC 57: AIR 2003 SC 3926: 2003 Cri LJ 3744.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 31-7-2003]

[7640] — S. 302 — Murder of a child to appease deities — *Prosecution case based on the sole testimony of an employee of one of the accused (A-1), according to whom he was the mute spectator of the entire incident — However, evidence showing that he was deputed by the accused to watch and inform the accused if anybody comes there while the accused persons were engaged in killing the boy — According to him, he did so out of fear and also because of his being an employee — He did not narrate the incident to anyone for 19 days even when he was away to his village — Without going into question whether he was an accomplice and as such his evidence could not be relied upon to convict the accused, held, on facts and in the circumstances of the case, it would be unsafe to convict the accused, other than the main accused A-3, on the sole testimony of that witness which remained uncorroborated on any of the material aspects — Therefore, such accused persons (A-1, A-2 and A-4) would be entitled to benefit of doubt. Kalpana Mazumdar* v. *State of Orissa*, (2002) 6 SCC 536: 2002 SCC (Cri) 1417: AIR 2002 SC 2826.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Y.K. Sabharwal**, JJ. [Date of decision: 30-7-2002]

[7641] — S. 302 — Murder trial — Evidence of solitary and related witness — Conviction on the basis of — Sustainability — Need for corroboration of — *Respondent alleged to have murdered his wife due to old quarrel — Evidence of PW 1 (younger brother of deceased) not shaken in spite of incisive cross-examination — Ground on which High Court had discarded his evidence was that he had graphically described his movements with the* *accused and the deceased and/or inference that photogenic memory was necessary, held, erroneous — Improvements in his evidence found inconsequential — Irrelevant details which do not in any way corrode the credibility of a witness cannot be levelled as omissions or contradictions — Moreover, unnatural conduct of respondent in not lodging the report, if he subsequently entered the house where his wife (deceased) breathed her last, was unnatural, strengthening the prosecution version — Acquittal recorded by High Court set aside and conviction under S. 302 and sentence of life imprisonment imposed by trial court restored* (Paras 2, 11, 12, 13 and 14). *State of Rajasthan* v. *Om Prakash*, (2007) 12 SCC 381: (2008) 1 SCC (Cri) 411: AIR 2007 SC 2257: (2007) 55 AIC 9 (SC).

Bench Strength **2**. Coram : **Dr. Arijit Pasayat** and *B.P. Singh*, JJ. [Date of decision : 13-6-2007]

[7642] — S. 302 — Murder Trial — Sole witness — Conviction based on testimony of single witness upheld where it was straightforward, cogent, enough to prove the prosecution case and stood corroborated by medical evidence — *Evidence Act, 1872, S. 134*

There is no rule of law that the testimony of a single witness cannot be accepted and the conviction cannot be based on such evidence, if believed. The testimony of a single witness if it is straightforward, cogent and if believed is sufficient to prove the prosecution case, the conviction can be made on the testimony of such a single witness.

On facts, the testimony of the sole witness was cogent and trustworthy and stood corroborated by medical evidence. *Vahula Bhushan* v. *State of T.N.*, 1989 Supp (1) SCC 232: 1989 SCC (Cri) 353: AIR 1989 SC 236: 1989 Cri LJ 799.

Bench Strength **2**. Coram: **B.C. Ray** and *N.D. Ojha*, JJ. [Date of decision: 31-10-1988]

Vadivelu Thevar v. State of Madras, AIR 1957 SC 614: 1957 SCR 981: 1957 Cri LJ 1000, followed

[7643] — S. 302 — Murder trial — Solitary related witness — Testimony — Conviction on the basis of — Sustainability — *Appellant-accused A-1 to A-4 armed with choppers alleged to have chased the deceased and hacked him to death at the very place of occurrence — Incident witnessed by PW 1 (elder brother of deceased), PW 2 and PW 3 — Some of the witnesses resiling from their earlier statements and appellants convicted on sole testimony of PW 1, which was found to the cogent and credible by trial court, as well as High Court — Submission that conviction should not be based on sole testimony of interested/partisan witness — Based on well-settled principle that there was no legal impediment in convicting a person on sole testimony of a solitary witness, provided he is wholly reliable, held, no interference with impugned judgment called for — Moreover, in the instant case, various recoveries were made on basis of confessional statement of A-1 — Evidence Act, 1872, S. 134* (Paras 15 and 19 to 21). *Ravi* v. *State*, (2008) 15 SCC 115: (2009) 3 SCC (Cri) 736: AIR 2009 SC 214: (2009) 1 ECrN 464 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-9-2008]

Vadivelu Thevar v. State of Madras, AIR 1957 SC 614: 1957 SCR 981; Joseph v. State of Kerala, (2003) 1 SCC 465: 2003 SCC (Cri) 356; Yakub Ismailbhai Patel v. State of Gujarat, (2004) 12 SCC 229: 2004 SCC (Cri) Supp 196; Bhimapa Chandappa Hosamani v. State of Karnataka, (2006) 11 SCC 323: (2007) 1 SCC (Cri) 456; Kunju v. State of T.N., (2008) 2 SCC 151: (2008) 1 SCC (Cri) 331, relied on

[7644] — S. 302 — On facts, testimony of sole eyewitness not reliable — *Conviction set aside — No law point laid down. Jaising Waman Patil* v. *State of Maharashtra*, AIR 1994 SC 1683.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 7-8-1992]

[7645] — S. 302 — Proof against accused — Solitary eyewitness, closely related to deceased, produced by prosecution — *His acquaintance with accused not established — His testimony not corroborated — Held on facts, prosecution failed to establish link between the incident and the accused — Hence conviction under S. 302 cannot be sustained — High Court justified in acquitting accused. State of U.P.* v. *Satish Chandra*, 1985 Supp SCC 596: 1985 SCC (Cri) 508: AIR 1986 SC 313.

Bench Strength **2**. Coram : *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision : 25-9-1985]

[7646] — S. 302 — Prosecution case based on evidence of solitary eyewitness — *Evidence must be wholly reliable so as to record conviction on that basis — Though the witness was an injured witness and his presence at the time and place of occurrence may not be doubtful but his evidence found to be in conflict with other evidence — Held on facts, it would be unsafe to convict the accused-appellant solely on the basis of such witness — Evidence Act, 1872, S. 134*

When there is a sole witness to the incident his evidence has to be accepted with an amount of caution and after testing it on the touchstone of the evidence tendered by other witnesses or evidence as recorded. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record

38.(q) Sole/Solitary witness *(contd.)*

and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. Even though such witness is an injured witness and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable. Particularly, when the trial court had given cogent reasons to acquit the accused, the High Court ought not to have interfered with the same merely because another opinion is possible and not that the finding concluded by the trial court was impossible. The High Court did not follow the aforesaid standard but went on to analyse evidence as if the material before them was given for the first time and not in appeal. (Paras 12 and 13). *Joseph* v. *State of Kerala*, (2003) 1 SCC 465: AIR 2003 SC 507.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *Arun Kumar*, JJ. [Date of decision: 3-12-2002]

[7647] — S. 302 — Prosecution case based on sole testimony of brother of the deceased — *Absence of his name from rukka sent by the doctor to the police station immediately after arrival of dead body in the hospital creating doubt about his presence at the scene of occurrence — Identification of the deceased by him the next day cannot cure the defect — Delay in sending special report to the Magistrate — Stomach and bladder of the deceased found empty suggesting, though not conclusively, that contrary to the prosecution case the deceased had answered the call of nature before he was shot at — Non-examination of other eyewitnesses who had removed the deceased to the hospital — Failure to send empty cartridges recovered from the spot and pistol and cartridges seized from the accused to the ballistic expert — Held in the circumstances of the case, conviction of the appellant not sustainable* (Paras 5, 6 and 21). *Sukhwant Singh* v. *State of Punjab*, (1995) 3 SCC 367: 1995 SCC (Cri) 524: AIR 1995 SC 1601: (1995) 2 An LT(Cri) 201.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 28-3-1995]

[7648] — S. 302 — Single witness — Conviction based on testimony of, others having resiled — The single witness, mother of deceased knowing the accused well — *Accused armed with dangerous weapons like knife, sword, etc. alleged to have chased the deceased and indiscriminately attacked him resulting in his instantaneous death — High Court finding evidence of PW 1 sufficient to convict the accused even though PWs 2 to 8 resiled from their statements — Hence, submission that since almost all the eyewitnesses had not supported the prosecution case, conviction should not have been recorded — PW 1 (mother of deceased) stating that in the previous night of occurrence accused had come and threatened to kill the deceased, and the next day when again they had come armed variously she told the deceased to run away and hide — But, he was chased and assaulted while she and PW 2 (her daughter-in-law) followed — Her testimony corroborating the complaint filed and thus strengthening prosecution version — Hence held, her evidence was found to be trustworthy and reliable and rightly acted upon — Further argument of the accused that in the murder case of her other son, since the accused though implicated had been set free PW 1 implicated the accused falsely in the present case also, rejected — PW 1 knew the accused from their childhood and due to the enmity they killed her sons within a span of 5-6 months — It was not a case of false implication* (Paras 8 to 13). *Mani* v. *State*, (2009) 12 SCC 288: 2009 Cri LJ 2268.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-2-2009]

Syed Ibrahim v. State of A.P., (2006) 10 SCC 601: (2007) 1 SCC (Cri) 34, relied on

[7649] — S. 302 — Sole and related witness — Son of deceased — Conviction can be founded on the only testimony of, if otherwise found to be reliable and free from infirmity — *Held on facts, there was no reason to refuse to act upon testimony of the sole prosecution witness merely on the ground that he was the son of the deceased when his testimony was otherwise reliable and acceptable* . *Brijbasilal* v. *State of M.P.*, 1991 Supp (1) SCC 200: 1991 SCC (Cri) 546.

Bench Strength **3**. Coram: *S. Ratnavel Pandian, M. Fathima Beevi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 14-11-1990]

[7650] — S. 302 — Sole eyewitness — Reliance on for conviction — *Held, court can act solely on evidence of reliable single witness to record conviction — If evidence of single witness is doubtful, then same has to be corroborated by other evidence — It is not quantity, but quality of evidence that is material — On the other hand, if testimony of several witnesses is not reliable, then accused may be* *acquitted — Evidence Act, 1872, S. 134* (Paras 31 to 33). *Bipin Kumar Mondal* v. *State of W.B.*, (2010) 12 SCC 91: AIR 2010 SC 3638: 2010 Cri LJ 3880.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-7-2010]

Sunil Kumar v. State (Govt. of NCT of Delhi), (2003) 11 SCC 367: 2004 SCC (Cri) 1055, followed

Namdeo v. State of Maharashtra, (2007) 14 SCC 150: (2009) 1 SCC (Cri) 773; Kunju v. State of T.N., (2008) 2 SCC 151: (2008) 1 SCC (Cri) 331; Jagdish Prasad v. State of M.P., 1995 SCC (Cri) 160; Vadivelu Thevar v. State of Madras, AIR 1957 SC 614: 1957 Cri LJ 1000, relied on

[7651] — S. 302 — Sole eyewitness not claiming to have seen the entire attack but categorically deposing about having seen the initial attack by appellant and co-accused with sharp-edged weapons on deceased's neck — *Thereafter he running away to save his own life — He was not inimical to accused and there was no reason to implicate appellant falsely — Held, factum of his friendship with deceased would not reduce him to the position of being an interested witness — His act of running away to save his own life instead of going forward to save deceased from the attack by accused persons who were armed with deadly weapons was a most probable and natural human conduct and cannot be a circumstance or a ground to disbelieve his testimony particularly when rest of his testimony was tested with cross-examination* (Paras 34 to 36). *Yakub Ismailbhai Patel* v. *State of Gujarat*, (2004) 12 SCC 229: AIR 2004 SC 4209: 2004 Cri LJ 4205.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 31-8-2004]

[7652] — S. 302 — Sole prosecution witness — Gunshot firing — *On hearing the gunshot, witness turning to that side and noticing the deceased collapsing and accused appellant standing with the rifle — On being chased accused escaping and absconding for few days — Circumstances under which complaint lodged by the witness, narration of events and conduct of the appellant considered together revealing truthfulness of evidence of the sole witness and falsity of explanation given by appellant — Broad facts deposed by the witness convincing though there may be variations regarding postures of the victim, position of the appellant and even place where the witness was at the time of occurrence — Medical evidence not in conflict with testimony of the witness — Having regard to the entire evidence, held, prosecution case true and the charge of murder against the appellant proved to the hilt by circumstances established in the case — Hence trial court erred in acquitting the appellant of charge of murder and High Court in appeal justified in interfering with the acquittal — CrPC, 1973, Ss. 378 and 386. Ram Kumar* v. *State of U.P.*, 1992 Supp (1) SCC 438(II): 1992 SCC (Cri) 297: AIR 1992 SC 1602: 1992 ALJ 629: 1992 Cri LJ 2421.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 12-12-1991]

[7653] — S. 302 — Sole related eyewitness in a murder trial — Acceptability of — Level of scrutiny — *Evidence of, should be more carefully scrutinised by court and if on such scrutiny his evidence is found reliable, same cannot be discarded merely because of his relationship with the deceased — Further, mere non-production of an independent witness mentioned in the FIR by prosecution cannot be a circumstance to discredit the evidence of the related and interested witness — Quality and not quantity of the witness is important — Where testimony of the related sole eyewitness (PW 2) was corroborated by medical evidence and trial court as well as High Court found his evidence reliable and Supreme Court also found no discernible discrepancy in his evidence, held, conviction of accused rightly recorded under S. 302 IPC*

The evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected in totality. In such a case, it is the paramount duty of the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinising the evidence of the interested sole witness. The prosecution's non-production of one independent witness who had been named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement. In this case, on scrutiny of the evidence of PW 2 and the medical evidence, it must be held that medical evidence corroborates the statement of eyewitness, PW 2. Both, the Sessions Court and the High Court, after scrutiny of the evidence of PW 2 have relied upon the statement and there is no discernible discrepancy in the evidence of PW 2 not to place reliance on his evidence. (Paras 4 and 6). *Seeman* v. *State*, (2005) 11 SCC 142: 2005 SCC (Cri) 1893: AIR 2005 SC 2503: 2005 Cri LJ 2618.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **P.P. Naolekar**, JJ. [Date of decision: 12-5-2005]

38.(q) Sole/Solitary witness *(contd.)*

[7654] — S. 302 — Sole testimony of son of the deceased aged 16 years found reliable — Minor contradictions regarding number of blows inflicted and which side of pharsa used immaterial — *Medical evidence not in entire conflict with the ocular version — Mere fact that the witness was taken by the police to be produced as a witness, is not a ground to come to the conclusion that he was tutored — Held, in the circumstances, High Court was justified in reversing the acquittal. Mangoo* v. *State of M.P.*, AIR 1995 SC 959: 1995 Cri LJ 1461.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-1-1995]

[7655] — S. 302 — Solitary eyewitness (PW 3) — Unnatural conduct of — Conviction based solely upon the testimony of PW 3, if on facts sustainable — *Accused residing near the houses of PW 3 and deceased — Occurrence taking place during night just outside the house of accused — PW 3 stating that he saw the occurrence while he was proceeding towards his house — Not clear from the record as to when exactly the occurrence took place — No electric light — Absence of sufficient light at the time of occurrence to enable the witness to identify the accused — Name of PW 3 not mentioned as eyewitness in FIR — Although several persons came to the place where the deceased was lying, PW 3 did not disclose to them about his having seen the occurrence — PW 3 disclosing the fact of his being an eyewitness to IO on the next day of the incident — Doubt about PW 3 witnessing the incident — No convincing explanation for the delay in arresting the accused — On facts, held, it was unsafe to sustain the conviction of the accused-appellant on the sole testimony of PW 3*

Further, the conduct of PW 3 appears to be rather unnatural. He did not talk about the incident to anyone after the occurrence, and for the first time on the next day at about 4.00 p.m. he disclosed the fact of his being an eyewitness to the investigating officer. His keeping silent for such a long period and not disclosing the fact that he was an eyewitness to the brothers of the deceased and others, who had come to the place where the deceased was lying injured just next to his house, creates a serious doubt about this witness being an eyewitness. No doubt, PW 3 stated that when the brothers of the deceased had come he had told one of the brothers, namely, B, that he had seen the occurrence. He further asserted that when he told the said fact to B, PW 1 was also present. PW 1 does not say that PW 3 had disclosed the name of the assailant to him or to any other person. What is of considerable significance is the fact that in the FIR lodged by PW 1, the name of PW 3 is not mentioned as an eyewitness, nor is it stated that he had disclosed that he had seen the occurrence. (Para 16)

It is unsafe to sustain the conviction of the appellant on the sole testimony of PW 3. (Para 19). *Joseph* v. *State of Kerala*, (2003) 11 SCC 223: 2004 SCC (Cri) 93: 2003 Cri LJ 2543: (2003) 2 KLT 756.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 22-4-2003]

[7656] — S. 302 — Solitary witness — Conviction based solely on testimony of — *Held, maintainable — If the evidence is unblemished and beyond all possible criticism and the court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained — Evidence Act, 1872, S. 134* (Para 10). *Ramesh Krishna Madhusudan Nayar* v. *State of Maharashtra*, (2008) 14 SCC 491: (2009) 2 SCC (Cri) 759: AIR 2008 SC 927: (2008) 62 AIC 25 (SC): 2008 Cri LJ 1023.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 7-1-2008]

Sridhar Bhuyan v. State of Orissa, (2004) 11 SCC 395: 2004 SCC (Cri) Supp 98; Parkash Chand v. State of H.P., (2004) 11 SCC 381: 2004 SCC (Cri) Supp 87; Sachchey Lal Tiwari v. State of U.P., (2004) 11 SCC 410: 2004 SCC (Cri) Supp 105; Sandhya Jadhav v. State of Maharashtra, (2006) 4 SCC 653: (2006) 2 SCC (Cri) 394; Lachman Singh v. State of Haryana, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123, relied on

[7657] — S. 302 — Statement of a single eyewitness brought in evidence under S. 288, CrPC — *Witness close relation of the accused — Accused charged for murdering his wife — Accused not questioning anyone about murder but attempting to commit suicide — Conduct indicating a feeling of remorse — Statement under S. 288, CrPC coupled with the circumstances conclusively proved charge of murder. Periyasami* v. *State of Madras*, AIR 1967 SC 1027: (1967) 2 SCR 122: 1967 Cri LJ 975, 977.

Bench Strength **2**. Coram : **M. Hidayatullah** and *G.K. Mitter*, JJ. [Date of decision : 25-11-1966]

[7658] — S. 302 — Testimony of sole eye witness found wholly unreliable, his conduct being highly unnatural and suspicious — *His testimony also contradicted by medical evidence — Testimony of other witnesses insufficient to bring home the guilt of the accused — Apart from such direct evidence the only incriminating circumstance was that deceased was last seen in the company of the accused — Held, accused's conviction under S. 302 cannot be sustained on the basis of such circumstance alone. Madhumoy Madhusudan Boul* v. *State of W.B.*, 1992 Supp (2) SCC 247: 1992 SCC (Cri) 909.

Bench Strength **2**. Coram : *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision : 12-9-1991]

[7659] — S. 302 — Wife of deceased sole witness of murderous assault on her husband — *Non-disclosure of name of assailant by wife to all present and to police is a highly unnatural conduct — Even her statement recorded by police later on entirely different from that stated at the trial — Held, prosecution failed to prove beyond reasonable doubt the case against the accused-appellant on the basis of sole testimony of the deceased's wife — Hence accused entitled to benefit of doubt. Shivaji Dayanu Patil* v. *State of Maharashtra*, 1989 Supp (1) SCC 758: 1989 SCC (Cri) 621: AIR 1989 SC 1762.

Bench Strength **2**. Coram: *S. Natarajan* and **Kuldip Singh**, JJ. [Date of decision: 12-7-1989]

[7660] — S. 302 — Witnesses — Sole eyewitness — Testimony of — Reliability of evidence of — *PW 3's name did not figure in the FIR — His testimony assailed on that ground and the fact that he being a student aged 15 years was taking an examination on the day of the incident — Held, explanation offered by witnesses for non-mention of PW 3's name plausible — Plea that his testimony doubtful lacks substance — Further held, evidence of PW 3 comes out unscathed in the acid test of credibility and reliability — His alleged appearance at the examination hall factually negated by the trial court and the High Court — Conviction upheld* (Paras 7 and 8). *Chittar Lal* v. *State of Rajasthan*, (2003) 6 SCC 397: 2003 SCC (Cri) 1377: AIR 2003 SC 3590: 2003 Cri LJ 3548.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 21-7-2003]

Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296: 2001 SCC (Cri) 1095, relied on

[**Ed.**: See in this context *State of U.P.* v. *Lalla Singh*, (1978) 1 SCC 142: 1978 SCC (Cri) 70; *Babu Singh* v. *State of Punjab*, (1996) 8 SCC 699.]

[7661] — S. 302 and S. 149 — Murder trial — Inimical witness — Testimony of — Reliability — Solitary eyewitness to the occurrence — *11 persons belonging to* **Khati** *community variously armed alleged to have assaulted the deceased and complainant resulting in death of the deceased — Long-standing enmity between complainant and his family members on one side and persons of* **Khati** *community on the other established — Complainant able to get only a momentary glimpse of the accused in scooter light — Active participation of only four accused established through testimony of the complainant — Specific roles assigned to them by him and injuries sustained by him and the deceased could have been caused by the weapons with which the aforesaid four accused were alleged to have been armed — Held, in such circumstances, conviction of only these accused can be maintained — Further clarified that though the prosecution case is not doubted in its entirety but benefit of doubt is given to the remaining accused by way of abundant caution — Benefit of judgment also given to the non-appealing accused since no specific role had been attributed to him* (Paras 7 to 11). *Dev Narayan* v. *State of M.P.*, (2006) 13 SCC 187: (2007) 2 SCC (Cri) 672: (2006) 47 AIC 19 (SC).

Bench Strength **2**. Coram : **G.P. Mathur** and *A.K. Mathur*, JJ. [Date of decision : 11-10-2006]

[7662] — Ss. 302 and 149 — Sole and interested witness — Testimony of, must be wholly reliable — *Conduct of the witness found to be highly unnatural and testimony in conflict with medical evidence — On this kind of evidence it is highly dangerous to convict as many as nine persons when there were strong circumstances showing that many of them would not have participated in the incident — Hence conviction and sentence set aside. Mangilal* v. *State of M.P.*, 1990 Supp SCC 529: 1991 SCC (Cri) 134.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 26-4-1990]

[7663] — S. 302 and Ss. 302/149 — Murder trial — Solitary eyewitness — Unnatural conduct of — *Effect — High Court finding that the sole eyewitness had not offered any basis for his presence in the alleged occurrence; nor did he disclose about the incident for about 10 days and suddenly according to him, his conscious pricked him and he came forward to speak about the incident to the police; his silence was most unusual because he was closely related to the deceased — Furthermore, the explanation offered that suddenly he became conscious of his constitutional duties to see that guilty persons get punishment, was hardly believable — His evidence about the manner of assault attributed to the various accused persons was too hollow to have any credence — It was quite unnatural that the manner in which the assaults were made could be stated with such precision when the accused persons were many as was the number of injuries — Held, in such circumstances, no interference with the order of acquittal so far as the offences relatable to S. 302 or Ss. 302/149 IPC are concerned, called for* (Paras 1, 3, 8 and 9). *State of Punjab* v. *Rajinder Singh*, (2008) 17 SCC 68.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-11-2008]

38.(q) Sole/Solitary witness *(contd.)*

[7664] — Ss. 302 and 307 — Merciless assault — *R* and *B* succumbed to their injuries whereas PW 1 suffered as many as 24 injuries — Conviction of appellants under Ss. 302 and 307 whereas acquittal of all the other accused persons — Propriety of — *Testimony of the eyewitnesses disbelieved due to considerable inconsistency in their evidence — Participation of appellants in the commission of the crime established by the evidence of PW 1 — Held, High Court rightly found the appellants guilty on the basis of the evidence of PW 1 ignoring that part of his evidence which appeared to be in the nature of embellishment — But on facts, conviction of the appellants under S. 302 IPC altered to that under Ss. 302/34 IPC*

The High Court rightly disbelieved the evidence of the witnesses and came to the conclusion that they had not witnessed the occurrence. The High Court, however, found that so far as PW 1 was concerned, his presence at the place of occurrence could not be disputed. He was subjected to merciless assault and had suffered as many as 24 injuries. Both the courts have concurrently found PW 1 to be a reliable witness and even though he sought to make an improvement in the course of his deposition by naming the other accused persons, for that reason his entire evidence cannot be rejected. The High Court has rightly ignored that part of his evidence which appears to be in the nature of embellishment. (Paras 7, 8 and 10)

However, considering the facts and circumstances of the case, the conviction of the appellants under Section 302 IPC is altered to that under Section 302 r/w Section 34 IPC. *Chittarmal* v. *State of Rajasthan*, (2003) 2 SCC 266: 2003 SCC (Cri) 514: AIR 2003 SC 796: 2003 Cri LJ 889.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 8-1-2003]

[7665] — Ss. 302 and 307 — Writ petition by a third party challenging conviction and sentences awarded to certain convicts on ground of violation of their fundamental rights — *Petitioner claiming to be a leader of a recognised political party and as such having interest in future of the convicts — Held, petition not maintainable. Simranjit Singh Mann* v. *Union of India*, (1992) 4 SCC 653: 1993 SCC (Cri) 22: AIR 1993 SC 280.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *K. Ramaswamy*, JJ. [Date of decision: 16-9-1992]

[7666] — Ss. 302 and 323 — Sole witness — Conviction can be safely based on reliable evidence of a single witness — *Prosecution based on testimony of sole eye witness who sustained injury in the occurrence and the dying declaration recorded by Naib Tehsildar — Presence of the witness at the scene of occurrence cannot be doubted in view of injuries sustained by him — His close relationship with the deceased would also not render his testimony unreliable when both the parties were closely related to each other — Mere mention of presence of accused's brother at the scene of occurrence in the dying declaration would not whittle down its veracity on ground of false implication — Held, prosecution made out the case against accused appellant by leading formidable evidence and High Court rightly relied on eye witness version and dying declaration in reversing acquittal order of trial court — Hence conviction and sentence recorded by High Court confirmed. Sohrabkhan* v. *State of M.P.*, 1992 Supp (2) SCC 173: 1992 SCC (Cri) 658.

Bench Strength **2**. Coram : *S. Ratnavel Pandian* and *M.M. Punchhi*, JJ. [Date of decision : 14-1-1992]

Vadivelu Thevar v. State of Madras, AIR 1957 SC 614: 1957 SCR 981: 1957 Cri LJ 1000, relied on

[7667] — S. 302 r/w S. 34 — Deliberate improvement made by sole eyewitness as regards injuries caused by accused to make his version consistent with medical opinion — *His testimony in regard to presence of other witnesses at the scene of occurrence as well as in regard to disposal of the dead body also found to be thoroughly unacceptable — In the circumstances held, it would be unsafe to convict accused-appellant under S. 302/34 by placing implicit reliance on testimony of the only witness in absence of any independent and dependable corroboration — Accordingly a serious doubt arose as regards involvement of the appellant in the crime and hence appellant entitled to benefit of doubt. Mahendra Singh* v. *State of Rajasthan*, 1989 Supp (1) SCC 338: 1989 SCC (Cri) 447: AIR 1989 SC 982: 1989 Cri LJ 886.

Bench Strength **2**. Coram : *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision : 19-1-1989]

[7668] — S. 302 r/w S. 149 — Murder trial — Solitary witness — Conviction on basis of, upheld — *PW 1, sister of the deceased watched the incident from 12 ft distance, accused persons known to her from childhood, described the role of each of accused persons in detail — Her testimony unshaken despite detailed cross-examination — Despite 14 witnesses not supporting the prosecution case, held, testimony of PW 1 could still be relied upon — Accused persons rightly convicted — Order of conviction passed by lower court and confirmed by High Court, upheld — Evidence Act, 1872, S. 134* (Paras 11 to 16)

The appellant faced trial along with 8 others. The appellant was the first accused (A-1). The trial court held that all the accused persons were guilty and they were awarded life sentence in respect of offence punishable under Section 302 read with Section 149 IPC.

The trial court after analysing the evidence of PW 1 found her to be a trustworthy witness and relied on her evidence and rejected the plea of the accused persons that the prosecution version cannot be accepted only on the basis of PW 1's evidence. In appeals, the High Court affirmed the conclusions of the guilt and the sentences imposed.

Primarily it was submitted that when there is a solitary witness's evidence it would be unsafe to rest the conviction thereon.

Dismissing the appeal, the Supreme Court held as above. *Vitthal Pundalik Zendge* v. *State of Maharashtra*, (2008) 17 SCC 239: AIR 2009 SC 1110.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 19-11-2008]

Sunil Kumar v. State Govt. (NCT of Delhi), (2003) 11 SCC 367, applied

Vadivelu Thevar v. State of Madras, AIR 1957 SC 614; Joseph v. State of Kerala, (2003) 1 SCC 465: 2003 SCC (Cri) 356; Yakub Ismailbhai Patel v. State of Gujarat, (2004) 12 SCC 229: 2004 SCC (Cri) Supp 196; Bhimapa Chandappa Hosamani v. State of Karnataka, (2006) 11 SCC 323: (2007) 1 SCC (Cri) 456; Kunju v. State of T.N., (2008) 2 SCC 151: (2008) 1 SCC (Cri) 331, relied on

[7669] — Ss. 302/34 — Conviction under, based on uncorroborated testimony of a single witness — *Witness disclosing the incident about 6 months after its occurrence — Before the committing Court, prosecution declaring him hostile and in the Sessions Court he appearing as a court witness — His evidence discrepant and infirm — Held, it is wholly unsafe to found conviction on such a witness. Mahadeo* v. *State of Maharashtra*, (1980) 1 SCC 490: 1980 SCC (Cri) 254: AIR 1980 SC 102.

Bench Strength 2. Coram : **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision : 26-4-1979]

[7670] — Ss. 302/34 — Credibility of witnesses — Murder of three persons — Appellant convicted by courts below under Ss. 302/34 and sentenced to death while co-accused absconded and declared proclaimed offender — *Sole eyewitness was a girl aged 7 years injured in the same incident who deposed before the trial court 5 years after the incident — Her evidence regarding involvement of appellant was doubtful in absence of anything to show that she had ever seen or known him prior to the occurrence and in view of unexplained delay of 3 days in examining her under S. 161 CrPC and in view of non-mention by her as to how the third deceased was killed when appellant had no motive to kill him — As regards evidence of father of the child witness, not only most of his statements made in examination-in-chief were not stated when he was examined under S. 161 CrPC, assertions made by him in the course of his deposition were also false, hence his evidence must be discarded — Another PW was declared hostile and though he had lodged FIR but nothing much turned on his evidence as he was not an eyewitness — Though a motorcycle and a wristwatch were seized from the place of occurrence, but no evidence produced to connect appellant with those items — Held, it would be unsafe to convict the appellant on the sole testimony of the child witness — Though the girl might have witnessed the occurrence, she did not know the appellant — CrPC, 1973, S. 161 — Evidence Act, 1872, S. 118* (Paras 24 to 29). *Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689: 2005 SCC (Cri) 893: AIR 2005 SC 913: 2005 Cri LJ 955.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and **B.P. Singh**, JJ. [Date of decision: 18-1-2005]

[7671] — Ss. 302/34 — Held, on facts, High Court rightly not accepted the evidence of the sole eyewitness — *No law point laid down. State of Rajasthan* v. *Bhola Singh*, AIR 1994 SC 542.

Bench Strength 2. Coram : *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision : 25-8-1993]

[7672] — Ss. 302/34 — Murder trial — Sole eyewitness — Appreciation of evidence — Concurrent findings upheld and conviction confirmed — *Evidence of solitary eyewitness PW 1 (wife of deceased) being corroborated by post-mortem report of PW 6 and evidence of IO (PW 8) and found to be trustworthy and reliable by concurrent findings — PW 1 on receiving information from one U, rushing to spot and witnessing her husband who was tied by rope being dragged and assaulted by the accused persons in the house of A-1 — PW 3 witnessing deceased in serious condition and informing police over telephone — PW 7 a tea shop owner accompanying police to the house of A-1 and witnessing deceased tied with a rope in the verandah of A-1 and confirming seizure of a chain, lathi, dao and rope — PW 8 (IO) immediately reaching spot and taking victim to hospital but victim dying — Not finding any good reasons for interference, concurrent findings upheld. Sambhu Das* v. *State of Assam*, (2010) 10 SCC 374: AIR 2010 SC 3300.

Bench Strength 2. Coram: *Dr. M.K. Sharma* and **H.L. Dattu**, JJ. [Date of decision: 15-9-2010]

38.(q) Sole/Solitary witness *(contd.)*

Dhananjay Shanker Shetty v. State of Maharashtra, (2002) 6 SCC 596: 2002 SCC (Cri) 1444; Ravinder Parkash v. State of Haryana, (2002) 8 SCC 426: 2002 SCC (Cri) 74; Bharat v. State of M.P., (2003) 3 SCC 106: 2003 SCC (Cri) 738; Mousam Singha Roy v. State of W.B., (2003) 12 SCC 377: 2004 SCC (Cri) Supp 429; Ganga Kumar Srivastava v. State of Bihar, (2005) 6 SCC 211: 2005 SCC (Cri) 1424; Basudev Hazra v. Matiar Rahaman Mandal, (1971) 1 SCC 433: 1971 SCC (Cri) 189, relied on

[7673] — Ss. 302/34 — Testimony of a solitary witness — Held, can be the basis of conviction but while doing so the court must be satisfied that his testimony is of such sterling quality that the court finds it safe to base a conviction solely on that — *Credibility of the witness is to be tested by reference to the quality of his evidence which must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on that basis — On facts held, evidence of PW 1 (mother of the deceased and an alleged eyewitness) fell short of that quality because (i) she invented a false story about existence of motive; (ii) narration of events as they took place before actual murder also found untrue; (iii) considerable doubt as to whether the FIR was recorded on her saying at 8/8.30 a.m.; and (iv) her evidence creating suspicion as regards her being an eyewitness — Hence, in absence of any reliable corroboration of her testimony, appellants entitled to benefit of doubt* (Paras 24, 25 and 26). *Bhimapa Chandappa Hosamani* v. *State of Karnataka*, (2006) 11 SCC 323.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 20-9-2006]

***Followed in** Namdeo v. State of Maharashtra, (2007) 14 SCC 150*

[7674] — Ss. 302/34 and 460 — Conviction under the said sections as well as S. 30, Arms Act by courts below — Propriety — *Land dispute — Gruesome murder engineered by accused B — S and H (both brothers of B) killed along with their wives and children — Testimony of PW 3 (the brother of the wife of S and the sole eyewitness to the incident) corroborated with material particulars by the proved recovery and seizure memos and the same was found quite natural, trustworthy and wholly reliable — On facts, conviction of appellants upheld. Bachittar Singh* v. *State of Punjab*, (2002) 8 SCC 125: AIR 2002 SC 3473.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 26-9-2002]

[7675] — Ss. 302/149 — Political rivalry — Criminal cases between the parties pending — *Accused persons variously armed with choppers and knives attacking the deceased and inflicting injuries — FIR lodged by a person who was not an eyewitness — Nine days later police coming to know about the sole eyewitness — Explanation submitted by the said eyewitness for not coming forward as witness for such a long time found to be unacceptable — His evidence suffering from important omissions and material discrepancies — Held, in the circumstances of the case, it is highly unsafe to rely on the sole testimony of such eyewitness to base the conviction. Supramanian* v. *State of Kerala*, (1996) 7 SCC 77: 1996 SCC (Cri) 176.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 10-8-1994]

[7676] — Ss. 302/149 and 148 — Appeal before Supreme Court against conviction recorded by trial court and High Court — Concurrent conviction — *Murder pursuant to land dispute in village — Genesis of the incident not known — Sole eyewitness, an interested person being brother of the deceased and inimically disposed against accused — His evidence highly exaggerated and not wholly reliable — Investigation defective — Trial court's approach not proper — Held on facts, accused entitled to acquittal*

The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (*i*) wholly reliable, (*ii*) wholly unreliable, and (*iii*) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness. In the present case, it is not possible for the court either to place implicit reliance on or to totally discard the testimony of the deceased's brother (PW 9), who was the sole eyewitness, as it can neither be called wholly reliable nor wholly unreliable.(Paras 10 and 11)

All these aspects of the case, specially the infirmities in the prosecution evidence and the investigation, have not received the attention of the trial court as also the High Court. On the state of evidence available the accused persons could not have been held guilty of the offences charged. (Para 15). *Lallu Manjhi* v. *State of Jharkhand*, (2003) 2 SCC 401: 2003 SCC (Cri) 544: AIR 2003 SC 854: 2003 Cri LJ 914.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Brijesh Kumar*, JJ. [Date of decision: 7-1-2003]

Vadivelu Thevar v. State of Madras, AIR 1957 SC 614: 1957 Cri LJ 1000, relied on

[7677] — Ss. 302/149 and 148 — Unlawful assembly involving a very large number of persons — Sole eyewitness — Credibility — *No rule of law that states that there cannot be any conviction on testimony of a sole eyewitness — In a fit case court may believe a reliable sole eyewitness if in his testimony he makes specific reference to identity of individual and his specific overt acts in the incident — Evidence Act, 1872, S. 134*

In a case involving an unlawful assembly with a very large number of persons, there is no rule of law that states that there cannot be any conviction on the testimony of a sole eyewitness, unless court is of the view that testimony of such sole eyewitness is not reliable. Though generally it is a rule of prudence followed by the courts that a conviction may not be sustained if it is not supported by two or more witnesses who give a consistent account of the incident, in a fit case the court may believe a reliable sole eyewitness if in his testimony he makes specific reference to the identity of the individual and his specific overt acts in the incident. The rule of requirement of more than one witness applies only in a case where a witness deposes in a general and vague manner, or in the case of a riot. (Para 27)

In the instant case two persons lost their lives and three were injured. The complainant died before the trial could commence and thus, the contents of the FIR could not be substantiated by him as he could not be examined. However, the two injured witnesses, PW 24 and PW 25 had deposed along with other eyewitnesses about the incident. PWs 2, 3 and 8 were examined. The injuries on the persons of the deceased, as well as on the injured persons had been noted by the courts below. All these witnesses had faced gruelling cross-examinations by the defence, but nothing could be elicited from either of them which may discredit their testimony. Out of these witnesses, PWs 24 and 25 are injured witnesses. The injuries found on the person of PW 25 were of a grievous nature. Their evidence had to be given due weightage as they are the stamped witnesses. (Paras 34 and 38). *Ranjit Singh* v. *State of M.P.*, (2011) 4 SCC 336.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-10-2010]

Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226; Muthu Naicker v. State of T.N., (1978) 4 SCC 385: 1979 SCC (Cri) 14; Binay Kumar Singh v. State of Bihar, (1997) 1 SCC 283: 1997 SCC (Cri) 333; Kamaksha Rai v. State of U.P., (1999) 8 SCC 701: 2000 SCC (Cri) 52; Chandra Shekhar Bind v. State of Bihar, (2001) 8 SCC 690: 2002 SCC (Cri) 90, followed

Sarwan Singh v. State of Punjab, (2003) 1 SCC 240: 2003 SCC (Cri) 282; State of U.P. v. Jagdeo, (2003) 1 SCC 456: 2003 SCC (Cri) 351; State of U.P. v. Kishan Chand, (2004) 7 SCC 629: 2004 SCC (Cri) 2021; Krishan v. State of Haryana, (2006) 12 SCC 459: (2007) 2 SCC (Cri) 214; Annareddy Sambasiva Reddy v. State of A.P., (2009) 12 SCC 546: (2010) 1 SCC (Cri) 630; Balraje v. State of Maharashtra, (2010) 6 SCC 673: (2010) 3 SCC (Cri) 211, relied on

[7678] — Ss. 302/201 — Appreciation of evidence — Murder — Sole eyewitness, who was a natural witness, clearly deposed about the incident in detail — His testimony found to be believable — *Prosecution version corroborated by evidence of incharge of the police station who had inspected the spot as well as post-mortem report — Held, in view of clear evidence of the eyewitness, conviction of the accused, as recorded by courts below, must be upheld, even assuming that evidence of the other witness was not acceptable* (Para 11). *Major Singh* v. *State of Punjab*, (2006) 10 SCC 499: (2007) 1 SCC (Cri) 118.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 19-10-2006]

(r) Tutored/Pressurised witness

See also CRIMINAL TRIAL — '251.(zp) Tutored/Pressurised witness', pp. 513 et seq. in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7679] — Ss. 302 and 34 — Murder trial — Applicability of S. 34 — Crucial eyewitness prevaricating in her stand (though evidently under pressure from the accused) — *Instant case of brutal murder of college girl **P** inside college campus by running a jeep over her by prime accused-appellant **S** and co-accused-appellants present in the jeep allegedly exhorting **S** for the same — High Court upholding conviction of appellant **S** under S. 302 for committing murder of **P** and co-accused-appellants **J**, **R** and **G**, under Ss. 302/34 for causing death of **P** in furtherance of their common intention with the appellant **S** — Sustainability — Held, trial court and High Court highlighted certain aspects which clearly brought out guilt of accused **S** — Significant were the evidence of PWs 7 and 8 — However, there was no evidence, much less credible, which was salvaged from onslaught on witnesses which suggested that there was any meeting of minds, because everything appears to have happened suddenly — Evidence of PW 8 (eyewitness), on which prosecution placed strong reliance for the purpose of attracting S. 34, gave prevaricating statements so far as co-accused-appellants **J**, **R** and **G** were concerned, though her statement was sufficient to fasten guilt on **S** — Therefore,*

38.(r) Tutored/Pressurised witness *(contd.)*

considering background facts, S. 34 has no application — Hence, while dismissing appeal filed by S, conviction recorded qua co-accused-appellants, set aside (Paras 16, 22 and 23). *Javed Alam* v. *State of Chhattisgarh*, (2009) 6 SCC 450: (2009) 2 SCC (Cri) 1085.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 8-5-2009]

State of M.P. v. Deshraj, (2004) 13 SCC 199; Chimanbhai Jagabhai Patel v. State of Gujarat, (2009) 11 SCC 273, relied on

[**Ed.**: See also *Mahbub Shah* v. *Emperor*, AIR 1945 PC 118.]

[7680] — S. 302 r/w S. 34 — As per prosecution witnesses, accused-appellant, who was a Muslim, addressing his father as "*Pitaji*" while asking him to shoot the deceased — *Held, the said fact indicating that the witnesses were wrongly tutored as it is not the language of a Muslim to so address his father — Evidence Act, 1872, S. 3*

The courts below did take note of the discrepancies found in the statements of the witnesses as to the exhortation or the language used in regard to the same. There is force in the contention of the appellant that the use of the word "*Pitaji*" by the appellant to exhort his father itself indicates that these witnesses have been tutored to make this statement because it is not the language of a Muslim to address his father as "*Pitaji*". This thing could only have happened when a witness is wrongly tutored by somebody. (Paras 5 and 6). *Abdul Wahid* v. *State of Rajasthan*, (2004) 11 SCC 241: AIR 2004 SC 3211: 2004 Cri LJ 2850.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 13-4-2004]

Abdul Wahid v. State of Rajasthan, 1998 Cri LJ 3423 (Raj), reversed

SECTION 304-A — CAUSING DEATH BY NEGLIGENCE

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See also Ss. 337, 338 and 304-A

(1) Generally — Nature, Scope and Applicability

See also '(2) "Rash or negligent act" — What is', below

[7681] — S. 304-A — Nature and scope — Held, S. 304-A is not limited to rash or negligent driving — Any rash or negligent act whereby death of any person is caused becomes punishable — Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness and negligence — *A person may cause death by rash or negligent act which may have nothing to do with driving at all — Negligence and rashness to be punishable in terms of S. 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in mind risking crime as well as life of person who may lose his life as a result of crime — S. 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practise such rashness or negligence which may cause death of other — Death so caused is not the determining factor — On facts, bus driven by appellant was hit by a train at railway crossing resulting in death and injuries to passengers — Charges were framed under S. 302 and alternatively under Ss. 304, 325 and 323 IPC — Criminal revision filed by appellant questioning correctness of charges framed, dismissed — Appellant contending that S. 302 IPC had no application herein as he had no intention to kill passengers and at the most it may be S. 304-A — Held, in the instant case, S. 302 IPC prima facie has no application —*

Accordingly, charges stand altered to S. 304-A along with Ss. 279 and 337 IPC — CrPC, 1973, S. 401

Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A. (Para 7)

Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practise such rashness or negligence which may cause the death of other. The death so caused is not the determining factor. (Para 8)

What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two. (Para 9)

Negligence is conduct which falls below the standard established for the protection of others against unreasonable risk of harm, this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. In order to objectify the law's abstractions like "care", "reasonableness" or "foreseeability" the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform. (Para 11)

"Reckless" means "careless", regardless or heedless of the possible harmful consequences of one's acts. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognising the existence of the risk and nevertheless deciding to ignore it. (Para 13). *Naresh Giri* v. *State of M.P.*, (2008) 1 SCC 791: (2008) 1 SCC (Cri) 324: (2007) 60 AIC 15 (SC): (2007) 4 KLT 1115.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 12-11-2007]

Director of Public Prosecutions v. Camplin, 1978 AC 705: (1978) 2 WLR 679: (1978) 2 All ER 168 (HL); Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59; R. v. Briggs, (1977) 1 WLR 605: (1977) 1 All ER 475 (CA); R. v. Caldwell, 1982 AC 341: (1981) 2 WLR 509: (1981) 1 All ER 961 (HL); R. v. Lawrence, 1982 AC 510: (1981) 2 WLR 524: (1981) 1 All ER 974 (HL), relied on

[7682] — S. 304-A — Applicability — Held, applies only to such acts which are rash and negligent and are directly the cause of death of another person — *Further held, in such cases there is no intention to cause death and no knowledge that the act done in all probability will cause death* (Para 7). *Rathnashalvan* v. *State of Karnataka*, (2007) 3 SCC 474: (2007) 2 SCC (Cri) 84: AIR 2007 SC 1064: 2007 Cri LJ 1451: (2007) 52 AIC 240 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-1-2007]

***Followed in** Prabhakaran v. State of Kerala, (2007) 14 SCC 269*

[7683] — S. 304-A — Applicability of — *Held, applies to cases where death is caused by doing a rash or negligent act — Not applicable where the act is done with intention or knowledge to cause death*

Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Rashness and negligence are essential elements under Section 304-A. It carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder in Section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A IPC has to make room for the graver and more serious charge of culpable homicide. (Para 18)

Thus, in order to be encompassed by the protection under Section 304-A there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section 304-A has no application. (Para 19)

In the present case, the accused-appellant not only picked up the gun, unlocked it for use but also put the cartridges and fired from very close range, aiming at a very vital part of the body (chest). Hence, the inevitable conclusion is that Section 304-A has no application in the instant case. (Paras 19 and 20). *Shankar Narayan Bhadolkar* v. *State of Maharashtra*, (2005) 9 SCC 71: 2005 SCC (Cri) 22: AIR 2004 SC 1966: 2004 Cri LJ 1778.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **Arijit Pasayat**, JJ. [Date of decision: 9-3-2004]

*Sadhu Singh Harnam Singh v. State of Pepsu, AIR 1954 SC 271: 1954 Cri LJ 727, **explained and distinguished on facts***

[7684] — S. 304-A — Liability under — When attracted — *Held, it is necessary that death should have been the direct result of a rash and negligent act of accused, and that act must be the proximate and efficient cause without the intervention of another's negligence — It must be the* ***causa causans*** *— It is not enough that it may have been the* ***causa sine qua non***

On 15-2-1995, the informant's father, late Jiwan Lal Sharma was admitted as a patient in a private ward of CMC Hospital, Ludhiana. On 22-2-1995 at about 11 p.m., Jiwan Lal felt difficulty in breathing. The complainant's elder brother, Vijay Sharma who was present in the room contacted the duty nurse, who in her turn called some doctor to attend to the patient. No doctor turned up for about 20 to 25 minutes. Then, Dr. Jacob Mathew, the appellant and Dr. Allen Joseph came to the room of the patient. An oxygen cylinder was brought and connected to the mouth of the patient but the breathing problem increased further. The patient tried to get up but the medical staff asked him to remain in bed. The oxygen cylinder was found to be empty. There was no other gas cylinder available in the room. Vijay Sharma went to the adjoining room and brought a gas cylinder therefrom. However, there was no arrangement to make the gas cylinder functional and in-between, 5 to 7 minutes were wasted. By this time, another doctor arrived who declared that the patient was dead. On the abovesaid report, an offence under Sections 304-A/34 IPC was registered and investigated. On charges having been filed against the two doctors, and their failure to obtain quashment thereof in all the forums below, the appellant was before the Supreme Court by special leave.

To impose criminal liability under Section 304-A, the Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have been the *causa sine qua non*. [Paras 48(6) and 38]. *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength **3**. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

[7685] — S. 304-A — Requirements of — Rash and negligent act must be the proximate cause of the death

Requirements of S. 304-A are that the death of any person must have been caused by the accused by doing any rash or negligent act. In other words, there must be proof that the rash or negligent act of accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused. *Suleman Rahiman Mulani* v. *State of Maharashtra*, AIR 1968 SC 829: (1968) 2 SCR 515: 1968 Cri LJ 1013.

Bench Strength **3**. Coram: *S.M. Sikri, J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 1-12-1967]

[7686] — Ss. 304-A, 299 and 300 — S. 304-A, applies to offences outside the range of Ss. 299 and 300 — Intentionally or knowingly inflicted violence resulting in death excluded — *Death must be direct result of rash or negligent act of the accused — Rashness or negligence — Determination of — Quarrel between two villagers and police officials — Appellant constable, as ordered by Head Constable, firing his rifle without any aim and to scare away the people killing two innocent bystanders — He acted in haste, rashly and without circumspection and due care and caution with regard to safety of other innocent people — Held, on facts, provisions of S. 304-A attracted*

The provisions of S. 304-A apply to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. Therefore this provision is directed at offences outside the range of Ss. 299 and 300 IPC and obviously contemplates those cases into which neither intention nor knowledge enters. The words "not amounting to culpable homicide" in the section are very significant and it must therefore be understood that intentionally or knowingly inflicted violence directly and wilfully caused is excluded. The section applies only to such acts which are rash or negligent and are directly the cause of death of another person. In other words, a rash act is primarily an overhasty act as opposed to a deliberate act but done without due care and caution. Then the question whether the conduct of the accused amounted to culpable rashness or negligence depends on the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient and this depends on the circumstances in each case.

In the instant case the appellant did not aim at the two deceased persons who were away. It was night time and it cannot definitely be said that the appellant could have seen them. In fact the two persons who started assaulting the Head Constable and the appellants were not hit by the shots fired by the appellant. That itself shows that the appellant fired his rifle without any aim and obviously to scare away the people and he did so as directed by the Head Constable who was in command of the police party. However, even in such a situation, he had to act in a prudent manner. But when he acted in such a haste, rashly and without circumspection and due care and caution with regard to the safety of other innocent people, then the only inference is that his rash act amounted to culpable rashness attracting the provisions of S. 304-A IPC. *Balwant Singh* v. *State of Punjab*, 1994 Supp (2) SCC 67: 1994 SCC (Cri) 844.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 18-2-1994]

Sadhu Singh Harnam Singh v. State of Pepsu, AIR 1954 SC 271: 1954 Cri LJ 727, relied on

Meera Puri v. State of Nagaland, 1971 Cri LJ 539: Assam LR (1971) Assam 22; Emperor v. Nga San Win, AIR 1933 Rang 326: 147 IC 60: 1933 CrC 1284; Emperor v. Morgan, (1909) 9 Cri LJ 393: 13 CWN 362: 9 CLJ 204, approved

[7687] — Ss. 304-A, 304 or S. 302 — Death caused by rash and negligent act

The deceased Mahant went to the house of the accused who was having a liquor party. The accused was very respectful to the Mahant and was overanxious to show all hospitality to him. He was anxious that the Mahant should not go away from his house without taking meals and spending the night with him, and seeing that the Mahant was going away, in all probability he let go his gun without aiming it at the Mahant in order to prevent him from leaving his place by terrifying him to some extent. The deceased was hit by the gunshot in the chest and he died of the gun injuries later on.

From the evidence of the eyewitnesses and the different statements made by them it was quite clear that the incident happened in a very short time and suddenly, and story that the accused took aim before firing at the Mahant or that he said that he had never allowed in the past anybody to go like that from his house was subsequent introduction in the case to add gravity to the offence committed by the accused.

Held :

On the materials placed on the record it could not be held proved that he had any intention of firing at the Mahant. He seems to have pulled the trigger without aiming at the Mahant in a state of intoxication in order to see that by the gunfire the Mahant was prevented from leaving his place. It was a wholly rash and negligent act on his part or at the worst was an act which would amount to manslaughter. It could not be held to constitute an offence of murder. No intention of causing death or an intention of causing such bodily injury as being sufficient in the ordinary course of nature to cause death could be ascribed to the accused or readily inferred in the circumstances of this case. Therefore, the accused was held guilty of an offence under S. 304-A, IPC. *Sadhu Singh Harnam Singh* v. *State of Pepsu*, AIR 1954 SC 271: 1954 Cri LJ 727, 732.

Bench Strength **3**. Coram: **M.C. Mahajan**, *B.K. Mukherjea* and *B. Jagannadhadas*, JJ. [Date of decision: 8-10-1953]

[7688] — Ss. 304-A & 304 Pt. II — Relative scope of — On facts, offence under S. 304-A made out

The deceased along with the Head Constable and two constables was resting on a cot at a hotel situated on a kutcha road by the side of the highway. The appellant came to the spot on his tractor. A truck which was formerly driven by him was parked there with only the conductor present. The appellant is alleged to have wilfully driven the truck at full speed against the deceased's cot overthrowing him and causing his death. The version of the appellant was that he lost control over the vehicle resulting in the accident. The Sessions Court convicted him under S. 304 Part II which was altered to that under S. 304-A by the High Court.

Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under S. 299 IPC or murder under S. 300 IPC. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some persons, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Each case will, therefore, depend upon the particular facts established against the accused.

Section 304-A by its own definition totally excludes the ingredients of S. 299 or S. 300, IPC. Doing an act with the intent to kill a person or knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide. When intent or knowledge as described above is the direct motivating force of the act complained of, S. 304-A has to make room for the graver and more serious charge of culpable homicide.

The facts disclosed in the prosecution evidence do not make out a case of any wilful or deliberate act on the part of the accused in order to cause the death of the deceased by driving the truck in the way he did.

On facts, the tangential track of the speeding truck coming in contact with the corner of the cot throwing it over and thereby throwing the deceased out of it resulting in fatal injuries, would not reveal the accused's intention or any deliberate act with the requisite knowledge for an offence of culpable homicide. The facts and circumstances disclosed in this case fit in more reasonably with the theory of loss of control by the accused of the vehicle in high speed trying to take a turn for the kutcha road. *State of Gujarat* v. *Haidarali Kalubhai*, (1976) 1 SCC 889: 1976 SCC (Cri) 211: AIR 1976 SC 1012: 1976 Cri LJ 732.

Bench Strength **2**. Coram: **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 3-2-1976]

[7689] — S. 304-A or S. 304 Pt. II — Interpretation of judgment — Permissible interpretations — Interpretation so as to nullify express provisions of a statute or CrPC — Impermissibility — Bhopal Gas tragedy — *1996 judgment, (1996) 6 SCC 129, delivered at stage of framing of charge, and on basis of materials produced by prosecution till that stage reducing charges from Ss. 304 Pt. II, 324, 326 & 429 IPC to S. 304-A IPC — After conclusion of trial, Magistrate refusing to enhance charge under S. 216 CrPC — State approaching appellate and revisional forums with prayer for enhancement of charge — State also filing present curative petition in Supreme Court under Art. 137 believing that 1996 judgment stood in the way of appellate and revisional forums for enhancing charge — Precedents, held, cannot be read in a manner as to nullify the express provisions of an Act or CrPC — If according to curative petitioners, Magistrate failed to appreciate correct legal position and misread 1996 judgment as tying his hands from exercising power under S. 323 or S. 216 CrPC, it can certainly be corrected by appellate/Revisional Court — 1996 judgment is not a fetter on proper exercise of powers by a court of competent jurisdiction under relevant provisions of CrPC — 1996 judgment was rendered at stage of Ss. 209/228/240 CrPC and it cannot be said that it removed from CrPC Ss. 323, 216, 386, 397, 399, 401 CrPC, etc. or denuded a competent court of powers under those provisions — Constitution of India, Arts. 141 and 137* (Paras 10 to 12). *CBI* v. *Keshub Mahindra*, (2011) 6 SCC 216.

Bench Strength **5**. Coram : **S.H. Kapadia, C.J.** and *Altamas Kabir, R.V. Raveendran, B. Sudershan Reddy* and *Aftab Alam*, JJ. [Date of decision : 11-5-2011]

Keshub Mahindra v. State of M.P., (1996) 6 SCC 129: 1996 SCC (Cri) 1124, clarified

[7690] — S. 304-A or S. 304 Pt. II — Sessions Court framing a charge under S. 304 Pt. II while the High Court in the criminal application filed thereagainst giving a finding as to non-existence of sufficient material to frame such a charge and proceeding to frame charge under S. 304-A —

Metropolitan Magistrate though proceeding under S. 304-A, held, would not be hindered by the finding of the High Court in case it comes to a different conclusion

The next question that requires determination is whether the charge under Section 304 Part II IPC should be sustained or the one under Section 304-A, as framed by the High Court should be retained. Fresh charges under Section 304-A and other provisions mentioned above have been framed by the Metropolitan Magistrate and the trial has already commenced. Any interference at this stage would not further the cause of justice and hence it is appropriate that the proceedings before the said Magistrate's Court should continue and the trial should proceed on the basis of the charges framed by it. But in case the Magistrate comes to the conclusion that there is sufficient material to charge the respondent for a more serious offence than the one punishable under Section 304-A, he shall proceed to do so, without in any manner being hindered or influenced by the observations or findings of the High Court in the impugned order or by the order of the Sessions Court which framed the charge punishable under Section 304 Part II IPC. Such decision of the Magistrate shall be purely based on the material brought in evidence at the trial. (Para 15)

It is made clear that no opinion is expressed on merits of the case. (Para 16). *State of Maharashtra* v. *Salman Salim Khan*, (2004) 1 SCC 525: 2004 SCC (Cri) 337: AIR 2004 SC 1189: 2004 Cri LJ 920.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-12-2003]

(2) "Rash or negligent act" — What is

See also SECTION 304-A — CAUSING DEATH BY NEGLIGENCE — '(1) Generally — Nature, Scope and Applicability', above

[7691] — S. 304-A — Nature of negligence required under — Phrase "rash or negligent act" — Scope of — *Held, though word "gross" has not been used in S. 304-A, expression "rash and negligent act" in S. 304-A has to be read as qualified by word "grossly" — Reasons for, discussed*

The word "gross" has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly". To impose criminal liability under Section 304-A, the Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. [Paras 48(6) and 38]. *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength **3**. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

[7692] — S. 304-A — Negligence — What amounts to

If a person, who is not an engineer chooses to decide for himself the width of a pipe for a chimney of a bakery, with two ovens, of the height of about 75 feet and entrusts the alteration of the chimney to a mason who has not designed chimneys before, and does not completely stop the fixing of an oven during the construction of the chimney, he does negligent acts within the meaning of S. 304-A. *Rustom Sherior Irani* v. *State of Maharashtra*, 1969 ACJ 70.

Bench Strength **3**. Coram: **S.M. Sikri**, *J.M. Shelat* and *V. Bhargava*, JJ. [Date of decision: 3-4-1968]

[7693] — S. 304-A — On facts motor accident caused owing to misjudgment and not negligence — Maxim res ipsa loquitur, held, not applicable

A woman accompanied by her 4-year-old daughter came out of her village to cross the highway. While crossing the road the mother asked the child to go back home, but when the mother had crossed the road and descended into the deep ditch on the other side, the child suddenly dashed across the road to join her mother and was caught under the left front wheel of a passenger bus driven by the accused and was crushed to death. According to the eyewitness account of the four passengers of the bus, at the material time the accused was driving the bus slowly as a narrow bridge was 30 feet ahead and when the child suddenly appeared on the road, he immediately swerved the vehicle to the extreme right side of the road in order to save the collision. It was also clear that if he had moved the bus further to the right it would have fallen in the ditch endangering the lives of the passengers. The prosecution, however, treated all the eyewitnesses as hostile and with the permission of the court cross-examined them to impeach their credit. The Public Prosecutor only contradicted the police statement of the eyewitnesses that the accident took place due to the negligence of the accused and not by statements relating to each of the facts. The trial Court disbelieved the evidence of the eyewitnesses. On appeal, the Sessions Judge while agreeing with the unreliability of the eyewitnesses, upheld his conviction applying the principle of res ipsa loquitur and the High Court endorsed that view.

Held :

On facts the circumstances of taking the vehicle suddenly to the extreme right of the road, did not bespeak negligence or dereliction of duty to exercise due care and control, on the part of the accused, in clear and unambiguous voice. Nor could it be said, that the cause of swerving the vehicle to the right, was unknown. The accused gave a reasonably convincing explanation of his conduct in doing so, and his version was fully supported by four prosecution witnesses who had seen the occurrence. In these circumstances, the maxim res ipsa loquitur could have no manner of application.

The accident happened due to an error of judgment, and not negligence or want of driving skill on the part of the accused. An error of judgment of the kind such as the one in the instant case which comes to light only on post-accident reflection, but could not be foreseen by the accused in that fragmented moment before the accident is not a sure index of negligence, particularly, when in taking and executing that decision the accused was acting with the knowledge and in the belief that this was the best course to be adopted in the circumstances for everyone's safety.

The prosecution had failed to prove beyond reasonable doubt that the appellant had caused the death of the child by negligent or rash driving. All happened in fraction of a moment; and even if the worst was assumed against the appellant, the highest that could be said was that it was a misjudgment on his part too slight to be branded as culpable negligence. *Syad Akbar* v. *State of Karnataka*, (1980) 1 SCC 30: 1980 SCC (Cri) 59: AIR 1979 SC 1848: 1979 Cri LJ 1374: 1980 MLJ (Cri) 265.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 25-7-1979]

[7694] — S. 304-A — Rash and negligent driving — What amounts to culpable rashness and criminal negligence — *Passenger, while boarding a bus, falling down therefrom when the bus moved forward and run over by the rear wheel of the bus resulting in her death — When can driver of the bus be held to be guilty of culpable negligence — Negligence of the driver cannot always be presumed — In absence of any evidence showing that the driver moved the vehicle before getting signal from the conductor to move, held, it cannot be presumed that the passenger fell down due to negligence of the driver — Hence conviction under S. 304-A not sustainable*

The appellant was driving a bus of the Andhra Pradesh Road Transport Corporation. A passenger was boarding the bus. When the bus moved forward she fell out of the vehicle and its rear wheel ran over her. She died of the injuries sustained in that accident. The conductor of the bus did not say how the accident happened. However, he admitted that while the bus was in motion he heard the sound of an accident and the bus was then stopped. The only other witness in his examination-in-chief merely deposed that the said passenger "was boarding the bus and the bus moved; and she fell down beneath the bus and died on the spot; the bus stopped at some distance" and that he saw the bus driver at that time. The driver of the bus was held guilty of culpable negligence in that episode. He now stands convicted under Section 304-A of the Indian Penal Code and was sentenced to imprisonment for three months. All the three courts, the trial court, the Sessions Court and the High Court in revision, took the same stand. The only question which survives for decision is whether on such facts a conclusion that the appellant is guilty of negligent driving must necessarily follow. Answering in the negative and allowing the appeal of the driver,

Held :

A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution. (Para 9)

It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus. (Para 7)

In the present case the possible explanation of the driver is that he was unaware of even the possibility of the accident which happened. It could be so. When he moved the vehicle forward his focus normally would have been towards what was ahead of the vehicle. He is not expected to move the vehicle forward when passengers are in the process of boarding the vehicle. But when he gets a signal from the conductor that the bus can proceed he is expected to start moving the vehicle. To fasten the liability with the driver for negligent driving when a passenger falls down from a moving vehicle, there should be evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side. Here no witness has said, including the conductor, that the driver moved the vehicle before getting a signal to move forward. The evidence in this case is too scanty to fasten him with criminal negligence. Some further evidence is indispensably needed to presume that the passenger fell down due to the negligence of the driver of the bus. Such further evidence is lacking in this case. Therefore, the Court is disabled from concluding that the victim fell down only because of the negligent driving of the bus. The corollary thereof is that the conviction of the appellant of the offence is unsustainable. (Paras 9, 5 and 10). *Mohd. Aynuddin* v. *State of A.P.*, (2000) 7 SCC 72: 2000 SCC (Cri) 1281: AIR 2000 SC 2511: 2000 Cri LJ 3508.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 28-7-2000]

[7695] — S. 304-A — Rashness and negligence — Distinction between

There is a distinction between a rash act and a negligent act. In the case of a rash act the criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. Negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection.

In the instant case the appellant was driving his car at a speed of 35 miles an hour, the speed permissible under the rules. No other circumstance was pointed out to show that he was driving in a reckless manner. Therefore, he cannot be said to have been running the risk of doing an act with recklessness or indifference as to the consequences. But he was undoubtedly guilty of negligence. He had a duty to look ahead and see whether there was any pedestrian in the pedestrian crossing. It is likely that while driving the car he was engrossed in talking with the person who was sitting by his side. By doing so, he failed to exercise the caution incumbent upon him. His culpable negligence and failure to exercise that reasonable and proper care and caution required of him resulted in the occurrence. He was therefore guilty of offence under S. 304-A. *Bhalachandra Waman Pathe* v. *State of Maharashtra*, 1968 ACJ 38: 1968 Mah LJ 423: 1968 MPLJ 371.

Bench Strength **3**. Coram: *S.M. Sikri*, *J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 20-11-1967]

Kamruddin v. King, 1905 Pun Re 29: 2 Cri LJ 207, R. v. Pittwood, 19 TLR 37; Queen v. Bhutan, 1894 ILR 16 All 472: 1894 All WN 182; R. v. David Dant, (1865) 169 ER 1517 and Empress v. Indu Beg. (1881) ILR 3 All 776: 1881 AWN 132, approved

[7696] — S. 304-A — Requirement of culpable rashness in driving under, held, is more drastic than negligence sufficient to create liability under tort law. *N.K.V. Bros. (P) Ltd.* v. *M. Karumai Ammal*, (1980) 3 SCC 457: 1980 SCC (Cri) 774: AIR 1980 SC 1354: (1980) 41 FLR 152.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and *D.A. Desai*, JJ. [Date of decision: 21-3-1980]

[7697] — Ss. 304-A, 88, 92 and 93 — Criminal negligence — Ingredients of — *Mens rea* in respect of, what is — Nature, scope and instances of, discussed — *Held, for negligence to amount to a criminal offence, element of **mens rea** must be shown to exist — Further held, it is recklessness that constitutes the **mens rea** in criminal negligence*

For negligence to amount to a criminal offence, the element of *mens rea* must be shown to exist. It is recklessness that constitutes *mens rea* in criminal law as far as negligence is concerned. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called optimising violations, may be motivated by thrill-seeking. These are clearly reckless. [Paras 12, 13 and 48(5)]. *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength **3**. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

[7698] — Ss. 304-A, 88, 92 and 93 — Criminal negligence — When actionable — *Held, to hold existence of criminal negligence it shall have to be found that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent*

In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. (Paras 14 and 15). *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength **3**. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

R. v. Lawrence, (1981) 1 All ER 974: 1982 AC 510: (1981) 2 WLR 524 (HL); R. v. Caldwell, (1981) 1 All ER 961: 1982 AC 341: (1981) 2 WLR 509 (HL); Andrews v. Director of Public Prosecutions, 1937 AC 576: (1937) 2 All ER 552 (HL); Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59; Bhalchandra Waman Pathe v. State of Maharashtra, 1968 Mah LJ 423 (SC): 1968 ACJ 38: 1968 MPLJ 371 (SC), relied on

Empress of India v. Idu Beg, ILR (1881) 3 All 776: (1881) 1 AWN 132, held approved

[7699] — Ss. 304-A, 88, 92 and 93 — Criminal negligence and negligence in tort/civil law — Meanings of — Degrees of negligence — *Held, are jurisprudentially different — To fasten liability in criminal law, degree of negligence has to be higher than negligence enough to fasten liability for damages in civil law i.e. gross or of a higher degree*

The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution. [Paras 12, 13, 38 and 48(5)]

While negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the *gross and culpable neglect or failure* to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. A clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. (Paras 16, 14 and 17). *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength **3**. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

Riddell v. Reid, (1942) 2 All ER 161: 1943 AC 1 (HL), relied on

[7700] — Ss. 304-A and 337 — Culpable negligence or rashness — *Held, depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering circumstances of the case — "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury — Criminality in such case lies in running the risk of doing such an act with recklessness or indifference as to the consequences — Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either* *to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted — In the instant case, the revision petitioner-accused was alleged to have driven the lorry in a rash and negligent manner dashing against a tree resulting in death of three persons and causing grievous injuries to three others travelling in it — PW 10 (RTO) explicitly stating that the accident was not on account of mechanical failure — Eyewitnesses to the occurrence also stating that the vehicle was being driven at a very high speed and that the road was quite wide and there was no traffic at the time of accident — Hence, conviction under Ss. 304-A and 337 sustainable — Sentence of 6 months' simple imprisonment and fine of Rs 300 affirmed — Motor Vehicles Act, 1988, Ss. 183, 184 and 187* (Paras 2, 6, 7 and 8). *Rathnashalvan* v. *State of Karnataka*, (2007) 3 SCC 474: (2007) 2 SCC (Cri) 84: AIR 2007 SC 1064: 2007 Cri LJ 1451: (2007) 52 AIC 240 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-1-2007]

Nidamarti Nagabhushanam, In re, 7 Mad HCR 119, approved

[7701] — Ss. 304-A, 337 and 338 — Meaning of culpable negligence for the purpose of the sections — *Collision between bus and goods train at level crossing — Culpability of bus driver in the circumstances not found*

Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case.

In a case of accident on a railway level crossing where the gate is open and there is no train scheduled to pass at the time, the driver would be justified in driving his vehicle through the level crossing. Passenger trains have a time schedule and if a train is expected to come at about the time the appellant reached the level crossing, a regular driver of motor vehicles on that route may, perhaps, be found negligent in crossing the railway track, if by any mischance, the gate was open. But in the case where a goods train not scheduled to pass the level crossing, comes just about the time the bus reached the spot and an accident takes place, the appellant cannot be held guilty of criminal negligence because he may not have known that a goods train would be coming at that moment. In such circumstances the appellant will not be guilty merely because he did not stop when the road signal wanted him to stop. Such a case will be a case of unavoidable accident because of the negligence of the gateman in keeping the gate open and inviting the vehicles to pass. *S.N. Hussain* v. *State of A.P.*, (1972) 3 SCC 18: 1972 SCC (Cri) 254: AIR 1972 SC 685: 1972 Cri LJ 496.

Bench Strength 2. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar**, JJ. [Date of decision: 5-1-1972]

[7702] — Ss. 304-A, 337 and 338 — Rash act compared with criminal negligence

Rashness consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. *S.N. Hussain* v. *State of A.P.*, (1972) 3 SCC 18: 1972 SCC (Cri) 254: AIR 1972 SC 685: 1972 Cri LJ 496.

Bench Strength 2. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar**, JJ. [Date of decision: 5-1-1972]

(3) Causation

[7703] — S. 304-A — Scope — Charge for negligently and rashly manufacturing glucose solution in normal saline causing death — *Accused-appellant giving batch number to all the lots manufactured on same day and using a chemical component from source unknown — Questions to be determined by the court — Evidence disclosing prevailing practice of giving single batch number to several lots — Analyst's duty to test the materials before issuing for injection — Total dereliction of duty by analysts — Non-compliance of drug rules does not make appellant's act alone causa causans of the deaths*

In a prosecution for an offence under S. 304-A of IPC, the court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act and that act was the proximate and efficient cause of the death without intervention of another's negligence. The mere fact that an accused contravenes certain rules or regulations in doing of an act does not establish an offence under S. 304-A, IPC.

The act causing deaths must be the causa causans; it is not enough that it may have been the causa sine qua non. The court has to determine whether the act of the accused is the causa causans or there has been a cause intervening which has broken the chain of causation so as to make the act of the accused, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. The fact that twelve lives have been lost, however shocking and regrettable it may be, ought not to allow the mind to be boggled while appreciating the evidence. *Ambalal D. Bhatt* v. *State of Gujarat*, (1972) 3 SCC 525: 1972 SCC (Cri) 618: AIR 1972 SC 1150: 1972 Cri LJ 727.

Bench Strength **3**. Coram: *J.M. Shelat*, **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 7-3-1972]

Emperor v. Omkar Rampratap, (1902) 4 Bom LR 679, approved

[7704] — S. 304-A — Death caused by rash or negligent act — Death must be direct or proximate result of rash or negligent act of accused

Where the appellant allowed the manufacture of wet paints in the same room where varnish and turpentine were stored and the fire resulted because of the proximity of the burners to the stored varnish and turpentine, he cannot be held responsible for the death of the seven workmen who were burnt in the fire. The direct or proximate cause of the fire which resulted in seven deaths was the act of *H* who was apparently in a hurry and, therefore, he did not perhaps allow the rosin to cool down sufficiently and poured turpentine too quickly. It was found that *H* was not as careful as he should have been and probably did not wait sufficiently for bitumen or rosin to cool down and added turpentine too quickly.

The mere fact that the appellant allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it might be a negligent act, would not be enough to make the appellant responsible for the fire which broke out. The cause of the fire was not merely the presence of burners in the room in which varnish and turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out. What S. 304-A requires is causing of death by doing any rash or negligent act, and this means that death must be the direct or proximate result of the rash or negligent act. The mere fact that the fire would not have taken place if the appellant had not allowed burners to be put in the same room in which turpentine and varnish were stored, would not be enough to make him liable under S. 304-A, for the fire would not have taken place, with the result that seven persons were burnt to death, without the negligence of *H*. The death in this case was, therefore, not directly the result of a rash or negligent act on the part of the appellant and was not the proximate and efficient cause without the intervention of another's negligence. *Kurban Hussein Mohamedalli Rangawalla* v. *State of Maharashtra*, AIR 1965 SC 1616: (1965) 2 SCR 622: (1965) 2 Cri LJ 550, 551.

Bench Strength **2**. Coram: **K.N. Wanchoo** and *J.R. Mudholkar*, JJ. [Date of decision: 15-12-1964]

(4) Proof of criminal negligence

See also generally under CRIMINAL TRIAL in Vols. 18, 19 and 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[7705] — S. 304-A — Causing death by rash and negligent driving — Burden of proof — Doctrine of res ipsa loquitur applied — *Death of passengers in bus accident — Fact admitted that the appellant driver was driving the vehicle when accident occurred — Held, in view of the facts, burden was on appellant to prove that the accident happened due to causes other than negligence on his part — In absence of the said proof, conviction of appellant by trial court and subsequent confirmation of it by High Court upheld — Evidence Act, 1872, Ss. 101 and 103* (Para 4). *Thakur Singh* v. *State of Punjab*, (2003) 9 SCC 208.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 15-9-2000]

[7706] — S. 304-A — Non-cross-examination on crucial aspects by the defence — *Effect*

Where evidence clearly discloses that: (1) the truck was being driven at a very high speed, (2) it was having no lights, (3) it was being driven without the driver sounding the horn, and (4) the visibility was very poor at that time, and there is no cross-examination on the above crucial aspects by the defence, the finding that the accident happened due to rash and negligent driving of the truck is justified. *Amar Singh* v. *State of Bihar*, (1971) 3 SCC 273: 1971 SCC (Cri) 530.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 26-3-1971]

[7707] — S. 304-A — On facts motor accident caused owing to misjudgment and not negligence — Maxim res ipsa loquitur, held, not applicable

A woman accompanied by her 4-year-old daughter came out of her village to cross the highway. While crossing the road the mother asked the child to go back home, but when the mother had crossed the road and descended into the deep ditch on the other side, the child suddenly dashed across the road to join her mother and was caught under the left front wheel of a passenger bus driven by the accused and was crushed to death. According to the eyewitness account of the four passengers of the bus, at the material time the accused was driving the bus slowly as a narrow bridge was 30 feet ahead and when the child suddenly appeared on the road, he immediately swerved the vehicle to the extreme right side of the road in order to save the collision. It was also clear that if he had moved the bus further to the right it would have fallen in the ditch endangering the lives of the passengers. The prosecution, however, treated all the eyewitnesses as hostile and with the permission of the court cross-examined them to impeach their credit. The Public Prosecutor only contradicted the police statement of the eyewitnesses that the accident took place due to the negligence of the accused and not by statements relating to each of the facts. The trial Court disbelieved the evidence of the eyewitnesses. On appeal, the Sessions Judge while agreeing with the unreliability of the eyewitnesses, upheld his conviction applying the principle of res ipsa loquitur and the High Court endorsed that view.

Held :

On facts the circumstances of taking the vehicle suddenly to the extreme right of the road, did not bespeak negligence or dereliction of duty to exercise due care and control, on the part of the accused, in clear and unambiguous voice. Nor could it be said, that the cause of swerving the vehicle to the right, was unknown. The accused gave a reasonably convincing explanation of his conduct in doing so, and his version was fully supported by four prosecution witnesses who had seen the occurrence. In these circumstances, the maxim res ipsa loquitur could have no manner of application.

The accident happened due to an error of judgment, and not negligence or want of driving skill on the part of the accused. An error of judgment of the kind such as the one in the instant case which comes to light only on post-accident reflection, but could not be foreseen by the accused in that fragmented moment before the accident is not a sure index of negligence, particularly, when in taking and executing that decision the accused was acting with the knowledge and in the belief that this was the best course to be adopted in the circumstances for everyone's safety.

The prosecution had failed to prove beyond reasonable doubt that the appellant had caused the death of the child by negligent or rash driving. All happened in fraction of a moment; and even if the worst was assumed against the appellant, the highest that could be said was that it was a misjudgment on his part too slight to be branded as culpable negligence. *Syad Akbar* v. *State of Karnataka*, (1980) 1 SCC 30: 1980 SCC (Cri) 59: AIR 1979 SC 1848: 1979 Cri LJ 1374: 1980 MLJ (Cri) 265.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 25-7-1979]

[7708] — S. 304-A — *Res ipsa loquitur* — Nature and scope of — Applicability of the said principle in criminal law — *Held, said rule cannot be pressed into service for determining per se the liability for negligence in criminal law and case under S. 304-A cannot be decided solely by applying the said rule — Evidence Act, 1872, S. 114*

Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law, specially in cases of tort and helps in determining the onus of proof in actions relating to negligence. Inference as to negligence may be drawn from proved circumstances by applying the rule if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. The said rule cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence. In criminal proceedings, the burden of proving negligence as an essential ingredient of the offence lies on the prosecution. Such ingredient cannot be said to have been proved or made out by resorting to the said rule. A case under Section 304-A IPC cannot be decided solely by applying the rule of *res ipsa loquitur.* [Paras 48(8) and 27]. *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength **3**. Coram: **R.C. Lahoti**, **C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59, relied on

Krishnan v. State of Kerala, (1996) 10 SCC 508: 1996 SCC (Cri) 1375, explained

[7709] — S. 304-A — Whether accused guilty of negligence and if his negligence caused the death, held, are questions of fact — *Such questions fall outside the High Court's jurisdiction in revision and Supreme Court's jurisdiction in special leave. Duli Chand* v. *Delhi Admn.*, (1975) 4 SCC 649: 1975 SCC (Cri) 663: AIR 1975 SC 1960: 1975 Cri LJ 1732: 1976 MLJ (Cri) 345.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 6-8-1975]

[7710] — Ss. 304-A and 279 — Rash and negligent driving — Dead body of the deceased child found 2 feet away from the bus and 3 feet away from the pavement on the right side of the road — No mechanical failure — *Appellant-accused admittedly did not err in judging — Spot mahazar revealed that bus was dragged for about 20 to 25 feet after brake was applied — Contents of mahazar not challenged — Post-mortem report and evidence of PW 1 (eyewitness) similar as regards several injuries — PW 1's statement that the bus was driven at a high speed, held, credible — Ascription of slow speed (i.e. 15-20 km per hour) by another witness, held, was rightly rejected*

A bus callously driven by appellant-accused dashed against a girl of 7 years and she got killed. His conviction for rash and negligent driving under Sections 304-A and 279 IPC was upheld by the High Court by modifying the jail sentence and quantum of fine.

Dismissing the appeal,

Held :

The evidence of PW 1 alone was sufficient to hold that the appellant was guilty of the said offences. According to PW 1 the child sustained grievous injuries on head and other parts of the body. In answer to a question put to him in cross-examination, he stated that the bus was being driven at a high speed. The mahazar, was marked as Ext. P-2. The contents of the mahazar were not challenged. The spot mahazar disclosed that there was a break mark for about 20-25 feet on the road. The post-mortem report also proved by PW 12 revealed that the deceased sustained several external injuries. Depressed wound and normal clots were present in right temporal region. The dead body of the girl was found 2 feet away from the bus. It was only 3 feet away from the pavement on the right side of the road. The bus admittedly did not have any mechanical failure. The appellant did not say that there was an error of judgment on his part. Reliance by the appellant on the deposition of one of the prosecution witnesses that the bus was being driven at a speed of 15-20 kilometres per hour, has rightly not been accepted. (Paras 8 to 11). *B. Nagabhushanam* v. *State of Karnataka*, (2008) 5 SCC 730: (2008) 3 SCC (Cri) 61: AIR 2008 SC 2557: (2007) 67 AIC 42(2) (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-5-2008]

[7711] — Ss. 304-A and 279 — Rash and negligent driving — *Res ipsa loquitur* (the thing speaks for itself) — *Held, applicable in criminal cases*

The doctrine of res ipsa loquitur would apply to criminal cases. In *Syad Akbar case*, (1980) 1 SCC 30 the doctrine of res ipsa loquitur was not applied having regard to the fact of a said case and on the finding that it was a case of error of judgment and the accused gave a reasonable, convincing explanation of his conduct. However, the said principle was applied in a case under the Prevention of Corruption Act in *C. Uma Maheswara Rao case*, (2004) 4 SCC 399. (Para 12). *B. Nagabhushanam* v. *State of Karnataka*, (2008) 5 SCC 730: (2008) 3 SCC (Cri) 61: AIR 2008 SC 2557: (2007) 67 AIC 42(2) (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-5-2008]

State of A.P. v. C. Uma Maheswara Rao, (2004) 4 SCC 399: 2004 SCC (Cri) 1276, applied

Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59, distinguished

[7712] — Ss. 304-A and 279 — Rash and negligent driving — Sufficiency of proof

The driver of a bus was prosecuted under Ss. 304-A and 279, IPC for carrying on the roof of his bus some corrugated iron sheets which fell owing to jolting of the bus on a kutcha road resulting in injuries to some persons and death of one.

Held :

Although the accused was said to have been carrying corrugated iron sheets on the roof of his bus, no attempt was made by the prosecution to find out if at all any corrugated iron sheets were being carried by the accused nor did the prosecution care to find out who the owner of the bus was and who had loaded the iron sheets. Unless there was proof that the iron sheets were put by the accused in a negligent manner or that he did not tie them properly, it is difficult to sustain his conviction under S. 304-A of the Indian Penal Code.

The accused could not also be convicted for rash driving under S. 279 of the Indian Penal Code because there was hardly any evidence worth the name from which it could be inferred that the speed of the bus was such that any iron sheets even if it be assumed that they were loaded on the roof of the bus fell down because of driving at a high speed. *Baijnath Singh* v. *State of Bihar*, (1972) 2 SCC 264: 1972 SCC (Cri) 667: AIR 1972 SC 1485: 1972 Cri LJ 919: (1972) 9 ACC 275.

Bench Strength 2. Coram: **A.N. Grover** and *M.H. Beg*, JJ. [Date of decision: 5-4-1972]

(5) Medical negligence

See also under CONSUMER PROTECTION in Vol. 12, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vols. 1 and 2 of *SC on Consumer Protection*

[7713] — S. 304-A — Scope — Whether accused liable under the circumstances

On facts it cannot be said that the death of the deceased was the direct result of any act of the accused nor was his driving the proximate and efficient cause. *Kishan Chand* v. *State of Haryana*, (1970) 3 SCC 904: (1971) 73 Punj LR 191.

Bench Strength 2. Coram: **S.M. Sikri** and *I.D. Dua*, JJ. [Date of decision: 19-9-1970]

[7714] — S. 304-A — Criminal medical negligence — Medical negligence — Criminal negligence — Essence of — *Held, criminal negligence involves rashness of a degree amounting to taking of a hazard knowing that it was of such a degree that injury was most likely imminent — Element of criminality is introduced by running the risk of doing such act with recklessness and indifference to consequences thereof*

Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. [Paras 89(I) and 86]

Negligence is an essential ingredient of the offence under Section 304-A IPC. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. [Paras 89(II) and 86]

The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires. [Paras 89(III) and 57]

A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. [Para 89(IV)]

In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctors. [Para 89(V)]

The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence. [Para 89(VI)]

Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession. [Para 89(VII)]

The present case is concerned with criminal negligence. To determine the same, the question that needs to be determined is whether the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. (Para 62)

To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent. (Para 87)

A clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. (Para 63)

To defend himself against a charge of medical negligence it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that in the present case the respondent charged with negligence acted in accordance with the general and approved practice is enough to clear him of the charge. Two things are pertinent. Firstly, the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time on which it is suggested as should have been used. (Para 72)

A mere deviation from normal professional practice is not necessarily evidence of negligence. (Para 73)

The medical texts speak of both the approaches for adrenalectomy as adopted in the present case. Nowhere has the appellant been able to support her contention that posterior approach was the only possible and proper approach and Respondent 3 was negligent in adopting the anterior approach. (Para 18)

Dr. *K*, Respondent 3 who performed the operation had reasonable degree of skill and knowledge. In the instant case, expert opinion is in favour of the procedure adopted by Respondent 3 at the time of surgery. The test is the standard of ordinary skilled man exercising and professing to have that special skill. (Paras 54 and 57)

Therefore, it has to be held that the appellants have failed to make out any case of medical negligence against the respondents. The National Commission was justified in dismissing the complaint of the appellants. (Paras 91 and 92). *Kusum Sharma* v. *Batra Hospital*, (2010) 3 SCC 480.

Bench Strength **2**. Coram : **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision : 10-2-2010]

Jacob Mathew v. State of Punjab, (2005) 6 SCC 1, reiterated

Ratanlal & Dhirajlal: Law of Torts; Charlesworth & Percy on Negligence (10th Edn., 2001), Para 1.13; Charlesworth & Percy on Negligence (10th Edn., 2001), Paras 8.03, 8.04; Halsbury's Laws of England (4th Edn., Vol. 30, para 35); Peritoneum, Retroperitoneum and Mesentery, Section IV; Principles of Surgery, 18th Edn., p. 560; Clive S. Grant and Jon A. Van Heerden: Technical Aspects of Adrenalectomy, Ch. 35; Halsbury's Laws of England, 4th Edn., Vol. 26 pp. 17-18, referred to

R. v. Lawrence, 1982 AC 510: (1981) 2 WLR 524: (1981) 1 All ER 974 (HL); Metropolitan Police Commr. v. Caldwell, 1982 AC 341: (1981) 2 WLR 509: (1981) 1 All ER 961 (HL), followed

Achutrao Haribhau Khodwa v. State of Maharashtra, (1996) 2 SCC 634; Spring Meadows Hospital v. Harjol Ahluwalia, (1998) 4 SCC 39; Whitehouse v. Jordan, (1981) 1 WLR 246: (1981) 1 All ER 267 (HL); C.P. Sreekumar (Dr.) v. S. Ramanujam, (2009) 7 SCC 130; Andrews v. Director of Public Prosecutions, 1937 AC 576: (1937) 2 All ER 552 (HL); Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59; Bhalchandra v. State of Maharashtra, AIR 1968 SC 1319: 1968 Cri LJ 1501; Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582: (1957) 2 All ER 118; Jacob Mathew v. State of Punjab, (2005) 6 SCC 1: 2005 SCC (Cri) 1369; Eckersley v. Binnie, (1988) 18 Con LR 1; Hucks v. Cole, (1968) 118 New LJ 469; Maynard v. West Midlands Regl. Health Authority, (1984) 1 WLR 634: (1985) 1 All ER 635 (HL); Hunter v. Hanley, 1955 SLT 213; Chin Keow v. Govt. of Malaysia, (1967) 1 WLR 813 (PC), relied on

Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582: (1957) 2 All ER 118, explained

Roe v. Minister of Health, (1954) 2 QB 66: (1954) 2 WLR 915: (1954) 2 All ER 131 (CA), approved

State of Haryana v. Santra, (2000) 5 SCC 182, distinguished

Poonam Verma v. Ashwin Patel, (1996) 4 SCC 332, considered

70 Corpus Juris Secundum (1951) 952, 953, Para 44; Black's Law Dictionary, cited

[7715] — S. 304-A — Death due to criminal medical negligence — Liability of doctors under — When attracted — *Death due to administration of medicine of which knowledge not possessed by doctor, though professed expressly or impliedly, held, prima facie constitutes criminal medical negligence*

A doctor who administers a medicine known to or used in a particular branch of medical profession impliedly declares that he has knowledge of that branch of science and if he does not, in fact, possess that knowledge, he is *prima facie* acting with rashness or negligence. (Para 40). *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength **3**. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

[7716] — S. 304-A — Death due to criminal medical negligence — Liability of doctors under — When attracted — Test to be applied — Special treatment of doctors — Rationale for, discussed in detail — *Held, it must be shown that accused doctor did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do — Hazard taken by accused doctor should be of such a nature that injury which resulted was most likely imminent — On facts, aged patient in advanced stage of terminal cancer experiencing breathing difficulties about 11 p.m. at night and succumbing due to unavailability of oxygen cylinders with oxygen, which was sought to be administered by appellant-accused doctor — Held, it is a case of non-availability of oxygen cylinders for which hospital may be liable in tort, but appellant cannot be proceeded against under S. 304-A on parameters of* Bolam test, *(1957) 2 All ER 118, 121 D-F [set out in para 19 in SCC]*

On 15-2-1995, the informant's father, late Jiwan Lal Sharma was admitted as a patient in a private ward of CMC Hospital, Ludhiana. On 22-2-1995 at about 11 p.m., Jiwan Lal felt difficulty in breathing. The complainant's elder brother, Vijay Sharma who was present in the room contacted the duty nurse, who in her turn called some doctor to attend to the patient. No doctor turned up for about 20 to 25 minutes. Then, Dr. Jacob Mathew, the appellant and Dr. Allen Joseph came to the room of the patient. An oxygen cylinder was brought and connected to the mouth of the patient but the breathing problem increased further. The patient tried to get up but the medical staff asked him to remain in bed. The oxygen cylinder was found to be empty. There was no other gas cylinder available in the room. Vijay Sharma went to the adjoining room and brought a gas cylinder therefrom. However, there was no arrangement to make the gas cylinder functional and in-between, 5 to 7 minutes were wasted. By this time, another doctor arrived who declared that the patient was dead. On the abovesaid report, an offence under Sections 304-A/34 IPC was registered and investigated. On charges having been filed against the two doctors, and their failure to obtain quashment thereof in all the forums below, the appellant was before the Supreme Court by special leave.

Allowing the appeals,

Held:

Indiscriminate prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to society. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason — whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being the better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society. (Paras 28, 29 and 47)

The criminal law has invariably placed medical professionals on a pedestal different from ordinary mortals. The Penal Code enacted as far back as in the year 1860 sets out a few vocal examples, in Sections 88, 92 and 93. (Para 34)

The word "gross" has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly". To impose criminal liability under Section 304-A, the Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have been the *causa sine qua non*. [Paras 48(6) and 38]

To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent. [Para 48(7)]

In the present case all the averments made in the complaint, even if held to be proved, do not make out a case of criminal rashness or negligence on the part of the accused-appellant. It is not the case of the complainant that the accused-appellant was not a doctor qualified to treat the patient whom he agreed to treat. It is a case of non-availability of oxygen cylinders either because of the hospital having failed to keep available a gas cylinder or because of the gas cylinder being found empty. Then, probably the hospital may be liable in civil law or may be not, but the accused-appellant cannot be proceeded against under Section 304-A IPC on the parameters of the *Bolam test*, (1957) 2 All ER 118, at p. 121 D-F [set out in para 19 in SCC]. (Para 53). *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength **3**. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

Suresh Gupta (Dr.) v. Govt. (NCT of Delhi), (2004) 6 SCC 422: 2004 SCC (Cri) 1785, affirmed

John Oni Akerele v. R., AIR 1943 PC 72: 44 Cri LJ 569; Kurban Hussein Mohammedali Rangwalla v. State of Maharashtra, (1965) 2 SCR 622: (1965) 2 Cri LJ 550; Kishan Chand v. State of Haryana, (1970) 3 SCC 904; Juggankhan v. State of M.P., (1965) 1 SCR 14: (1965) 1 Cri LJ 763, relied on

Emperor v. Omkar Rampratap, (1902) 4 Bom LR 679, held, approved

[**Ed.:** The Supreme Court has made an extensive discussion of the various issues that may arise in cases of *civil* medical negligence as noted under Short Note J. It would seem that all the conclusions in respect thereof would be applicable *mutatis mutandis* to cases of criminal medical negligence, the difference being that all rulings would have to be considered in the context of the *higher* level of negligence necessary to constitute criminal negligence.]

[7717] — S. 304-A — Degree of medical negligence necessary to attract provisions of — Death due to negligence in performance of rhinoplasty — *Cause of death stated to be non-introduction of endotracheal tube of proper size to prevent aspiration of blood from wound in respiratory passage — Held, such act, even if attributed to be true, can be described as a negligent act as there was lack of due care and precaution, which may attract liability in tort but the carelessness or want of due attention and skill cannot be described to be so reckless or grossly negligent as to attract criminal liability*

No doubt, in the present case, the patient was a young man with no history of any heart ailment. The operation to be performed for nasal deformity was not so complicated or serious. He was not accompanied even by his own wife during the operation. From the medical opinions produced by the prosecution, the cause of death is stated to be "not introducing a cuffed endotracheal tube of proper size as to prevent aspiration of blood from the wound in the respiratory passage". This act attributed to the doctor, even if accepted to be true, can be described as negligent act as there was lack of due care and precaution. For this act of negligence he may be liable in tort but his carelessness or want of due attention and skill cannot be described to be so *reckless or grossly negligent* as to make him criminally liable. (Para 24). *Suresh Gupta (Dr.)* v. *Govt. (NCT of Delhi)*, (2004) 6 SCC 422: 2004 SCC (Cri) 1785: AIR 2004 SC 4091: (2004) 3 KLT 14: (2004) 112 DLT 866.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **D.M. Dharmadhikari**, JJ. [Date of decision: 4-8-2004]

Affirmed in Jacob Mathew v. State of Punjab, (2005) 6 SCC 1

[7718] — S. 304-A — Delay on the part of the doctor to attend on the patient — *Held, it may at worst be a case of civil negligence and not one of culpable negligence — That apart death of patient being due to poisoning and there being no allegation against the doctor that he administered poison to the patient no prima facie case of rash or negligent act on the part of the doctor made out — Charge-sheet quashed — CrPC, 1973, S. 482. Rakesh Ranjan Gupta* v. *State of U.P.*, (1999) 1 SCC 188: 1999 SCC (Cri) 76: AIR 1999 SC 2115: 1999 ACJ 807.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and *K.T. Thomas* and *S. Rajendra Babu*, JJ. [Date of decision: 24-7-1998]

[7719] — S. 304-A — Liability of doctors under, for death due to medical negligence — Degree of negligence required to be proved — *Held, where a patient dies due to negligent medical treatment of a doctor, if the degree of negligence is so gross and the act of the doctor was so reckless as to endanger the life of the patient, the doctor would be made criminally liable, in addition to any civil liability in tort — For every mishap or death during medical treatment however, the medical man cannot be proceeded against for punishment — Reason therefor set out*

The legal position is almost firmly established that where a patient dies due to the negligent medical treatment of the doctor, the doctor can be made liable in civil law for paying compensation and damages in tort and at the same time, if the degree of negligence is so gross and his act was so reckless as to endanger the life of the patient, he would also be made criminally liable for offence under Section 304-A IPC. (Para 12)

For fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high as can be described as "gross negligence" or "recklessness". It is not merely lack of necessary care, attention and skill. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as "criminal". It can be termed "criminal" only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable. For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and the patient. Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence. (Paras 20 to 23, 25 and 26). *Suresh Gupta (Dr.)* v. *Govt. (NCT of Delhi)*, (2004) 6 SCC 422: 2004 SCC (Cri) 1785: AIR 2004 SC 4091: (2004) 3 KLT 14: (2004) 112 DLT 866.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **D.M. Dharmadhikari**, JJ. [Date of decision: 4-8-2004]

R. v. Adomako, (1994) 3 All ER 79 (HL), relied on

Affirmed in Jacob Mathew v. State of Punjab, (2005) 6 SCC 1

[7720] — S. 304-A — Medical negligence — Negligence — Concepts of, in civil law and criminal law — Distinction between — *Held, "simple lack of care" attracts civil liability whereas "very high degree of negligence" is required in criminal cases — Consumer Protection Act, 1986, Ss. 2(c), (g) and (o)* (Para 73). *Kusum Sharma* v. *Batra Hospital*, (2010) 3 SCC 480.

Bench Strength **2**. Coram : **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision : 10-2-2010]

[7721] — S. 304-A — Medical negligence — Requirement to obtain independent medical opinion before investigation is initiated against a doctor — Direction given in *Jacob Mathew case*, (2005) 6 SCC 1, para 52 — *Held, is meant for criminal cases and not for civil cases filed in Consumer Fora for the purpose of determining civil liability — General directions given in* Martin F. D'Souza *case, (2009) 3 SCC 1, para 106 extending the same to civil cases, held, are per incuriam and not binding — Consumer Forum can give appropriate relief on the basis of summary trial on affidavits — Consumer Forum can also, in its discretion, permit expert evidence but it is not bound by views expressed by expert because medical negligence is a mixed question of law and fact, to be resolved finally by Forum — In complicated civil cases requiring expert evidence, parties are also free to approach civil court instead of Consumer Forum — Consumer Protection Act, 1986, Ss. 1(o), 3, 13 and 14 — CPC, 1908, S. 9 — Evidence Act, 1872, S. 45*

Directions given in para 52 of *Jacob Mathew case*, were not given in respect of complaints filed before the Consumer Fora under the Consumer Protection Act wherein medical negligence is treated as civil liability for payment of damages. This distinction has been overlooked in *Martin F. D'Souza case*. The directions given in *D'Souza* are not consistent with the law laid down by the larger Bench in *Mathew*. The direction in *Mathew* for consulting the opinion of another doctor before proceeding with criminal investigation was confined only in cases of criminal complaint and not in respect of cases before the Consumer Fora. The reason why the larger Bench in *Mathew* did not equate the two is obvious in view of the jurisprudential and conceptual difference between cases of negligence in civil and criminal matter. This has been elaborately discussed in *Mathew*. This distinction has been accepted in the judgment in *Malay Kumar Ganguly case*, (2009) 9 SCC 221. (Paras 30 to 33)

When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decisions on the point such decisions are rendered per incuriam. The two-Judge Bench in *D'Souza case*, (2009) 3 SCC 1, has taken note of the decisions in *Indian Medical Assn. case*, (1995) 6 SCC 651 and *Mathew case*, (2005) 6 SCC 1, but even after taking note of those two decisions, *D'Souza* gave those general directions in para 106 which are contrary to the principles laid down in both those larger Bench decisions. The larger Bench decision in *J.J. Merchant case*, (2002) 6 SCC 635 has not been noted in *D'Souza*. Apart from that, the directions in para 106 in *D'Souza* are contrary to the provisions of the governing statute. That is why those directions cannot be accepted as constituting a binding precedent in cases of medical negligence before the Consumer Fora. Those directions are also inconsistent with the avowed purpose of the said Act. (Paras 54 and 55)

Those directions are also contrary to the avowed purposes of the Act. In this connection we must remember that the Act was brought about in the background of a worldwide movement for consumer protection. It is clear from the Statement of Objects and Reasons of the Act that it is to provide a forum for speedy and simple redressal of consumer disputes. Such avowed legislative purpose cannot be either defeated or diluted by superimposing a requirement of having expert evidence in all cases of medical negligence regardless of factual requirement of the case. If that is done the efficacy of remedy under the Act will be substantially curtailed and in many cases the remedy will become illusory to the common man. (Paras 43 and 45)

The directions given in para 106 of *D'Souza* are contrary to (*a*) the law laid down in para 37 of *Indian Medical Assn.*, (*b*) and para 19 in *J.J. Merchant*, (*c*) those directions in para 106 of *D'Souza* equate medical negligence in criminal trial and negligence fastening civil liability whereas the earlier larger Bench in *Mathew* elaborately differentiated between the two concepts, (*d*) those directions in *D'Souza* are contrary to the Consumer Protection Act which is the governing statute, (*e*) those directions are also contrary to the avowed purpose of the Act, which is to provide a speedy and efficacious remedy to the consumer. If those general directions are followed then in many cases the remedy under the said Act will become illusory, (*f*) those directions run contrary to the principle of res ipsa loquitur which has matured into a rule of law in some cases of medical negligence where negligence is evident and obvious. (Paras 35, 36, 38 and 53)

In the facts and circumstances of this case, expert evidence was not required and the District Forum rightly did not ask the appellant to adduce expert evidence. (Para 59). *V. Kishan Rao* v. *Nikhil Super Speciality Hospital*, (2010) 5 SCC 513.

Bench Strength **2**. Coram : *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision : 8-3-2010]

Jacob Mathew v. State of Punjab, (2005) 6 SCC 1: 2005 SCC (Cri) 1369, clarified and followed

Malay Kumar Ganguly v. Dr. Sukumar Mukherjee, (2009) 9 SCC 221: (2010) 2 SCC (Cri) 299; Indian Medical Assn. v. V.P. Shantha, (1995) 6 SCC 651; J.J. Merchant (Dr.) v. Shrinath Chaturvedi, (2002) 6 SCC 635; R. v. Lawrence, 1982 AC 510: (1981) 2 WLR 524: (1981) 1 All ER 974 (HL); Andrews v. Director of Public Prosecutions, 1937 AC 576: (1937) 2 All ER 552 (HL); Potts (or Riddell) v. Reid, 1943 AC 1: (1942) 2 All ER 161 (HL), relied on

Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1: (2009) 1 SCC (Cri) 958, held per incuriam on this point

[7722] — Ss. 304-A, 88, 92 and 93 — Prosecution of criminal offences against doctors — Detailed guidelines laid down to protect interest of doctors, and to save them from unwarranted and malicious proceedings — Rationale for, discussed in detail — *CrPC, 1973, Ss. 204, 201-203 and 70*

The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to a rash or negligent act within the domain of criminal law under Section 304-A IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered to his reputation cannot be compensated by any standards. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against. The service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. (Paras 50 and 51)

Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, the following guidelines will be in force which shall govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the *Bolam test*, (1957) 2 All ER 118, at p. 121 D-F [set out in para 19 in SCC], to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld. (Para 52). *Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369: AIR 2005 SC 3180: (2005) 3 CPR 70 (SC): (2005) 122 DLT 83: (2005) 3 CPJ 9 (II) (SC): 2005 Cri LJ 3710.

Bench Strength **3**. Coram: **R.C. Lahoti**, **C.J.** and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-8-2005]

[7723] — Ss. 304-A, 88, 92 and 93 — Prosecution of criminal offences against doctors — Need for restraint and circumspection — Reasons for given

A doctor, in essence, needs to be inventive and has to take snap decisions especially in the course of performing surgery when some unexpected problems crop up or complication sets in. If the medical profession, as a whole, is hemmed in by threat of action, criminal and civil, the consequence will be loss to the patients. No doctor would take a risk, a justifiable risk in the circumstances of a given case, and try to save his patient from a complicated disease or in the face of an unexpected problem that confronts him during the treatment or the surgery. Therefore the setting in motion of the criminal law or claims in tort against the medical profession should be done cautiously and on the basis of reasonably sure grounds. (Para 33). *State of Punjab* v. *Shiv Ram*, (2005) 7 SCC 1: AIR 2005 SC 3280.

Bench Strength **3**. Coram: **R.C. Lahoti, C.J.** and *C.K. Thakker* and *P.K. Balasubramanyan*, JJ. [Date of decision: 25-8-2005]

Jacob Mathew v. State of Punjab, (2005) 6 SCC 1: 2005 SCC (Cri) 1369, affirmed

[**Ed.**: *See also* Shortnotes *A*, *C* and *J* in *Jacob Mathew case*, (2005) 6 SCC 1.]

(6) Motor vehicle accidents

See also S. 279 IPC, in Vol. 1

See also Ss. 337 and 338 IPC

See also Ss. 141 et seq. in Motor Vehicles Act, 1988

[7724] — S. 304-A — Scope — Whether accused liable under the circumstances

On facts it cannot be said that the death of the deceased was the direct result of any act of the accused nor was his driving the proximate and efficient cause. *Kishan Chand* v. *State of Haryana*, (1970) 3 SCC 904: (1971) 73 Punj LR 191.

Bench Strength **2**. Coram: **S.M. Sikri** and *I.D. Dua*, JJ. [Date of decision: 19-9-1970]

[7725] — S. 304-A — Nature and scope — Held, S. 304-A is not limited to rash or negligent driving — Any rash or negligent act whereby death of any person is caused becomes punishable — Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness and negligence — *A person may cause death by rash or negligent act which may have nothing to do with driving at all — Negligence and rashness to be punishable in terms of S. 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in mind risking crime as well as life of person who may lose his life as a result of crime — S. 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practise such rashness or negligence which may cause death of other — Death so caused is not the determining factor — On facts, bus driven by appellant was hit by a train at railway crossing resulting in death and injuries to passengers — Charges were framed under S. 302 and alternatively under Ss. 304, 325 and 323 IPC — Criminal revision filed by appellant questioning correctness of charges framed, dismissed — Appellant contending that S. 302 IPC had no application herein as he had no intention to kill passengers and at the most it may be S. 304-A — Held, in the instant case, S. 302 IPC prima facie has no application — Accordingly, charges stand altered to S. 304-A along with Ss. 279 and 337 IPC — CrPC, 1973, S. 401*

Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A. (Para 7)

Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practise such rashness or negligence which may cause the death of other. The death so caused is not the determining factor. (Para 8)

What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two. (Para 9)

Negligence is conduct which falls below the standard established for the protection of others against unreasonable risk of harm, this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. In order to objectify the law's abstractions like "care", "reasonableness" or "foreseeability" the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform. (Para 11)

"Reckless" means "careless", regardless or heedless of the possible harmful consequences of one's acts. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognising the existence of the risk and nevertheless deciding to ignore it. (Para 13). *Naresh Giri* v. *State of M.P.*, (2008) 1 SCC 791: (2008) 1 SCC (Cri) 324: (2007) 60 AIC 15 (SC): (2007) 4 KLT 1115.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 12-11-2007]

Director of Public Prosecutions v. Camplin, 1978 AC 705: (1978) 2 WLR 679: (1978) 2 All ER 168 (HL); Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59; R. v. Briggs, (1977) 1 WLR 605: (1977) 1 All ER 475 (CA); R. v. Caldwell, 1982 AC 341: (1981) 2 WLR 509: (1981) 1 All ER 961 (HL); R. v. Lawrence, 1982 AC 510: (1981) 2 WLR 524: (1981) 1 All ER 974 (HL), relied on

[7726] — S. 304-A — Accused holding a learner's license driving a car without a trainer by his side — *Car striking a man who later succumbed to the injuries caused — No evidence that the accused did not know driving or that death was caused due to rash and negligent act on his part — Held, accused is not guilty under S. 304-A. Suleman Rahiman Mulani* v. *State of Maharashtra*, AIR 1968 SC 829: (1968) 2 SCR 515: 1968 Cri LJ 1013.

Bench Strength **3**. Coram: *S.M. Sikri*, *J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 1-12-1967]

[7727] — S. 304-A — Accused making no attempt to save the victim even when there was sufficient space on either side of the road — *Rash and negligent driving proved. Baldevji Bhathiji Thakore* v. *State of Gujarat*, (1980) 1 SCC 320: 1980 SCC (Cri) 163: AIR 1979 SC 1327: 1979 Cri LJ 1136.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision: 15-2-1979]

[7728] — S. 304-A — Causing death by negligence — Conviction reversed — *Accused, driver of a A.P. SRTC bus alleged to have driven at high speed in a rash and negligent manner and dashed against T who succumbed to the injuries while undergoing treatment in the hospital — Submission by appellant that evidence on record did not establish that he was driving the offending vehicle, or that he was driving it in a rash or negligent manner — PWs 4 and 11 stated that at the time of occurrence it was dark but in FIR name of the appellant-accused and the bus number was indicated — However, it was the accepted case of PWs 4, 5 and 11 that the offending vehicle after the occurrence sped away from the place — Hence, improbable that PWs 4 and 5 could have noted the long registration number of the bus — IO stating that he could know the details of the bus after about four days of the occurrence — Evidence showing that the bus hit the victim on the right side and the boy was in the middle of the road — Discrepancies in evidence of eyewitnesses pertaining to other material particulars also discernible — Held, in view of the aforesaid unsatisfactory nature of evidence, the prosecution cannot be said to have established the accusations — Conviction recorded by the courts below set aside* (Paras 2, 6 and 7). *Renu Kunta Mallaiah* v. *State of A.P.*, (2008) 10 SCC 220.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *M.K. Sharma*, JJ. [Date of decision: 16-10-2008]

[7729] — S. 304-A — Causing death by negligence — Rash driving — Substantiation of charge — Duty of investigation

In order to substantiate the charge of rash driving investigation should be conducted on scientific line, for instance, there should be examination of the tyre-marks of vehicle on the road with the object of finding out the approximate speed and the manner of application of brakes at the time of the collision and photographs should be taken of the position of the site soon after the occurrence. *Jagdish Chander* v. *State of Delhi*, (1973) 2 SCC 203: 1973 SCC (Cri) 770: AIR 1973 SC 2127: 1973 Cri LJ 1393: (1974) 1 SCR 204.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 3-5-1973]

[7730] — S. 304-A — Causing death by rash and negligent driving — Burden of proof — Doctrine of res ipsa loquitur applied — *Death of passengers in bus accident — Fact admitted that the appellant driver was driving the vehicle when accident occurred — Held, in view of the facts, burden was on appellant to prove that the accident happened due to causes other than negligence on his part — In absence of the said proof, conviction of appellant by trial court and subsequent confirmation of it by High Court upheld — Evidence Act, 1872, Ss. 101 and 103* (Para 4). *Thakur Singh* v. *State of Punjab*, (2003) 9 SCC 208.

Bench Strength 2. Coram: K.T. Thomas and R.P. Sethi, JJ. [Date of decision: 15-9-2000]

[7731] — S. 304-A — Compensation — Accident owing to rash driving of bus — *Acquittal in criminal case will not defeat the claim for damages — Requirement of culpable rashness under S. 304-A, Indian Penal Code is more drastic than negligence sufficient to create liability under tort law — Motor Vehicles Act, 1939, Ss. 115, 116, 110-A, 110-B & 110-D. N.K.V. Bros. (P) Ltd.* v. *M. Karumai Ammal*, (1980) 3 SCC 457: 1980 SCC (Cri) 774: AIR 1980 SC 1354: (1980) 41 FLR 152.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and *D.A. Desai*, JJ. [Date of decision: 21-3-1980]

[7732] — S. 304-A — Death caused by car accident — Rash or negligent — Distinction explained — Sentence — Discretion of Court — Whether fine enough — *Facts and circumstances. Balchandra Waman Pathe* v. *State of Maharashtra*, 1968 Mah LJ 423: 1968 MPLJ 371.

Bench Strength **3**. Coram: *S.M. Sikri*, *J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 20-11-1967]

[7733] — S. 304-A — Deceased stopping at the mid-road to let the vehicular traffic pass and then suddenly taking a step backward before trying to cross-over the road — *Accused motorcyclist, while trying to overtake a bus, knocking down the deceased when he took the back-step and the bus running over him causing his death — Held, accused not guilty under S. 304-A as he could have by-passed both the bus and the deceased, had the deceased not taken the fatal erratic step. State of Maharashtra* v. *Vijay Sadanand Shenoy*, (1981) 3 SCC 524: 1981 SCC (Cri) 741.

Bench Strength **3**. Coram: **A.D. Koshal**, *V. Balakrishna Eradi* and *R.B. Misra*, JJ. [Date of decision: 30-1-1981]

[7734] — S. 304-A — Drunkenness — *Cannot be said to be conclusively proved unless urine or blood test carried out — Mere smelling of alcohol, unsteady gait, dilation of pupils and incoherence in speech not enough. Bachubhai Hassanalli Karyani* v. *State of Maharashtra*, (1971) 3 SCC 930: 1972 SCC (Cri) 178: 1971 ACJ 116.

Bench Strength **3**. Coram: **S.M. Sikri**, *V. Bhargava* and *I.D. Dua*, JJ. [Date of decision: 18-12-1970]

[7735] — S. 304-A — Negligence — Pedestrian crossings — Duty of driver of car — *Held, driver must look ahead and see whether there was any pedestrian in the crossing and if there was one to wait till he crossed the carriage way. Bhalachandra Waman Pathe* v. *State of Maharashtra*, 1968 ACJ 38: 1968 Mah LJ 423: 1968 MPLJ 371.

Bench Strength **3**. Coram: *S.M. Sikri*, *J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 20-11-1967]

[7736] — S. 304-A — Negligence — Statement of witness that bus was coming at high speed not sufficient to justify conviction — *To one man a speed of even 10 or 20 miles per hour may appear to be high while to another even a speed of 25 to 30 miles per hour may appear to be reasonable speed — In the absence of evidence of negligence conviction could not be upheld. Mohanta Lal Saha* v. *State of W.B.*, 1968 ACJ 124.

Bench Strength **3**. Coram: *S.M. Sikri*, *J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 21-3-1968]

[7737] — S. 304-A — Negligent driving — Proof — Truck hitting and killing cyclist — *On facts negligence on the part of driver, held, proved — Motor Vehicles Act, 1988, S. 168(1) — Motor Vehicles Act, 1939, S. 110-B*

The accident was due to the fault of the truck driver. The truck was proceeding from North to South and the deceased was coming on a cycle from South to North. There was a rickshaw standing or moving in front of the truck. It is in the evidence of the witnesses that the truck driver which was coming from the opposite side swerved to the right to take over the rickshaw. If that is so then the truck would be almost on its right side and in front of the deceased who was driving the cycle on the left side of the road. The truck driver in the process saved the rickshaw but killed the deceased. Therefore, the High Court fell into patent error in holding that there was no negligence on the part of the driver of the vehicle. *Haji Zainullah Khan* v. *Nagar Mahapalika*, (1994) 5 SCC 667: 1994 SCC (Cri) 1568.

Bench Strength 2. Coram: **Kuldip Singh** and *N.P. Singh*, JJ. [Date of decision: 13-7-1994]

[7738] — S. 304-A — On facts motor accident caused owing to misjudgment and not negligence — Maxim res ipsa loquitur, held, not applicable

A woman accompanied by her 4-year-old daughter came out of her village to cross the highway. While crossing the road the mother asked the child to go back home, but when the mother had crossed the road and descended into the deep ditch on the other side, the child suddenly dashed across the road to join her mother and was caught under the left front wheel of a passenger bus driven by the accused and was crushed to death. According to the eyewitness account of the four passengers of the bus, at the material time the accused was driving the bus slowly as a narrow bridge was 30 feet ahead and when the child suddenly appeared on the road, he immediately swerved the vehicle to the extreme right side of the road in order to save the collision. It was also clear that if he had moved the bus further to the right it would have fallen in the ditch endangering the lives of the passengers. The prosecution, however, treated all the eyewitnesses as hostile and with the permission of the court cross-examined them to impeach their credit. The Public Prosecutor only contradicted the police statement of the eyewitnesses that the accident took place due to the negligence of the accused and not by statements relating to each of the facts. The trial Court disbelieved the evidence of the eyewitnesses. On appeal, the Sessions Judge while agreeing with the unreliability of the eyewitnesses, upheld his conviction applying the principle of res ipsa loquitur and the High Court endorsed that view.

Held :

On facts the circumstances of taking the vehicle suddenly to the extreme right of the road, did not bespeak negligence or dereliction of duty to exercise due care and control, on the part of the accused, in clear and unambiguous voice. Nor could it be said, that the cause of swerving the vehicle to the right, was unknown. The accused gave a reasonably convincing explanation of his conduct in doing so, and his version was fully supported by four prosecution witnesses who had seen the occurrence. In these circumstances, the maxim res ipsa loquitur could have no manner of application.

The accident happened due to an error of judgment, and not negligence or want of driving skill on the part of the accused. An error of judgment of the kind such as the one in the instant case which comes to light only on post-accident reflection, but could not be foreseen by the accused in that fragmented moment before the accident is not a sure index of negligence, particularly, when in taking and executing that decision the accused was acting with the knowledge and in the belief that this was the best course to be adopted in the circumstances for everyone's safety.

The prosecution had failed to prove beyond reasonable doubt that the appellant had caused the death of the child by negligent or rash driving. All happened in fraction of a moment; and even if the worst was assumed against the appellant, the highest that could be said was that it was a misjudgment on his part too slight to be branded as culpable negligence. *Syad Akbar* v. *State of Karnataka*, (1980) 1 SCC 30: 1980 SCC (Cri) 59: AIR 1979 SC 1848: 1979 Cri LJ 1374: 1980 MLJ (Cri) 265.

Bench Strength 2. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 25-7-1979]

[7739] — S. 304-A — Rash and negligent driving — *Motor vehicle dashing against a boy standing on kutcha portion of the right side of the road who later succumbed to the injuries caused by the accident — Held, the very fact that the accident occurred on kutcha portion of the right side of the road is indicative of the negligent manner in which the vehicle was being driven — On facts, reversal of acquittal by the High Court justified — Motor Vehicles Act, 1988, Ss. 166 and 168. A.P. Raju* v. *State of Orissa*, 1995 Supp (2) SCC 385: 1995 SCC (Cri) 675.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 16-2-1994]

[7740] — S. 304-A — Rash and negligent driving — Factors to determine — *Investigation conducted in a very casual and superficial manner and important evidence which was available and should easily have been forthcoming not brought before the court for wholly inadequate, if not flimsy, reasons — No evidence adduced regarding examination of marks of wheels on the road and the state of traffic at the relevant time — Held, it cannot be* *said that the accused was driving his vehicle rashly or negligently. Nageshwar Shri Krishna Ghobe* v. *State of Maharashtra*, (1973) 4 SCC 23: 1973 SCC (Cri) 664: AIR 1973 SC 165: 1973 Cri LJ 235: 1973 Bom LR 483: (1973) 2 SCR 377.

Bench Strength 3. Coram: *J.M. Shelat*, **I.D. Dua** and *H.R. Khanna*, JJ. [Date of decision: 19-9-1972]

[7741] — S. 304-A — Rash and negligent driving — On facts, the finding of lower courts that the appellant was grossly negligent even though his speed was not fast or excessive upheld. *Duli Chand* v. *Delhi Admn.*, (1975) 4 SCC 649: 1975 SCC (Cri) 663: AIR 1975 SC 1960: 1975 Cri LJ 1732: 1976 MLJ (Cri) 345.

Bench Strength 3. Coram: *Y.V. Chandrachud*, **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 6-8-1975]

[7742] — S. 304-A — Rash and negligent driving — What amounts to culpable rashness and criminal negligence — *Passenger, while boarding a bus, falling down therefrom when the bus moved forward and run over by the rear wheel of the bus resulting in her death — When can driver of the bus be held to be guilty of culpable negligence — Negligence of the driver cannot always be presumed — In absence of any evidence showing that the driver moved the vehicle before getting signal from the conductor to move, held, it cannot be presumed that the passenger fell down due to negligence of the driver — Hence conviction under S. 304-A not sustainable*

The appellant was driving a bus of the Andhra Pradesh Road Transport Corporation. A passenger was boarding the bus. When the bus moved forward she fell out of the vehicle and its rear wheel ran over her. She died of the injuries sustained in that accident. The conductor of the bus did not say how the accident happened. However, he admitted that while the bus was in motion he heard the sound of an accident and the bus was then stopped. The only other witness in his examination-in-chief merely deposed that the said passenger "was boarding the bus and the bus moved; and she fell down beneath the bus and died on the spot; the bus stopped at some distance" and that he saw the bus driver at that time. The driver of the bus was held guilty of culpable negligence in that episode. He now stands convicted under Section 304-A of the Indian Penal Code and was sentenced to imprisonment for three months. All the three courts, the trial court, the Sessions Court and the High Court in revision, took the same stand. The only question which survives for decision is whether on such facts a conclusion that the appellant is guilty of negligent driving must necessarily follow. Answering in the negative and allowing the appeal of the driver,

Held :

A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution. (Para 9)

It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus. (Para 7)

In the present case the possible explanation of the driver is that he was unaware of even the possibility of the accident which happened. It could be so. When he moved the vehicle forward his focus normally would have been towards what was ahead of the vehicle. He is not expected to move the vehicle forward when passengers are in the process of boarding the vehicle. But when he gets a signal from the conductor that the bus can proceed he is expected to start moving the vehicle. To fasten the liability with the driver for negligent driving when a passenger falls down from a moving vehicle, there should be evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side. Here no witness has said, including the conductor, that the driver moved the vehicle before getting a signal to move forward. The evidence in this case is too scanty to fasten him with criminal negligence. Some further evidence is indispensably needed to presume that the passenger fell down due to the negligence of the driver of the bus. Such further evidence is lacking in this case. Therefore, the Court is disabled from concluding that the victim fell down only because of the negligent driving of the bus. The corollary thereof is that the conviction of the appellant of the offence is unsustainable. (Paras 9, 5 and 10). *Mohd. Aynuddin* v. *State of A.P.*, (2000) 7 SCC 72: 2000 SCC (Cri) 1281: AIR 2000 SC 2511: 2000 Cri LJ 3508.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 28-7-2000]

[7743] — S. 304-A — Rash and negligent driving causing death — *2 years' RI awarded by courts below — Although the accused driver supporting large family and the proprietor of vehicle failing to compensate the family, no compassion can be shown and no interference with the sentence called for — Conventional defences, except under compelling evidence, must be given short shrift. Rattan Singh* v. *State of Punjab*, (1979) 4 SCC 719: 1980 SCC (Cri) 17: AIR 1980 SC 84: 1980 Cri LJ 11.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *P.N. Shinghal*, JJ. [Date of decision: 3-10-1979]

[7744] — S. 304-A — Rash or negligent driving — Deceased suddenly crossing the road without taking note of approaching bus — *Driver not driving at high speed or on wrong side — Deceased dashing against the bus and dying — Held, bus driver not negligent*

If the deceased suddenly crossed the road from West to East without taking note of the approaching bus there was every possibility of his dashing against the bus without the driver becoming aware of his crossing till it was too late. If a person suddenly crosses the road the bus driver, however slowly he may be driving, may not be in a position to save the accident. Therefore, the bus driver cannot be held to be negligent. *Mahadeo Hari Lokre* v. *State of Maharashtra*, (1972) 4 SCC 758: AIR 1972 SC 221: 1972 Cri LJ 49.

Bench Strength 2. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar**, JJ. [Date of decision: 23-11-1971]

[7745] — S. 304-A — Rashness and negligence — Distinction between

There is a distinction between a rash act and a negligent act. In the case of a rash act the criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. Negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection.

In the instant case the appellant was driving his car at a speed of 35 miles an hour, the speed permissible under the rules. No other circumstance was pointed out to show that he was driving in a reckless manner. Therefore, he cannot be said to have been running the risk of doing an act with recklessness or indifference as to the consequences. But he was undoubtedly guilty of negligence. He had a duty to look ahead and see whether there was any pedestrian in the pedestrian crossing. It is likely that while driving the car he was engrossed in talking with the person who was sitting by his side. By doing so, he failed to exercise the caution incumbent upon him. His culpable negligence and failure to exercise that reasonable and proper care and caution required of him resulted in the occurrence. He was therefore guilty of offence under S. 304-A. *Bhalachandra Waman Pathe* v. *State of Maharashtra*, 1968 ACJ 38: 1968 Mah LJ 423: 1968 MPLJ 371.

Bench Strength 3. Coram: *S.M. Sikri, J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 20-11-1967]

[7746] — S. 304-A — Requirement of culpable rashness in driving under, held, is more drastic than negligence sufficient to create liability under tort law. *N.K.V. Bros. (P) Ltd.* v. *M. Karumai Ammal*, (1980) 3 SCC 457: 1980 SCC (Cri) 774: AIR 1980 SC 1354: (1980) 41 FLR 152.

Bench Strength 2. Coram: *V.R. Krishna Iyer* and *D.A. Desai*, JJ. [Date of decision: 21-3-1980]

[7747] — S. 304-A — Revision — *Where a bus driver was convicted under S. 304-A in connection with an accident which resulted in the death of one person, held, High Court erred in allowing respondent bus driver's revision petition and upsetting concurrent findings of fact of lower courts without considering evidence on record and without* *indicating how lower courts were wrong in reaching their conclusions and without giving any reasons as to why the revision was being allowed— CrPC, 1973, S. 397* (Para 4). *State of A.P.* v. *Rajagopala Rao*, (2000) 10 SCC 338.

Bench Strength **2**. Coram: *B.N. Kirpal* and *S. Rajendra Babu*, JJ. [Date of decision: 26-2-1999]

[7748] — S. 304-A — Sentence — Interference with by High Court — *Head-on collision of lorry driven by accused-respondent with a car resulting in death of four occupants of the car — High Court in revision awarding a lesser sentence while maintaining the conviction — Trial Magistrate and appellate court finding rash and negligent driving by accused — High Court taking the view that negligence was only to the extent that accused did not make any effort to avoid the collision — High Court's view not based on evidence — Having regard to serious nature of the accident, held, High Court's interference with the sentence was not warranted*

A car had a head-on collision with a mini lorry driven by the accused-respondent. As a result of the collision, the right front tyre of the car burst and the driver of the car lost control of the vehicle and it dashed against a nearby tree. The driver and three other occupants of the car died in the accident. The respondent raised a plea before the trial Magistrate as well as before the appellate court that the accident might have occurred due to the bursting of the right front tyre of the car as a result of which the car went to the right side of the road and dashed against the lorry. But this plea was not accepted. A suggestion to this effect was put to the Motor Vehicles Inspector who had examined the vehicle after the accident. However, the Inspector also declined the suggestion. The possibility of the car having gone to the extreme right side stood also ruled out by the evidence. The trial Magistrate and the appellate court found the respondent guilty of offences under Sections 279, 337, 338 and 304-A IPC. However, on revision a Single Judge of the High Court, while confirming the conviction of the respondent, modified the sentence taking the view that the collision had taken place when due to bursting of the front tyre, the car went to the right side of the road. The Single Judge observed:

"While to this extent the petitioner could be said to be innocent and while that aspect of innocence could certainly influence the decision relating to sentence, I am of the opinion that the accident having taken place at 7.00 a.m., with no other vehicles being on the road and when it is as wide a road as of 40 feet width totally, the negligence on the part of the petitioner lies in the fact that he did not make any efforts to avoid the collision."

For this reason the Single Judge reduced the sentence for the offence under Section 304-A to payment of a fine of Rs 5000 and in default thereof simple imprisonment for 3 months. The Single Judge imposed a sentence for the offence under Section 337 IPC with a fine of Rs 500, in default to simple imprisonment for 15 days; and for the offence under Section 338 IPC with a fine of Rs 550, in default to simple imprisonment for 15 days. No separate sentence was awarded for the offence punishable under Section 279 IPC. Allowing the State's appeal,

Held :

The observation made by the revisional court is not based on the evidence on record. Having regard to the serious nature of the accident, which resulted in the death of four persons, the learned Single Judge should not have interfered with the sentence imposed by the courts below. It may create and set an unhealthy precedent and send wrong signals to the subordinate courts which have to deal with several such accident cases. If the accused are found guilty of rash and negligent driving, courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the courts should have a deterrent effect on potential wrongdoers and it should commensurate with the seriousness of the offence. Of course, the courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum of sentence, but the discretion shall be exercised with due regard to larger interest of the society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system. (Paras 5 and 6)

In the facts and circumstances of the case, interference with the judgment of the Single Judge of the High Court is called for and the respondent is liable to undergo the sentence imposed by the trial Magistrate and affirmed by the appellate court. Consequently, it is directed that for the offence punishable under Section 304-A, the respondent be taken into custody to undergo simple imprisonment for six months. As regards offences under Sections 279, 337 and 338 IPC, no separate sentence has been awarded by the trial Magistrate. The direction of the trial Magistrate is maintained. (Para 7). *State of Karnataka* v. *Sharanappa Basanagouda Aregoudar*, (2002) 3 SCC 738: 2002 SCC (Cri) 704: AIR 2002 SC 1529.

Bench Strength **2**. Coram: *R.P. Sethi* and **K.G. Balakrishnan**, JJ. [Date of decision: 21-3-2002]

[7749] — S. 304-A — Sentence — Mitigating circumstances — *Accident between truck and auto-rickshaw killing a child — Both drivers to blame for accident — Proceedings against driver of auto-rickshaw going on for 8 years — Sentence reduced to 6 months. Jagdish Chander* v. *State of Delhi*, (1973) 2 SCC 203: 1973 SCC (Cri) 770: AIR 1973 SC 2127: 1973 Cri LJ 1393: (1974) 1 SCR 204.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 3-5-1973]

[7750] — S. 304-A — Sentence — Rash and negligent driving resulting in death of a boy — *Occurrence taking place about 15 years ago — Appellant remaining on bail for the last more than 8 years — Held, in the circumstances, the appellant directed to be released under S. 360 CrPC on probation of good conduct, be of good behaviour and keep peace for a period of one year — Probation of Offenders Act, 1958, S. 4. A.P. Raju* v. *State of Orissa*, 1995 Supp (2) SCC 385: 1995 SCC (Cri) 675.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 16-2-1994]

[7751] — Ss. 304-A and 279 — Applicability of Probation of Offenders Act, 1958 — Causing death by rash and negligent driving — Provisions of S. 4 PO Act not attracted — *Held, in view of galloping rate of road accidents in India and its devastating consequences, lenience cannot be shown and the benevolent provisions of S. 4 PO Act cannot be treated as applicable to the offence under S. 304-A IPC — Further, held, when deciding quantum of sentence deterrence ought to be the prime consideration — Every driver should fear that, if convicted, courts will not treat him leniently — Appellant bus driver knocking down cyclist in front of office gate in town area — Injuries fatal — Trial court and appellate court both finding appellant guilty of rash and negligent driving and convicting him under Ss. 279 and 304-A IPC — Held, High Court rightly dismissed the revision petition filed by appellant — S. 4 PO Act not attracted to case of appellant — Probation of Offenders Act, 1958, S. 4*

The appellant, while driving a bus, knocked down a cyclist in front of the main gate of an office building in the town of Bhiwani, Haryana. The time was around 6:15 p.m. and the victim was just leaving his place of work. After being hit he was dragged by the bus for some distance. The unfortunate young man thus died a horribly painful death. The appellant was tried and convicted under Sections 279 and 304-A IPC; he was sentenced to imprisonment for three months and 1 year, respectively, for the two offences.

The trial court and Sessions Court both noted that there was a greater need for caution when driving in urban areas, which have large numbers of people in limited spaces. They observed that the appellant, ignoring this simple, but critical rule, had driven very carelessly and rashly and caused the death of a man in front of his own office building. The High Court dismissed the appellant's revision petition.

Before the Supreme Court, the benevolent provisions of the Probation of Offenders Act, 1958 were sought to be invoked on behalf of the appellant. Dismissing the appeal,

Held :

When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic. (Para 1)

Courts must bear in mind that when any plea is made based on Section 4 of the PO Act for application to a convicted person under Section 304-A IPC, that road accidents have proliferated to an alarming extent and the toll is galloping day by day in India, and that no solution is in sight nor suggested by any quarter to bring them down. (Para 11)

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver should not take a chance thinking that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles. (Para 13). *Dalbir Singh* v. *State of Haryana*, (2000) 5 SCC 82: AIR 2000 SC 1677: 2000 Cri LJ 2283.

Bench Strength 2. Coram: **K.T. Thomas** and *Doraiswamy Raju*, JJ. [Date of decision: 4-5-2000]

State of Karnataka v. Krishna, (1987) 1 SCC 538: 1987 SCC (Cri) 198; Rattan Singh v. State of Punjab, (1979) 4 SCC 719: 1980 SCC (Cri) 17, relied on

Aitha Chander Rao v. State of A.P., 1981 Supp SCC 17: 1981 SCC (Cri) 637, distinguished

[7752] — Ss. 304-A and 279 — Hit-and-run case — Contents of FIR — Absence of name of witness — Effect — Hit-and-run motor accident case — Name of witness who disclosed number of offending vehicle and name of driver not disclosed in FIR — *Held, it is but natural for a relative under traumatic condition of giving immediate medical aid to victim not to be conscious enough of the presence of any person in vicinity — Courts below were wrong in holding that if name of witness is not mentioned in FIR, it was not possible for him to have witnessed the incident — Reiterated, in a case relating to motor accident compensation claims, claimants are not required to prove the case as it is required to be done in a criminal trial — Evidence Act, 1872, Ss. 14 and 101 — Motor Vehicles Act, 1988, Ss. 166 and 163-A — CrPC, 1973, S. 154* (Paras 8 and 9). *Kusum Lata* v. *Satbir*, (2011) 3 SCC 646.

Bench Strength 2. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 2-3-2011]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Cri) 1002, applied

National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297: 2004 SCC (Cri) 733, followed

Bimla Devi v. Himachal RTC, (2009) 13 SCC 530: (2010) 1 SCC (Cri) 1101, relied on

[7753] — Ss. 304-A and 279 — Hit-and-run cases — Death in road accident — Denial of compensation — Non-mention of registration number of car and name of driver in FIR — *Tribunal denied compensation on ground that involvement of offending vehicle in question not proved because number of vehicle and name of driver were not mentioned in FIR — Held, not noting down number of offending vehicle and instead taking victim for medical aid is normal human conduct (especially of one such as brother of deceased) — High Court was wrong in justifying findings of Tribunal on this account — Evidence Act, 1872, Ss. 8 and 14 — Motor Vehicles Act, 1988, Ss. 163-A, 166, 168 and 173* (Para 5). *Kusum Lata* v. *Satbir*, (2011) 3 SCC 646.

Bench Strength 2. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 2-3-2011]

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Bimla Devi v. Himachal RTC, (2009) 13 SCC 530: (2010) 1 SCC (Cri) 1101, relied on

[7754] — Ss. 304-A and 279 — Rash and negligent driving — *Deceased crossing the road at a distance of 50 feet away from the running car — Accused could have applied brakes — Number of injuries showing impact to be severe — Circumstance that the appellant without stopping the car sped avway shows that he acted rashly and negligently — Having regard to the fact that incident took place about 13 years back sentence reduced from 6 months' RI to 3 months' RI. Chandramohanan Nair* v. *State of Kerala*, 1994 SCC (Cri) 1750.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 16-11-1993]

[7755] — Ss. 304-A and 279 — Rash and negligent driving — Dead body of the deceased child found 2 feet away from the bus and 3 feet away from the pavement on the right side of the road — No mechanical failure — *Appellant-accused admittedly did not err in judging — Spot mahazar revealed that bus was dragged for about 20 to 25 feet after brake was applied — Contents of mahazar not challenged — Post-mortem report and evidence of PW 1 (eyewitness) similar as regards several injuries — PW 1's statement that the bus was driven at a high speed, held, credible — Ascription of slow speed (i.e. 15-20 km per hour) by another witness, held, was rightly rejected*

A bus callously driven by appellant-accused dashed against a girl of 7 years and she got killed. His conviction for rash and negligent driving under Sections 304-A and 279 IPC was upheld by the High Court by modifying the jail sentence and quantum of fine.

Dismissing the appeal,

Held :

The evidence of PW 1 alone was sufficient to hold that the appellant was guilty of the said offences. According to PW 1 the child sustained grievous injuries on head and other parts of the body. In answer to a question put to him in cross-examination, he stated that the bus was being driven at a high speed. The mahazar, was marked as Ext. P-2. The contents of the mahazar were not challenged. The spot mahazar disclosed that there was a break mark for about 20-25 feet on the road. The post-mortem report also proved by PW 12 revealed that the deceased sustained several external injuries. Depressed wound and normal clots were present in right temporal region. The dead body of the girl was found 2 feet away from the bus. It was only 3 feet away from the pavement on the right side of the road. The bus admittedly did not have any mechanical failure. The appellant did not say that there was an error of judgment on his part. Reliance by the appellant on the deposition of one of the prosecution witnesses that the bus was being driven at a speed of 15-20 kilometres per hour, has rightly not been accepted. (Paras 8 to 11). *B. Nagabhushanam* v. *State of Karnataka*, (2008) 5 SCC 730: (2008) 3 SCC (Cri) 61: AIR 2008 SC 2557: (2007) 67 AIC 42(2) (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-5-2008]

[7756] — Ss. 304-A and 279 — Rash and negligent driving — *Res ipsa loquitur* (the thing speaks for itself) — *Held, applicable in criminal cases*

The doctrine of res ipsa loquitur would apply to criminal cases. In *Syad Akbar case*, (1980) 1 SCC 30 the doctrine of res ipsa loquitur was not applied having regard to the fact of a said case and on the finding that it was a case of error of judgment and the accused gave a reasonable, convincing explanation of his conduct. However, the said principle was applied in a case under the Prevention of Corruption Act in *C. Uma Maheswara Rao case*, (2004) 4 SCC 399. (Para 12). *B. Nagabhushanam* v. *State of Karnataka*, (2008) 5 SCC 730: (2008) 3 SCC (Cri) 61: AIR 2008 SC 2557: (2007) 67 AIC 42(2) (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-5-2008]

State of A.P. v. C. Uma Maheswara Rao, (2004) 4 SCC 399: 2004 SCC (Cri) 1276, applied

Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59, distinguished

[7757] — Ss. 304-A and 279 — Rash and negligent driving — Sentence of imprisonment — Rationale of punishment — *Case law emphasising deterrent effect of punishment on lax and inattentive drivers, relied upon — A seven years old child was killed due to rash and negligent driving — Simple imprisonment for six months plus one month and fine of Rs 1000 plus Rs 500, held, proper*

Six months' simple imprisonment and a direction to the appellant to pay a fine of Rs 1000 for commission of the offence punishable under Section 304-A IPC and simple imprisonment for one month and to pay a fine of Rs 500 for the offence punishable under Section 279 IPC cannot be said to be shocking. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. The driver must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. (Paras 14 and 15). *B. Nagabhushanam* v. *State of Karnataka*, (2008) 5 SCC 730: (2008) 3 SCC (Cri) 61: AIR 2008 SC 2557: (2007) 67 AIC 42(2) (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-5-2008]

Dalbir Singh v. State of Haryana, (2000) 5 SCC 82: 2004 SCC (Cri) 1208; Ratan Singh v. State of Punjab, (1979) 4 SCC 719: 1980 SCC (Cri) 17, relied on

[7758] — Ss. 304-A and 279 — Rash and negligent driving — Sufficiency of proof

The driver of a bus was prosecuted under Ss. 304-A and 279, IPC for carrying on the roof of his bus some corrugated iron sheets which fell owing to jolting of the bus on a kutcha road resulting in injuries to some persons and death of one.

Held :

Although the accused was said to have been carrying corrugated iron sheets on the roof of his bus, no attempt was made by the prosecution to find out if at all any corrugated iron sheets were being carried by the accused nor did the prosecution care to find out who the owner of the bus was and who had loaded the iron sheets. Unless there was proof that the iron sheets were put by the accused in a negligent manner or that he did not tie them properly, it is difficult to sustain his conviction under S. 304-A of the Indian Penal Code.

The accused could not also be convicted for rash driving under S. 279 of the Indian Penal Code because there was hardly any evidence worth the name from which it could be inferred that the speed of the bus was such that any iron sheets even if it be assumed that they were loaded on the roof of the bus fell down because of driving at a high speed. *Baijnath Singh* v. *State of Bihar*, (1972) 2 SCC 264: 1972 SCC (Cri) 667: AIR 1972 SC 1485: 1972 Cri LJ 919: (1972) 9 ACC 275.

Bench Strength **2**. Coram: **A.N. Grover** and *M.H. Beg*, JJ. [Date of decision: 5-4-1972]

[7759] — S. 304-A or S. 304 Pt. II — Rash and negligent act — Appellant, bus driver running over a boy aged 10 years crossing the road along with other school children in a queue — *Appellant ignoring passengers' and pedestrians' cries cautioning him to stop, drove the bus at reckless speed resulting in death of the boy — Trial court* *and High Court holding appellant guilty of culpable homicide not amounting to murder punishable under S. 304 Pt. II on the basis that the accused acted with the knowledge that it was likely to cause death — Sustainability of — Held, S. 304-A speaks of causing death by negligence — It applies to rash and negligent acts and does not apply to cases where death has been voluntarily caused — Obviously it does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death — It only applies to cases in which without any such intention or knowledge death is caused by what is described as a rash and negligent act — Hence, appropriate conviction in the present case would be under S. 304-A IPC and not S. 304 Pt. II IPC*

A boy aged 10 years while he was a student of 4th standard in a nearby school, was run over in the middle of the road by a bus driven by the appellant. The investigation by the police revealed that there was evidence to the effect that even the passengers in the bus were alarmed at the enormous speed at which it was being driven and had cautioned the driver to stop, even crying, as they had seen the school children crossing the road in a queue. The investigation also revealed that even the children crossing the road had raised both hands for stopping the vehicle. The passengers and pedestrians were of the view that the bus was being driven at a high speed and that they had cried aloud to stop the bus. It was, in spite of all these, that the bus ran over the said student on his head and the bus could be stopped only 15 to 20 feet ahead of the spot of occurrence.

In the light of this evidence, the investigating officer felt that there was real intention on the part of the appellant driver of the bus to cause the death of persons to whom harm may be caused by reason of hitting the bus and he was charged with offence punishable under Section 302 IPC. The court below found that no intention had been proved in the case. But, at the same time, the accused acted with the knowledge that it was likely to cause death. So, the act committed by the appellant was culpable homicide not amounting to murder punishable under Section 304 Part II IPC. Convicting him for the said offence, he was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs 15,000 with a default sentence of imprisonment for three years. This was assailed in appeal.

The High Court did not find any substance in the plea of the appellant that the case was covered under Section 304-A IPC. It accepted the stand of the respondent State that conviction was to be for culpable homicide. The appellant was before the Supreme Court thereagainst by special leave.

Allowing the appeal,

Held :

Section 304-A speaks of causing death by negligence. This section applies to rash and negligent acts and does not apply to cases where death has been voluntarily caused. This section obviously does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death. It only applies to cases in which without any such intention or knowledge death is caused by what is described as a rash and negligent act. (Para 5)

When the factual scenario of the present case is analysed, it is crystal clear that the appropriate conviction would be under Section 304-A IPC and not Section 304 Part II IPC. Conviction is accordingly altered. The maximum sentence which can be imposed for offence punishable under Section 304-A is two years or fine or with both. The custodial sentence, therefore, is reduced to the maximum i.e. two years. (Para 8)

[The Court agreed on the inadequacy of sentence it could award, considering the increasing number of vehicular accidents resulting in death of large number of innocent persons. It is for the legislature to provide for an appropriate sentence. But the statute presently provides for a maximum sentence of two years.] (Para 9). *Prabhakaran* v. *State of Kerala*, (2007) 14 SCC 269: AIR 2007 SC 2376: (2007) 3 KLT 400: (2007) 56 AIC 258 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 21-6-2007]

Andrews v. Director of Public Prosecutions, 1937 AC 576: (1937) 2 All ER 552; Rathnashalvan v. State of Karnataka, (2007) 3 SCC 474, followed

[7760] — Ss. 304-A and 337 — Sentence — Heavy sentence imposed by trial court on ground that appellant was found to have been drunk — *Conclusion of doctor who examined accused based merely on the facts that appellant's breath was smelling alcohol, that his gait was unsteady that his speech was incoherent and that his pupils were dilated — Urine and blood reports not brought on record — Appellant could not be held to have been drunk at the time of accident — Sentence of 18 months' RI and fine of Rs 1000 reduced to imprisonment already undergone. Bachubhai Hassanalli Karyani* v. *State of Maharashtra*, (1971) 3 SCC 930: 1972 SCC (Cri) 178: 1971 ACJ 116.

Bench Strength **3**. Coram: **S.M. Sikri**, *V. Bhargava* and *I.D. Dua*, JJ. [Date of decision: 18-12-1970]

[7761] — Ss. 304-A, 337 and 338 — Criterion for deciding whether driving was rash and negligent — Speed not the sole criterion

The main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed but the width of the road, the density of the traffic, and the attempt as in the case, to overtake the other vehicles resulting in going to the wrong side of the road and being responsible for the accident. Even if the accident took place in the twinkling of an eye it is not difficult for an eyewitness to notice a car overtaking other vehicles and going to the wrong side of the road and hitting a vehicle travelling on that side of the road. *Shakila Khader* v. *Nausheer Cama*, (1975) 4 SCC 122: 1975 SCC (Cri) 379: AIR 1975 SC 1324: 1975 Cri LJ 1105.

Bench Strength **2**. Coram: **A. Alagiriswami** and *N.L. Untwalia*, JJ. [Date of decision: 10-3-1975]

[7762] — Ss. 304-A, 337 and 338 — Meaning of culpable negligence for the purpose of the sections — *Collision between bus and goods train at level crossing — Culpability of bus driver in the circumstances not found*

Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case.

In a case of accident on a railway level crossing where the gate is open and there is no train scheduled to pass at the time, the driver would be justified in driving his vehicle through the level crossing. Passenger trains have a time schedule and if a train is expected to come at about the time the appellant reached the level crossing, a regular driver of motor vehicles on that route may, perhaps, be found negligent in crossing the railway track, if by any mischance, the gate was open. But in the case where a goods train not scheduled to pass the level crossing, comes just about the time the bus reached the spot and an accident takes place, the appellant cannot be held guilty of criminal negligence because he may not have known that a goods train would be coming at that moment. In such circumstances the appellant will not be guilty merely because he did not stop when the road signal wanted him to stop. Such a case will be a case of unavoidable accident because of the negligence of the gateman in keeping the gate open and inviting the vehicles to pass. *S.N. Hussain* v. *State of A.P.*, (1972) 3 SCC 18: 1972 SCC (Cri) 254: AIR 1972 SC 685: 1972 Cri LJ 496.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar**, JJ. [Date of decision: 5-1-1972]

[7763] — Ss. 304-A/336 and 201 — Offences under — Sentence — Rigorous imprisonment for one year and three months — Adequacy of — *One L, head of the family, had allegedly taken illegal electric connection from a tubewell — Death of two ladies due to falling of electric wire on them — Allegation against appellants that they removed the electric wire and poles from the place of occurrence with a view to destroy the evidence against L — Out of four appellants, two were brothers of L, third was son of L and fourth was residing with family of L — On such facts, held, sentence of one year and three months imposed on appellants was not justified — Since occurrence took place about 14 or 15 years back and the appellants in custody for the past 8½ months, sentence reduced to period already undergone. Birendra Sharma* v. *State of Bihar*, (2005) 10 SCC 460: 2005 SCC (Cri) 1585.

Bench Strength **2**. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 4-3-2005]

(7) Other situations

[7764] — S. 304-A — Scope — Charge for negligently and rashly manufacturing glucose solution in normal saline causing death — *Accused-appellant giving batch number to all the lots manufactured on same day and using a chemical component from source unknown — Questions to be determined by the court — Evidence disclosing prevailing practice of giving single batch number to several lots — Analyst's duty to test the materials before issuing for injection — Total dereliction of duty by analysts — Non-compliance of drug rules does not make appellant's act alone causa causans of the deaths*

In a prosecution for an offence under S. 304-A of IPC, the court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act and that act was the proximate and efficient cause of the death without intervention of another's negligence. The mere fact that an accused contravenes certain rules or regulations in doing of an act does not establish an offence under S. 304-A, IPC.

The act causing deaths must be the causa causans; it is not enough that it may have been the causa sine qua non. The court has to determine whether the act of the accused is the causa causans or there has been a cause intervening which has broken the chain of causation so as to make the act of the accused, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. The fact that twelve lives have been lost, however shocking and regrettable it may be, ought not to allow the mind to be boggled while appreciating the evidence. *Ambalal D. Bhatt* v. *State of Gujarat*, (1972) 3 SCC 525: 1972 SCC (Cri) 618: AIR 1972 SC 1150: 1972 Cri LJ 727.

Bench Strength 3. Coram: *J.M. Shelat*, **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 7-3-1972]

Emperor v. Omkar Rampratap, (1902) 4 Bom LR 679, approved

[7765] — S. 304-A — Drunkenness — *Cannot be said to be conclusively proved unless urine or blood test carried out — Mere smelling of alcohol, unsteady gait, dilation of pupils and incoherence in speech not enough. Bachubhai Hassanalli Karyani* v. *State of Maharashtra*, (1971) 3 SCC 930: 1972 SCC (Cri) 178: 1971 ACJ 116.

Bench Strength 3. Coram: **S.M. Sikri**, *V. Bhargava* and *I.D. Dua*, JJ. [Date of decision: 18-12-1970]

[7766] — S. 304-A — Fixing live electric wire across passage to latrine in order to prevent ingress of trespassers — *No warning that wire was live — Deceased, a trespasser, getting shock and dying soon after — Accused held guilty of offence under S. 304-A*

Other Situations

In order to prevent the ingress of persons like the deceased into his latrine by making such ingress dangerous the accused fixed up a copper wire across the passage leading up to his latrine. This wire was naked and uninsulated and carried current from the electrical wiring of his house to which it was connected. There was no warning that the wire was live. The deceased managed to pass into the latrine without contacting the wire but that as she came out her hand happened to touch it and she got a shock as a result of which she died soon after.

Held :

A trespasser is not an outlaw, a *caput lupinem*. The mere fact that the person entering land is a trespasser does not entitle the owner or occupier to inflict on him personal injury by direct violence and the same principle would govern the infliction of injury by indirectly doing something on the land the effect of which he must know was likely to cause serious injury to the trespasser. Thus in England it has been held that one who sets spring-guns to shoot at trespasser is guilty of a tort and that the person injured is entitled to recover. The laying of such a trap, and there is little difference between the spring-gun which was the trap with which the English Courts had to deal and the naked live wire in the present case, is in truth "an arrangement to shoot a man without personally firing a shot". It is, no doubt, true that the trespasser enters the property at his own risk and the occupier owes no duty to take any reasonable care for his protection, but at the same time the occupier is not entitled to do wilfully acts such as set a trap or set a naked live wire with the deliberate intention of causing harm to trespasser or in reckless disregard of the presence of the trespassers. The voltage of the current fed into the wire precludes any contention that it was merely a reasonable precaution for the protection of private property. There is no force in the contention that the deceased was a trespasser and that there was no duty owed by an occupier like the accused towards the trespasser and therefore the latter would have had no cause of action for damages for the injury inflicted and that if the act of the accused was not a tort, it could not also be a crime. *Cherubin Gregory* v. *State of Bihar*, AIR 1964 SC 205: (1964) 4 SCR 199: (1964) 1 Cri LJ 138, 139: 1965 MLJ (Cri) 236.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and *J.C. Shah* and **N. Rajagopala Ayyangar**, JJ. [Date of decision: 31-7-1963]

[7767] — S. 304-A — Negligence — Probabilities and broader consideration — Collision of trains — Prosecution of Stationmaster for negligence — *Crucial issue not to be determined on a mere balance of oral evidence — Correct approach is to determine the crucial issues on the broader considerations and clear probabilities — Case under S. 101, Railways Act, 1890*

In the case, where the Stationmaster was being prosecuted under S. 101 of Indian Railways Act in connection with a head-on collision the main question for determination was whether the Stationmaster was negligent and failed to observe the rules, by getting the signals on the down side lowered for reception of the down train without getting the points on the down side reset from the inner loop line to the main line.

The correct approach in a matter of this kind was to determine the crucial issue not on a mere balance of oral evidence but on broader considerations and probabilities.

Assuming that in some unexplained way the levers on the down side were found to have been lowered at the very time of the collision, the actual physical act of lowering is not done by the Stationmaster, but is done by the signalman who has been acquitted. There is absolutely no indication in the evidence that the signalman had by then received instructions, from the Stationmaster to lower the down side signals or had received the necessary keys from him to enable him to operate the down side signals. There is, therefore, no reason to attribute the negligence to the appellant Stationmaster and not to somebody else such as the pointsman. *Awadh Behari Sharma* v. *State of M.P.*, AIR 1956 SC 738: 1956 Cri LJ 1372.

Bench Strength 2. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 10-5-1956]

[7768] — S. 304-A — Negligence of teachers to take due care of students — *Teachers entrusted by the school for escorting minor students to a picnic organised by the school at a place near a river — Due to negligence of the teachers, some of the students while playing near the river falling into a dibber and dying due to drowning — Conviction of the teachers under S. 304-A upheld*

While the parent owes his child a duty of care in relation to the child's physical security, a teacher in a school is expected to show such care towards a child under his charge as would be exercised by a reasonably careful parent. Duty of care varies from situation to situation — whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the playfield. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to a playground near a river for fun and a swim, the degree of care required stands at a much higher degree and no deviation therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for a swim by reason of popular sayings will not be a sufficient compliance. As a matter of fact the degree of care required to be taken, especially against the minor children, stands at a much higher level than adults: children need much stricter care. (Paras 15 and 16)

Negligence is an independent tort and has its own strict elements especially in the matter of children — the liability is thus absolute vis-à-vis the children. The school authorities in the contextual facts attributed negligence to the two teachers who stand convicted under Section 304-A of the Indian Penal Code. (Para 17). *M.S. Grewal* v. *Deep Chand Sood*, (2001) 8 SCC 151: 2001 SCC (Cri) 1426: AIR 2001 SC 3660.

Bench Strength 2. Coram: *A.P. Misra* and **U.C. Banerjee**, JJ. [Date of decision: 24-8-2001]

Prince v. Gregory, (1959) 1 WLR 177: (1959) 1 All ER 133 (CA); Ricketts v. Erith Borough Council, (1943) 2 All ER 629: 113 LJKB 269: 169 LT 396, relied on

[7769] — Ss. 304-A, 299 and 300 — Prescribing poisonous medicines without studying their probable effect is a rash and negligent act

Where the accused who was a registered Homoeopathic medical practitioner, administered 24 drops of mother tincture stramonium and leaf of dhatura to his patient without studying their effects and the patient died of poisoning

Held :

S. 299, IPC does not apply. It cannot be held that the appellant administered the stramonium drops and the dhatura leaf with the knowledge that he was likely by such an act to cause the death of the deceased.

According to the evidence on the record, in no system of medicine except perhaps in the Ayurvedic System, the dhatura leaf is given as cure for guinea worms. It seems that the appellant prescribed the medicine without thoroughly studying what would be the effect of giving 24 drops of stramonium and a leaf of dhatura. It is a rash and negligent act to prescribe poisonous medicines without studying their probable effect.

It is true, that care should be taken before imputing criminal negligence to a professional man acting in the course of his profession, but even taking this care there is no doubt that the appellant was guilty of a rash and negligent act. *Juggankhan* v. *State of M.P.*, AIR 1965 SC 831: (1965) 1 SCR 14: (1965) 1 Cri LJ 763, 765.

Bench Strength 2. Coram: *K. Subba Rao* and **S.M. Sikri**, JJ. [Date of decision: 10-8-1964]

[7770] — Ss. 304-A and 337 — Applicability — Firework factory situate in close proximity to residential quarters — *Prohibited explosives with highly sensitive composition stored in the premises — Owner's employing women who brought young children to the factory — Young children below the age of 18 employed — Explosion in the factory causing death and injuries to persons — Cause of explosion not known — Held, license holders displayed a high degree of negligence and were guilty under the sections*

The appellants, who were licence holders for manufacturing explosive had displayed a high degree of negligence by allowing or causing to be used dangerous and prohibited compositions and substances which must be held to have been the efficient cause of the explosion. They were, therefore, guilty under Ss. 304-A and 337, IPC. *Bhalchandra* v. *State of Maharashtra*, AIR 1968 SC 1319: (1968) 3 SCR 766: 1968 Cri LJ 1501, 1505.

Bench Strength 3. Coram: *M. Hidayatullah, C.J.* and *C.A. Vaidialingam* and **A.N. Grover**, JJ. [Date of decision: 11-4-1968]

(8) Sentence/Fine/Compensation/Other punishment/Relief to victim

[7771] — S. 304-A — Accidental death of a family man — Accused being responsible for the accident convicted and already in jail for four and a half months — *In the circumstances of the case sentence of imprisonment reduced to that already undergone and instead fine of Rs 2000 enhanced to Rs 10,000 to be paid to the family members of the deceased. Sukhdev Singh* v. *State of Punjab*, (1982) 2 SCC 439: 1982 SCC (Cri) 467.

Bench Strength **3**. Coram: *P.N. Bhagwati, E.S. Venkataramiah* and *A. Varadarajan*, JJ. [Date of decision: 18-1-1982]

[7772] — S. 304-A — Compensation — Accident owing to rash driving of bus — Acquittal in criminal case will not defeat the claim for damages — *Requirement of culpable rashness under S. 304-A, IPC is more drastic than negligence sufficient to create liability under tort law. N.K.V. Bros. (P) Ltd.* v. *M. Karumai Ammal*, (1980) 3 SCC 457: 1980 SCC (Cri) 774: AIR 1980 SC 1354: (1980) 41 FLR 152.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and *D.A. Desai*, JJ. [Date of decision: 21-3-1980]

[7773] — S. 304-A — Conviction under confirmed but sentence of imprisonment reduced and fine enhanced — *Fine directed to be paid over to the deceased's widow as compensation. Nand Ballabh Pant* v. *State (Union Territory of Delhi)*, (1976) 4 SCC 512: 1977 SCC (Cri) 9: AIR 1977 SC 892: 1977 Cri LJ 549.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *V.R. Krishna Iyer* and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 13-9-1976]

[7774] — S. 304-A — Death caused by car accident — Rash or negligent — Distinction explained — Sentence — Discretion of Court — Whether fine enough — *Facts and circumstances. Balchandra Waman Pathe* v. *State of Maharashtra*, 1968 Mah LJ 423: 1968 MPLJ 371.

Bench Strength **3**. Coram: *S.M. Sikri, J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 20-11-1967]

[7775] — S. 304-A — Plea-bargaining — *Enhancement or imposition of sentence in revision or appeal after the accused had plea-bargained for a lighter sentence or mere fine in the trial court, held, would not be reasonable, just or fair and thereby offend Art. 21 — Proper course in such instances is to order retrial giving opportunity to the accused to defend himself — Constitution of India, Art. 21 — CrPC, 1973, Ss. 229, 241 and 368, 399 & 401. Thippaswamy* v. *State of Karnataka*, (1983) 1 SCC 194: 1983 SCC (Cri) 160: AIR 1983 SC 747: 1983 Cri LJ 1271.

Bench Strength **3**. Coram: *P.N. Bhagwati, R.S. Pathak* and *A.N. Sen*, JJ. [Date of decision: 25-11-1982]

[7776] — S. 304-A — Probation — *On the peculiar facts and circumstances, held, the appellant found guilty under S. 304-A should be released on probation on executing bond for good behaviour. Aitha Chander Rao* v. *State of A.P.*, 1981 Supp SCC 17: 1981 SCC (Cri) 637.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A. Varadarajan*, JJ. [Date of decision: 8-1-1981]

[7777] — S. 304-A — Sentence — Delay in final disposal — *Trial finally disposed of by Supreme Court 18 years after the date of occurrence — Sentence of 6 months' imprisonment and Rs 250 fine for offence under S. 304-A, IPC — Inadvisable to send the accused to imprisonment after such delay — Sentence converted into fine of Rs 2000 payable to parents/relatives of the girl (the victim) — Constitution of India, Art. 136. Parkash Chandra Agnihotri* v. *State of M.P.*, 1990 Supp SCC 764: 1991 SCC (Cri) 146.

Bench Strength **2**. Coram: *Kuldip Singh* and *M. Fathima Beevi*, JJ. [Date of decision: 24-7-1990]

[7778] — S. 304-A — Sentence — Interference with by High Court — *Head-on collision of lorry driven by accused-respondent with a car resulting in death of four occupants of the car — High Court in revision awarding a lesser sentence while maintaining the conviction — Trial Magistrate and appellate court finding rash and negligent driving by accused — High Court taking the view that negligence was only to the extent that accused did not make any effort to avoid the collision — High Court's view not based on evidence — Having regard to serious nature of the accident, held, High Court's interference with the sentence was not warranted*

A car had a head-on collision with a mini lorry driven by the accused-respondent. As a result of the collision, the right front tyre of the car burst and the driver of the car lost control of the vehicle and it dashed against a nearby tree. The driver and three other occupants of the car died in the accident. The respondent raised a plea before the trial Magistrate as well as before the appellate court that the accident might have occurred due to the bursting of the right front tyre of the car as a result of which the car went to the right side of the road and dashed against the lorry. But this plea was not accepted. A suggestion to this effect was put to the Motor Vehicles

Inspector who had examined the vehicle after the accident. However, the Inspector also declined the suggestion. The possibility of the car having gone to the extreme right side stood also ruled out by the evidence. The trial Magistrate and the appellate court found the respondent guilty of offences under Sections 279, 337, 338 and 304-A IPC. However, on revision a Single Judge of the High Court, while confirming the conviction of the respondent, modified the sentence taking the view that the collision had taken place when due to bursting of the front tyre, the car went to the right side of the road. The Single Judge observed:

"While to this extent the petitioner could be said to be innocent and while that aspect of innocence could certainly influence the decision relating to sentence, I am of the opinion that the accident having taken place at 7.00 a.m., with no other vehicles being on the road and when it is as wide a road as of 40 feet width totally, the negligence on the part of the petitioner lies in the fact that he did not make any efforts to avoid the collision."

For this reason the Single Judge reduced the sentence for the offence under Section 304-A to payment of a fine of Rs 5000 and in default thereof simple imprisonment for 3 months. The Single Judge imposed a sentence for the offence under Section 337 IPC with a fine of Rs 500, in default to simple imprisonment for 15 days; and for the offence under Section 338 IPC with a fine of Rs 550, in default to simple imprisonment for 15 days. No separate sentence was awarded for the offence punishable under Section 279 IPC. Allowing the State's appeal,

Held:

The observation made by the revisional court is not based on the evidence on record. Having regard to the serious nature of the accident, which resulted in the death of four persons, the learned Single Judge should not have interfered with the sentence imposed by the courts below. It may create and set an unhealthy precedent and send wrong signals to the subordinate courts which have to deal with several such accident cases. If the accused are found guilty of rash and negligent driving, courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the courts should have a deterrent effect on potential wrongdoers and it should commensurate with the seriousness of the offence. Of course, the courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum of sentence, but the discretion shall be exercised with due regard to larger interest of the society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system. (Paras 5 and 6)

In the facts and circumstances of the case, interference with the judgment of the Single Judge of the High Court is called for and the respondent is liable to undergo the sentence imposed by the trial Magistrate and affirmed by the appellate court. Consequently, it is directed that for the offence punishable under Section 304-A, the respondent be taken into custody to undergo simple imprisonment for six months. As regards offences under Sections 279, 337 and 338 IPC, no separate sentence has been awarded by the trial Magistrate. The direction of the trial Magistrate is maintained. (Para 7). *State of Karnataka* v. *Sharanappa Basanagouda Aregoudar*, (2002) 3 SCC 738: 2002 SCC (Cri) 704: AIR 2002 SC 1529.

Bench Strength **2**. Coram: *R.P. Sethi* and **K.G. Balakrishnan**, JJ. [Date of decision: 21-3-2002]

[7779] — S. 304-A — Sentence — Mitigating circumstances — *Accident between truck and autorickshaw killing a child — Both drivers to blame for accident — Proceedings against driver of autorickshaw going on for 8 years — Sentence reduced to 6 months. Jagdish Chander* v. *State of Delhi*, (1973) 2 SCC 203: 1973 SCC (Cri) 770: AIR 1973 SC 2127: 1973 Cri LJ 1393: (1974) 1 SCR 204.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 3-5-1973]

[7780] — S. 304-A — Sentence — Rash and negligent driving resulting in death of a boy — *Occurrence taking place about 15 years ago — Appellant remaining on bail for the last more than 8 years — Held, in the circumstances, the appellant directed to be released under S. 360 CrPC on probation of good conduct, be of good behaviour and keep peace for a period of one year — Probation of Offenders Act, 1958, S. 4. A.P. Raju* v. *State of Orissa*, 1995 Supp (2) SCC 385: 1995 SCC (Cri) 675.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 16-2-1994]

[7781] — S. 304-A — Sentence — Reduction of, on offer to compensate heirs of deceased, and serious ailment of accused plus fact that incident took place 18 years back — *Imposition of sentence of 1½ years — Incident took place 18 years back — Appellant suffering from serious ailment — He offering to pay Rs 15,000 as compensation to the heirs of the deceased — In such circumstances,* *held, it would be just and proper to reduce the sentence of appellant to six months — Constitution of India, Art. 136* (Paras 2 and 4). *Munni Kachhi* v. *State of M.P.*, (2005) 13 SCC 386: (2006) 2 SCC (Cri) 330.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.N. Srikrishna*, JJ. [Date of decision: 22-7-2005]

[7782] — S. 304-A — Sentence of imprisonment imposed for offence under, set aside and instead a substantial amount of fine imposed by High Court having regard to various mitigating circumstances — *Held, High Court should consider the matter afresh as regards sentence alone in the light of decisions of Supreme Court in* Krishna case, *(1987) 1 SCC 538 and* Sharanappa case, *(2002) 3 SCC 738 and then pass appropriate orders, taking into consideration facts and circumstances of the case. State of Karnataka* v. *K. Rajeeva Shetty*, (2004) 13 SCC 401.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *B.N. Srikrishna*, JJ. [Date of decision: 6-12-2004]

State of Karnataka v. Krishna, (1987) 1 SCC 538: 1987 SCC (Cri) 198; State of Karnataka v. Sharanappa Basanagouda Aregoudar, (2002) 3 SCC 738: 2002 SCC (Cri) 704, relied on

[7783] — S. 304-A — Sentence of imprisonment is not a must — *Court has discretion to punish either with imprisonment or with fine or with both*

The High Court appears to have been influenced by the fact that a human life had been lost. If that is so it had clearly lost sight of the fact that causing death is a necessary ingredient of an offence under S. 304-A, Indian Penal Code. Yet the legislature in its wisdom has left it to the discretion of the Courts to punish an offence under that section either with imprisonment or with fine or both. From that it is clear that the legislature did not consider that for an offence under S. 304, Indian Penal Code, a term of imprisonment is a must. On the other hand it did visualise the possibility of an offence falling under that provision being penalised by mere fine. *Bhalachandra Waman Pathe* v. *State of Maharashtra*, 1968 ACJ 38: 1968 Mah LJ 423: 1968 MPLJ 371.

Bench Strength **3**. Coram: *S.M. Sikri*, *J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 20-11-1967]

[7784] — Ss. 304-A and 279 — Applicability of Probation of Offenders Act, 1958 — Causing death by rash and negligent driving — Provisions of S. 4 PO Act not attracted — *Held, in view of galloping rate of road accidents in India and its devastating consequences, lenience cannot be shown and the benevolent provisions of S. 4 PO Act cannot be treated as applicable to the offence under S. 304-A IPC — Further, held, when deciding quantum of sentence deterrence ought to be the prime consideration — Every driver should fear that, if convicted, courts will not treat him leniently — Appellant bus driver knocking down cyclist in front of office gate in town area — Injuries fatal — Trial court and appellate court both finding appellant guilty of rash and negligent driving and convicting him under Ss. 279 and 304-A IPC — Held, High Court rightly dismissed the revision petition filed by appellant — S. 4 PO Act not attracted to case of appellant — Probation of Offenders Act, 1958, S. 4*

The appellant, while driving a bus, knocked down a cyclist in front of the main gate of an office building in the town of Bhiwani, Haryana. The time was around 6:15 p.m. and the victim was just leaving his place of work. After being hit he was dragged by the bus for some distance. The unfortunate young man thus died a horribly painful death. The appellant was tried and convicted under Sections 279 and 304-A IPC; he was sentenced to imprisonment for three months and 1 year, respectively, for the two offences.

The trial court and Sessions Court both noted that there was a greater need for caution when driving in urban areas, which have large numbers of people in limited spaces. They observed that the appellant, ignoring this simple, but critical rule, had driven very carelessly and rashly and caused the death of a man in front of his own office building. The High Court dismissed the appellant's revision petition.

Before the Supreme Court, the benevolent provisions of the Probation of Offenders Act, 1958 were sought to be invoked on behalf of the appellant. Dismissing the appeal,

Held :

When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic. (Para 1)

Courts must bear in mind that when any plea is made based on Section 4 of the PO Act for application to a convicted person under Section 304-A IPC, that road accidents have proliferated to an alarming extent and the toll is galloping day by day in India, and that no solution is in sight nor suggested by any quarter to bring them down. (Para 11)

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver should not take a chance thinking that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles. (Para 13). *Dalbir Singh* v. *State of Haryana*, (2000) 5 SCC 82: AIR 2000 SC 1677: 2000 Cri LJ 2283.

Bench Strength 2. Coram: **K.T. Thomas** and *Doraiswamy Raju*, JJ. [Date of decision: 4-5-2000]

State of Karnataka v. Krishna, (1987) 1 SCC 538: 1987 SCC (Cri) 198; Rattan Singh v. State of Punjab, (1979) 4 SCC 719: 1980 SCC (Cri) 17, relied on

Aitha Chander Rao v. State of A.P., 1981 Supp SCC 17: 1981 SCC (Cri) 637, distinguished

[7785] — Ss. 304-A and 279 — Rash and negligent driving — Sentence of imprisonment — Rationale of punishment — *Case law emphasising deterrent effect of punishment on lax and inattentive drivers, relied upon — A seven years old child was killed due to rash and negligent driving — Simple imprisonment for six months plus one month and fine of Rs 1000 plus Rs 500, held, proper*

Six months' simple imprisonment and a direction to the appellant to pay a fine of Rs 1000 for commission of the offence punishable under Section 304-A IPC and simple imprisonment for one month and to pay a fine of Rs 500 for the offence punishable under Section 279 IPC cannot be said to be shocking. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. The driver must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. (Paras 14 and 15). *B. Nagabhushanam* v. *State of Karnataka*, (2008) 5 SCC 730: (2008) 3 SCC (Cri) 61: AIR 2008 SC 2557: (2007) 67 AIC 42(2) (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-5-2008]

Dalbir Singh v. State of Haryana, (2000) 5 SCC 82: 2004 SCC (Cri) 1208; Ratan Singh v. State of Punjab, (1979) 4 SCC 719: 1980 SCC (Cri) 17, relied on

[7786] — Ss. 304-A and 279 — Sentence — Interference when justified — Supervening circumstances — *Held, normally the Supreme Court would not interfere with the sentence imposed — But, due to certain supervening circumstances (calamity which had overtaken accused-appellant and his family), Supreme Court justified in doing so — Appellant sentenced to one year's imprisonment in respect of offences under Ss. 304-A and 279 IPC — Subsequently, his family becoming victims of disaster of tsunami tidal waves — His wife and one son not traceable nor their dead bodies recovered till date — Appellant's eldest son V living separately since his marriage and keeping no relations with appellant and his family — X was the only surviving dependent son of the appellant — He left in complete destitution having neither parents nor brother nor any source of livelihood and shelter — In view of the above, held, it would not be proper to direct the appellant to serve the sentence for further period — Sentence already undergone (about 5 months) treated as substantive punishment — However, fine of Rs 5000 imposed with default stipulation — Constitution of India, Art. 136* (Paras 3 and 2). *T. Gurumurthy* v. *State*, (2005) 10 SCC 208: 2005 SCC (Cri) 1506.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 11-3-2005]

[7787] — Ss. 304-A and 279 — Sentence — Reduction of — Leniency for a convict under (offence not being compoundable under S. 320 CrPC) — Factual considerations and extent of leniency — Appellant-accused willing to pay mother of deceased rupees one lakh (mother having no grievance against accused) — *Appellant not under the influence of any drug or intoxicant while driving — High Court awarding sentence of one year simple imprisonment and fine of Rs 5000 for offence under S. 279 IPC and simple imprisonment for six months and a fine of Rs 5000 for the offence under S. 304-A IPC — On facts, held, lenient view can be taken — Sentence of imprisonment reduced to period already undergone with the condition of payment of rupees one lakh to the mother of the deceased failing which S. 431 CrPC would be attracted — CrPC, 1973, Ss. 357, 320, 431 and 428*

The appellant dashed against a Kinetic Honda scooter, being driven by the deceased, who fell down and was run over by the left wheel of the tanker. The deceased succumbed to the injuries on the way to the hospital. Both the courts below have found the appellant guilty of the offence under Sections 279 and 304-A IPC. The trial court sentenced him to undergo simple imprisonment for one year and to pay fine of Rs 5000 for both the offences and in default to undergo simple imprisonment for two months. On appeal, the impugned order of High Court maintained the conviction and awarded simple imprisonment for one year and a fine of Rs 5000 for the offence under Section 279 IPC and simple imprisonment for six months and a fine of Rs 5000 for the offence under Section 304-A IPC.

Partly allowing the appeal,

Held :

The prayer for compounding of offences was rejected as offences punishable under Sections 279 and 304-A IPC are not compoundable under Section 320 CrPC. Having regard to the fact that the mother of the victim has no grievance against the appellant and has prayed for some compensation, a lenient view can be taken in the matter and the sentence of imprisonment can be reduced. Ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone but in addition thereto, the appellant who was willing to pay an amount of Rs 1,00,000 to the mother of the deceased by way of compensation should be directed to pay the amount. Accordingly, the conviction of the appellant under Sections 279 and 304-A IPC is maintained. However, the substantive sentence of imprisonment is reduced to the period already undergone. If the appellant fails to pay the said amount within the stipulated time of three months, the same shall be recovered as per the procedure prescribed under Section 431 CrPC and be paid to the mother of the deceased. (Paras 7, 17 and 18)

True that in the instant case the appellant has been found to be guilty of offences punishable under Sections 279 and 304-A IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of a precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simpliciter and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment. (Para 16). *Manish Jalan* v. *State of Karnataka*, (2008) 8 SCC 225: (2008) 3 SCC (Cri) 456: AIR 2008 SC 3074: (2008) 3 KLT 390: (2008) 68 AIC 124 (SC): 2008 Cri LJ 3941.

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 11-7-2008]

[7788] — Ss. 304-A, 279 and 337 — Sentence — Rash and negligent driving of motor vehicle causing death of one person and injuries to another and failure to secure medical aid to the victims and to make a report of the accident to police — *Sentences of fine of Rs 250 and in default simple imprisonment for one month under S. 304-A, fine of Rs 25 and in default simple imprisonment for one week under S. 279 and fine of Rs 50 and in default simple imprisonment for 25 days under S. 337 besides fine of Rs 10 and in default simple imprisonment for 5 days under Ss. 89(a)/112 as also under Ss. 89(b)/112 of Motor Vehicles Act imposed by trial court — Held, sentences unconscionably lenient — High Court gravely erred in refusing to enhance the sentences under S. 377, CrPC — While sentence for the most serious charges under S. 304-A enhanced to 6 months' RI with fine of Rs 1000 and in default 2 months' RI, the remaining sentences left undisturbed by Supreme Court — Motor Vehicles Act, 1939, Ss. 89(a) & (b) and 112. State of Karnataka* v. *Krishna*, (1987) 1 SCC 538: 1987 SCC (Cri) 198: AIR 1987 SC 861: 1987 Cri LJ 776.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 21-1-1987]

[7789] — Ss. 304-A and 337 — Culpable negligence or rashness — *Held, depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering circumstances of the case — "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury — Criminality in such case lies in running the risk of doing such an act with recklessness or indifference as to the consequences — Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted — In the instant case, the revision petitioner-accused was alleged to have driven the lorry in a rash and negligent manner dashing against a tree resulting* *in death of three persons and causing grievous injuries to three others travelling in it — PW 10 (RTO) explicitly stating that the accident was not on account of mechanical failure — Eyewitnesses to the occurrence also stating that the vehicle was being driven at a very high speed and that the road was quite wide and there was no traffic at the time of accident — Hence, conviction under Ss. 304-A and 337 sustainable — Sentence of 6 months' simple imprisonment and fine of Rs 300 affirmed — Motor Vehicles Act, 1988, Ss. 183, 184 and 187* (Paras 2, 6, 7 and 8). *Rathnashalvan* v. *State of Karnataka*, (2007) 3 SCC 474: (2007) 2 SCC (Cri) 84: AIR 2007 SC 1064: 2007 Cri LJ 1451: (2007) 52 AIC 240 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-1-2007]

Nidamarti Nagabhushanam, In re, 7 Mad HCR 119, approved

[7790] — Ss. 304-A and 337 — Sentence — Heavy sentence imposed by trial court on ground that appellant was found to have been drunk — *Conclusion of doctor who examined accused based merely on the facts that appellant's breath was smelling alcohol, that his gait was unsteady that his speech was incoherent and that his pupils were dilated — Urine and blood reports not brought on record — Appellant could not be held to have been drunk at the time of accident — Sentence of 18 months' RI and fine of Rs 1000 reduced to imprisonment already undergone. Bachubhai Hassanalli Karyani* v. *State of Maharashtra*, (1971) 3 SCC 930: 1972 SCC (Cri) 178: 1971 ACJ 116.

Bench Strength 3. Coram: **S.M. Sikri**, *V. Bhargava* and *I.D. Dua*, JJ. [Date of decision: 18-12-1970]

[7791] — Ss. 304-A and 338 — Reduction of sentence to period already undergone — Convictions under with sentences of SI for six and three months imposed, to run concurrently — *On appellant having remained in custody for more than three months, sentence reduced to period already undergone. Uthem Rajanna* v. *State of A.P.*, (2005) 11 SCC 531.

Bench Strength 2. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 5-5-2005]

(9) Effect on civil proceedings for compensation/damages

[7792] — S. 304-A — Compensation — Accident owing to rash driving of bus — *Acquittal in criminal case will not defeat the claim for damages — Requirement of culpable rashness under S. 304-A IPC is more drastic than negligence sufficient to create liability under tort law — Motor Vehicles Act, 1939, Ss. 115, 116, 110-A, 110-B & 110-D. N.K.V. Bros. (P) Ltd.* v. *M. Karumai Ammal*, (1980) 3 SCC 457: 1980 SCC (Cri) 774: AIR 1980 SC 1354: (1980) 41 FLR 152.

Bench Strength 2. Coram: *V.R. Krishna Iyer* and *D.A. Desai*, JJ. [Date of decision: 21-3-1980]

(10) Other issues

[7793] — S. 304-A — Conviction — *Conviction confirmed by High Court under S. 304-A — Observation by High Court that charge should have been under S. 340 — Observation not serious in view of confirmation by High Court — Conviction upheld. Natha Singh* v. *State of J&K*, (1971) 3 SCC 719: 1972 SCC (Cri) 38.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 16-3-1971]

[7794] — S. 304-A — Revision — *Where a bus driver was convicted under S. 304-A in connection with an accident which resulted in the death of one person, held, High Court erred in allowing respondent bus driver's revision petition and upsetting concurrent findings of fact of lower courts without considering evidence on record and without indicating how lower courts were wrong in reaching their conclusions and without giving any reasons as to why the revision was being allowed — CrPC, 1973, S. 397* (Para 4). *State of A.P.* v. *Rajagopala Rao*, (2000) 10 SCC 338.

Bench Strength 2. Coram: *B.N. Kirpal* and *S. Rajendra Babu*, JJ. [Date of decision: 26-2-1999]

[7795] — S. 304-A — Revision — Powers of High Court under S. 401 CrPC — *High Court, without any reference to the evidence on record or findings of the subordinate courts in respect of the evidence, upsetting the concurrent findings of the courts below — Revisional jurisdiction being supervisory in nature, High Court's interference with the concurrent findings of the courts below, without assigning any reason for such an interference, held, was not proper — CrPC, 1973, Ss. 401 and 374. State of A.P.* v. *Pituhuk Sreeinvanasa Rao*, (2000) 9 SCC 537: 2001 SCC (Cri) 642: AIR 2000 SC 3515(2).

Bench Strength 2. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 6-3-2000]

[7796] — Ss. 304-A and 279 — Accused acquitted of offence under S. 89(a) and (b) of Motor Vehicles Act, 1939 but convicted under Ss. 304-A and 279 IPC — *No appeal against acquittal — In appeal against conviction under Ss. 304-A and 279,* *IPC, High Court has no jurisdiction to convict the accused under S. 89(a) and (b) and acquit him of offence under Ss. 304-A and 279 IPC — Motor Vehicles Act, 1939, S. 89(a) and (b) — CrPC, 1973 — Ss. 374 and 386. Gurudeth* v. *State of Kerala*, 1990 Supp SCC 148: 1990 SCC (Cri) 641.

Bench Strength **2**. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 18-7-1988]

— S. 304-A Pt. I *See also* Ss. 300 Exception 4 and 304-A Pt. I

SECTION 304-B — DOWRY DEATH

See also SECTIONS 299-304 — CULPABLE HOMICIDE AND MURDER — 'C.9. Dowry death/Bride burning (S. 304-B)', in Vol. 2

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(1) Generally — Object, Nature, Scope and Applicability

See also '(2) History of S. 304-B and Abuse of dowry laws', below

[7797] — **S. 304-B — Object and philosophy behind enactment of** (Paras 41, 42 and 46). *Ram Badan Sharma* v. *State of Bihar*, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166: AIR 2006 SC 2855: 2006 Cri LJ 4070.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 21-8-2006]

Soni Devrajbhai Babubhai v. State of Gujarat, (1991) 4 SCC 298: 1991 SCC (Cri) 959, relied on

[7798] — S. 304-B — Object behind insertion of S. 304-B IPC and S. 113-B, Evidence Act, restated

Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. (Para 10). *Kunhiabdulla* v. *State of Kerala*, (2004) 4 SCC 13: 2004 SCC (Cri) 907: AIR 2004 SC 1731: (2004) 2 KLT 152.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **Arijit Pasayat**, JJ. [Date of decision: 9-3-2004]

[7799] — S. 304-B — Dowry death — Object behind insertion of S. 304-B IPC and S. 113-B, Evidence Act, 1872 — Restated — *Evidence Act, 1872, S. 113-B* (Para 16). *Tarsem Singh* v. *State of Punjab*, (2008) 16 SCC 155: AIR 2009 SC 1454: (2009) 73 AIC 50 (SC): (2009) 2 ECrN 520 (SC).
Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 12-12-2008]

[7800] — Ss. 304-B and 302 — Bride burning for dowry — Remedy to eliminate the evil of, suggested — *Dowry Prohibition Act, 1961*

Dowry killing is a crime of its own kind where elimination of daughter-in-law becomes immediate necessity if she or her parents are no more able to satiate the greed and avarice of her husband and their family members, to make the boy available once again in the marriage market. Eliminate it and much may stand resolved automatically. Social reformist and legal jurists may evolve a machinery for debarring such a boy from remarriage irrespective of the member of family who committed the crime and in violation penalise the whole family including those who participate in it. That is, social ostracisation is needed to curtail increasing malady of bride burning. (Para 4). *Ashok Kumar* v. *State of Rajasthan*, (1991) 1 SCC 166: 1991 SCC (Cri) 126: AIR 1990 SC 2134: 1990 Cri LJ 2276.
Bench Strength **2**. Coram: *M.M. Punchhi* and **R.M. Sahai**, JJ. [Date of decision: 11-9-1990]

(2) History of S. 304-B and Abuse of dowry laws

See also SECTION 304-B — DOWRY DEATH — '(1) Generally — Object, Nature, Scope and Applicability', above

[7801] — Ss. 304-B, 306 and 498-A — Dowry demand — Plausibility of — Abuse of dowry laws — *Alleged dowry demand raised for first time six years after marriage, and that too involving a trivial amount considering socio-economic status of the parties — Held, such allegation unnatural and improbable — It was a clear-cut case of gross abuse of dowry laws — Dowry Prohibition Act, 1961, Ss. 4 and 3* (Paras 57 to 59). *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of Maharashtra*, (2010) 13 SCC 657.
Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 11-11-2010]

(3) Pre-S. 304-B dowry deaths

[7802] — S. 304-B — Applicability — Offence committed prior to coming into force of S. 304-B — Evidence showing death could be suicide — *Held, S. 304-B not applicable. Lakhjit Singh* v. *State of Punjab*, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235.
Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 31-3-1993]

[7803] — S. 304-B — Inserted by Dowry Prohibition (Amendment) Act, 1986 (43 of 1986) prospectively w.e.f. November 19, 1986 by creating a new substantive offence more stringent than S. 498-A — Where incident occurred prior to that date, held, accused-respondents rightly tried under S. 498-A, as their trial under S. 304-B would be hit by Art. 20(1) — *However, respondents can be tried under any more stringent pre-existing provision if alleged offence can fall thereunder — Constitution of India, Art. 20(1)*

The offence punishable under S. 304-B, known as dowry death, was a new offence created with effect from November 19, 1986 by insertion of the provision in the Indian Penal Code providing for a more stringent offence than S. 498-A. Section 304-B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence. The contention that S. 304-B contains merely a rule of evidence is untenable. The rule of evidence to prove the offence of dowry death is contained in S. 113-B of the Indian Evidence Act. The fact that the Evidence Act was so amended simultaneously with the insertion of S. 304-B in the Penal Code by the same Amendment Act is another pointer in this direction. (Paras 9 and 10)

The death in question in the present case took place when S. 498-A was in operation and the respondents were being tried in the Court of Magistrate of the First Class under that provision. The respondents could not be tried and punished for offence under the new S. 304-B as that had been inserted in IPC subsequent to the commission of the offence attributed to the respondents. Section 304-B cannot be held to have retrospective operation as that would amount to holding that the respondents can be tried and punished for the offence under S. 304-B with the minimum sentence of seven years' imprisonment for an act done by them prior to creation of the new offence of dowry death. This would clearly deny them the protection under Art. 20(1). (Para 9)

However, in case the accusation against the respondents discloses commission of any other more stringent pre-existing offence by the respondents than S. 498-A of the Indian Penal Code, the appellant would be entitled to raise that question and the court will then consider and decide it on that basis. (Para 11). *Soni Devrajbhai Babubhai* v. *State of Gujarat*, (1991) 4 SCC 298: 1991 SCC (Cri) 959: AIR 1991 SC 2173.
Bench Strength **2**. Coram: *L.M. Sharma* and **J.S. Verma**, JJ. [Date of decision: 28-8-1991]

(4) Ss. 304-B, 306 and 498-A IPC and Ss. 113-A/113-B, Evidence Act — Relative scope

See also under S. 306 and S. 498-A, below

[7804] — Ss. 304-B and 306 — Difference in legal position between — *Effect on S. 306 of enactment of S. 113-A, Evidence Act, 1872 in 1983*

There is difference in legal position between Section 304-B and Section 306 IPC which was merely an offence of abetment of suicide earlier. The section remained in the statute-book without any practical use till 1983. But by the introduction of Section 113-A in the Evidence Act the said offence under Section 306 IPC has acquired wider dimensions and has become a serious marriage-related offence. Section 113-A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the court *may presume* having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the court may presume the fact, it is discretionary on the part of the court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the court to act on the presumption, the accused can persuade the court against drawing a presumption adverse to him. But the peculiar situation in respect of an offence under Section 304-B IPC, as discernible from the distinction pointed out above in respect of the offence under Section 306 IPC is this: Under the former the court has a statutory compulsion, merely on the establishment of the two factual positions, namely, (*1*) death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the court is bound to act on it. (Paras 29 and 30). *Shamnsaheb M. Multtani* v. *State of Karnataka*, (2001) 2 SCC 577: 2001 SCC (Cri) 358: AIR 2001 SC 921.

Bench Strength **3**. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 24-1-2001]

[7805] — Ss. 304-B and 306 — Framing of charge — Omission/defect in — When material — *Held, mere omission or defect in framing charge would not disable court from convicting accused for offence which has been found to be proved on basis of evidence on record — In such circumstances, matter would fall within purview of S. 221 CrPC — In instant case of bride committing suicide, there was no failure of justice, when High Court, on close scrutiny of evidence, converted conviction of appellant-accused (husband of deceased) under S. 304-B IPC to one under S. 306 IPC, even though specific charge had not been framed under S. 306 IPC — CrPC, 1973, Ss. 221 and 464(1)* (Paras 22 and 23). *Narwinder Singh* v. *State of Punjab*, (2011) 2 SCC 47.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 5-1-2011]

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, distinguished

[7806] — Ss. 304-B and 306 — Presumptions under Ss. 113-A and 113-B, Evidence Act, 1872 compared — *Burden to prove innocence is more on the accused under S. 113-B than under S. 113-A, which places a far lighter burden on the accused — In S. 113-A, which relates to S. 306 IPC, the court "may presume", "having regard to all the other circumstances of the case", but in S. 113-B, which is relatable to S. 304-B, the court "shall presume" and further there is no reference to the circumstances of the case — Evidence Act, 1872, Ss. 113-A, 113-B and 4* (Para 13). *Anand Kumar* v. *State of M.P.*, (2009) 3 SCC 799: (2009) 2 SCC (Cri) 28: AIR 2009 SC 2155.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 20-2-2009]

[7807] — Ss. 304-B and 306 — Standard of proof under — Contrasted — *Held, the onus on the accused under S. 306 is not as heavy as in the case of a dowry death* (Para 14). *Anand Kumar* v. *State of M.P.*, (2009) 3 SCC 799: (2009) 2 SCC (Cri) 28: AIR 2009 SC 2155.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 20-2-2009]

[7808] — S. 304-B or S. 306 — Applicability of either section — Determining factor — Bride committing suicide — Absence of dowry demands — Effect — *Held, cruelty or harassment sans any dowry demands, which drives bride to commit suicide, attracts offence of "abetment of suicide" under S. 306 and not S. 304-B, which defines offence and punishment for "dowry death"* (Para 21). *Narwinder Singh* v. *State of Punjab*, (2011) 2 SCC 47.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 5-1-2011]

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, distinguished

[7809] — S. 304-B or S. 306 — Bride committing suicide — Appreciation of evidence — Commission of suicide not on account of demands for dowry but due to harassment caused by accused husband — Conversion of conviction to one under S. 306, affirmed — *High Court converting conviction of appellant-accused (husband of deceased) from one under S. 304-B to S. 306 — Sustainability — Held, High Court, upon meticulous scrutiny of entire evidence on record, rightly concluded that there was no evidence to indicate commission of offence under S. 304-B — It also observed that deceased had committed suicide due to harassment meted out to her by appellant husband, but there was no evidence on record to suggest that such harassment or cruelty was made in connection to any dowry demands — Hence, High Court very appropriately converted conviction of appellant under S. 304-B to one under S. 306 — Therefore, no interference warranted* (Paras 14 to 23). *Narwinder Singh* v. *State of Punjab*, (2011) 2 SCC 47.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 5-1-2011]

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, distinguished

[7810] — Ss. 304-B, 306 and 498-A — Death by burning — Deceased committing suicide within 11 months after her marriage with Appellant 1 — No direct evidence — *Appellants not attempting to save the deceased — Trial court acquitting Appellant 1 and his mother, Appellant 2, of all the charges on the grounds that the dying declaration was not recorded in the language in which it was made, there were some minor contradictions in the dying declaration and the report made to the Head Constable, and that there was doubt whether the deceased was in a fit condition to make the dying declaration — Further, the trial court held that the scolding and taunting of the deceased for not preparing proper food or that she was not good-looking was not such a cruelty so as to push her to commit suicide — Where the dying declaration was recorded and signed by the Magistrate, endorsement was made thereon by the doctor that the deceased made the statement in a fit state of mind, and the deceased put a thumb impression on her declaration which was made in Urdu and recorded in English and thereafter explained in Hindi to the deceased, held on facts, the appellants were rightly convicted under Ss. 306 and 498-A by the High Court — Further, High Court rightly held that the continuous taunting or teasing of the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life — CrPC, 1973, Ss. 386 and 378*

PW 1, the Magistrate has certified that he had signed the dying declaration and had taken the endorsement of the doctor on duty that the deceased was in a fit state of mind to make a statement; the deceased had made the dying declaration in question-answer form in Urdu and he had translated the version and recorded the declaration in English. After recording her statement, he explained the statement in Hindi to the deceased who admitted its correctness. Thereafter, he took the thumb impression of the deceased on her declaration. In cross-examination, he has stated that he could read and speak in Hindi; the deceased had made statement in Urdu which he could understand as Urdu and Hindi languages are almost similar and in Hyderabad, Urdu and Hindi languages are spoken in the same way, there being not much difference. PW 11, the doctor, corroborated the statement of PW 1 to the effect that the deceased was in a fit mental condition to make statement and that he was present when the statement was recorded by the Magistrate. (Para 5)

Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. Each case has to be decided on its own facts to decide whether the mental cruelty was established or not. In the facts and circumstances of the case, the High Court rightly concluded that the continuous taunting or teasing of the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life. Out of 11 months of married life, the deceased was forced to live in her parents' house and could live with her husband for a period of two months in different spells. The High Court also took note of the fact that the appellants did not try to save the deceased although they were present when the burn injuries were caused to her. (Para 6)

Having regard to the evidence brought on record and looking to the reasons recorded by the High Court, the trial court committed manifest error in disbelieving the dying declaration and the evidence of PWs 3 to 7. The High Court was right and justified in reversing the order of acquittal and convicting and sentencing the appellants for the offences under Sections 306 and 498-A IPC. However, having regard to the fact that both the appellants were in imprisonment for about two months, the incident took place on 9-3-1988, Appellant 2 is the mother of Appellant 1 and she is aged 60 years, it would be just and appropriate to modify the sentence of imprisonment to the period already undergone. (Para 8). *Mohd. Hoshan* v. *State of A.P.*, (2002) 7 SCC 414: 2002 SCC (Cri) 1765: AIR 2002 SC 3270.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Shivaraj V. Patil**, JJ. [Date of decision: 16-9-2002]

[7811] — Ss. 304-B, 306 and 498-A — Dowry suicide-death — Sustainability of conviction — Direct and reasonable nexus between suicide and cruelty meted out — *Death of the bride within four months of her marriage — Harassment and cruelty meted out to the deceased demanding more dowry/tape recorder immediately after her marriage proved — Reluctance of the deceased to return to her matrimonial home established — Held, there was direct and reasonable nexus of the commission of suicide by the deceased with the act of cruelty to which the deceased was subjected to by the accused-appellants — Hence, conviction of the appellants under Ss. 306 and 498-A sustainable — Evidence Act, 1872, S. 113-A* (Paras 14 to 22). *Sahebrao* v. *State of Maharashtra*, (2006) 9 SCC 794: (2006) 3 SCC (Cri) 408: AIR 2006 SC 2002: 2006 Cri LJ 2881.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 3-5-2006]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740; Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619: 2002 SCC (Cri) 461; Mohd. Hoshan v. State of A.P., (2002) 7 SCC 414: 2002 SCC (Cri) 1765; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; Hans Raj v. State of Haryana, (2004) 12 SCC 257: 2004 SCC (Cri) Supp 217, relied on

[7812] — Ss. 304-B and 498-A — Applicability — Adequacy of evidence — *In the present case, a neighbour was examined and that too after about two months of the alleged date of occurrence to bring in application of S. 304-B — Held, there is sufficient evidence relating to demand of dowry to bring in application of S. 498-A but the same not sufficient to attract S. 304-B — Hence, conviction under S. 304-B set aside and that in relation to S. 498-A maintained — Custodial sentence of 3½ years already served, held adequate*

Allowing the appeal,

Held :

The only evidence relatable to Section 304-B was that of a neighbour who was examined after about two months of the alleged date of occurrence. Though the evidence appears to be sufficient to bring in application of Section 498-A and there is sufficient evidence relating to demand of dowry, there is definite inadequacy to attract Section 304-B IPC. In that view of the matter the conviction so far it relates to Section 304-B IPC was set aside and that in relation to Section 498-A IPC maintained. (Paras 9 and 10). *D. Jayana* v. *State of Karnataka*, (2009) 6 SCC 575: (2009) 3 SCC (Cri) 75.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-5-2009]

[7813] — S. 304-B and S. 498-A — Charge under S. 304-B but conviction under S. 498-A — Sustainability of — Whether after discarding the testimony of PW 1, PW 6 and PW 7 and acquitting the appellant of the charge under S. 304-B IPC, the High Court could convict him under S. 498-A IPC — *Held, although impugned judgment does not contain elaborate discussion with reference to the ingredients of S. 498-A, but on reconsideration of evidence of PWs 1, 6, 7, 14 and 26, offence of cruelty within the meaning of cl. (a) of the Explanation appearing below S. 498-A stood proved — Mere fact that the statements of three witnesses were not found convincing by High Court for sustaining the conviction of the appellant and his other co-accused on the premise that all the ingredients of S. 304-B IPC have not been established, held, is not sufficient to discard the prosecution case as a whole — PW 1, PW 6 (both sisters), PW 7 (mother) and PW 26 (brother) have categorically deposed that immediately after marriage the deceased was given beating by the appellant, his brothers and was subjected to harassment and taunting by mother-in-law and sister-in-law for being dark complexioned and illiterate/not fluent in English — Their statements also show that the appellant had hit the deceased with a brick resulting in wound on her head which had to be stitched — On the date of death also, the deceased was subjected to physical torture and harassment — Both the sisters narrated that when they met the deceased, she was weeping and her eyes were swollen — Their testimony was substantially corroborated by PW 14 who had that the deceased was subjected to beating by her husband and she had suffered injury on her head — This part of the prosecution case has not been disbelieved by High Court which found discrepancy only on the issue of demand of dowry — Beating given to the deceased* *and harassment to which she was subjected had direct bearing on her committing suicide — Hence, conviction of appellant under S. 498-A sustainable* (Paras 23, 29 to 31). *Dinesh Seth* v. *State (NCT of Delhi)*, (2008) 14 SCC 94: (2009) 2 SCC (Cri) 783: 2008 Cri LJ 4345: (2008) 153 DLT 535.

Bench Strength **2**. Coram: *Altamas Kabir* and **G.S. Singhvi**, JJ. [Date of decision: 18-8-2008]

State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107; Satpal v. State of Haryana, (1998) 5 SCC 687: 1998 SCC (Cri) 1372; Pyare Lal v. State of Haryana, (1997) 11 SCC 552: 1998 SCC (Cri) 197, relied on

Dinesh Seth v. State, ILR (2003) 1 Del 433: 2003 Cri LJ 4532 (Del), affirmed

[7814] — Ss. 304-B and 498-A — Comparative scope — *Held, width and scope of the two sections is different — S. 304-B deals with cases of death as a result of cruelty or harassment within seven years of marriage — S. 498-A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce the woman or any person related to her to meet unlawful demand for property or valuable security — For convicting a person under S. 304-B prosecution is required to establish that the death of the woman has been caused by burns or bodily injury or otherwise than under normal circumstances within seven years of her marriage and soon before her death, the woman was subjected to cruelty or harassment by her husband or his relative — On the other hand, for conviction under S. 498-A it is sufficient to prove that the woman was subjected to cruelty, as elucidated in the Explanation, by her husband or his relative* (Paras 26 and 27). *Dinesh Seth* v. *State (NCT of Delhi)*, (2008) 14 SCC 94: (2009) 2 SCC (Cri) 783: 2008 Cri LJ 4345: (2008) 153 DLT 535.

Bench Strength **2**. Coram: *Altamas Kabir* and **G.S. Singhvi**, JJ. [Date of decision: 18-8-2008]

[7815] — Ss. 304-B and 498-A — Conviction under Ss. 304-B and 498-A — Legality — Dowry death — Death within the time-limit mentioned in S. 304-B, when not amounts to — *Accused-appellant making demands of property and cash which partially met by his father-in-law — Appellant, however, turning out his wife and one month old child and consequently the wife staying with her father — Cross-litigation under S. 9 of Hindu Marriage Act and S. 125 of CrPC between the appellant and wife — However, compromise effected between the parties and the wife going to the appellant's house — After a few months two problems arising, viz. the appellant starting to beat the wife and the appellant's father refusing to accommodate the spouses in his own house — The spouses shifting to a rented house — The wife, due to the harassment and maltreatment meted out to her by the appellant, asking her father to accommodate her but her father refusing to do so — Impending delivery of a child in these very circumstances having a further depressing effect on her — These circumstances leading her to commit suicide by taking poison — Having been occasioned not by any demand of dowry but by other factors, the wife's death although within seven years of marriage, held, not dowry death so as to attract S. 304-B — However, the cruelty otherwise inflicted upon her, held, a relevant factor to maintain the appellant's conviction under S. 498-A — Hindu Marriage Act, 1955, S. 13(i-a). Pyare Lal* v. *State of Haryana*, (1997) 11 SCC 552: AIR 1999 SC 1563.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K.T. Thomas*, JJ. [Date of decision: 20-2-1997]

[7816] — Ss. 304-B and 498-A — Dowry death — Bride burning — Acquittal under S. 304-B but conviction under S. 498-A IPC and Ss. 3 & 4, Dowry Prohibition Act — Permissibility — *Examining ingredients of Ss. 304-B and 498-A, held, these are both distinct and separate offences — Therefore, even if there is acquittal under S. 304-B, still conviction under S. 498-A can be recorded under law — Again, examining ingredients of Ss. 3 and 4, Dowry Prohibition Act, held, ambit and scope of these sections is different from that of S. 304-B IPC — Dowry Prohibition Act, 1961, Ss. 3 and 4*

Sections 304-B and 498-A IPC are both distinct and separate offences. The "cruelty" is a common essential ingredient of both the offences. Under Section 304-B, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. In the statute, no such period is mentioned in Section 498-A IPC. The husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. The demand of dowry is an essential ingredient to attract Section 304-B IPC, whereas under Section 498-A IPC the demand of dowry is not the basic ingredient of the offence. Therefore, even if there is acquittal under Section 304-B IPC, still conviction under Section 498-A can be recorded under the law. (Paras 32 and 33)

The object of Section 4, Dowry Prohibition Act, 1961 is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for "giving" property or valuable security which demand, if satisfied, would constitute an offence under Section 3 read with Section 2 of the Act. Thus, the ambit and scope of Sections 3 and 4 of the 1961 Act is different from the ambit and scope of Section 304-B IPC. (Paras 35 to 37)

Hence, the ingredients of Section 498-A IPC and Sections 3 and 4, Dowry Prohibition Act, are different from the ingredients of Section 304-B IPC. The High Court gravely erred in coming to the finding that once the charge under Section 304-B IPC could not be proved, then conviction under Section 498-A IPC and Sections 3 & 4 of the 1961 Act also cannot be recorded. (Paras 18 and 31). *State of U.P.* v. *Santosh Kumar*, (2009) 9 SCC 626.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 3-9-2009]

Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191, relied on

State of Karnataka v. Balappa, 1999 Cri LJ 3064 (Kant), approved

[7817] — Ss. 304-B and 498-A — Dowry death — Two dying declarations — *First declaration indicating that the deceased died of accidental burns while the second one indicating that the deceased on being unable to bear the dowry demand and harassment meted out by the appellants, committed suicide by setting herself ablaze — Conviction by courts below relying on second declaration and rejecting the first one — Propriety — First declaration recorded by Magistrate after following proper procedure and taking necessary precautions, held, reliable — No reason to discard the same — Second declaration recorded by a police constable about 10 minutes after the first one — Doubt as to the need for recording of — That apart, no proper procedure followed and necessary precautions taken while recording it — Held, it was more appropriate to place reliance on the first declaration — Thus, presumption under S. 113-B, Evidence Act, stood rebutted by contents of the first declaration — Even a harassed wife can get burnt accidentally, and so her death would not attract S. 304-B — Conviction under S. 304-B set aside — However, charge under S. 498-A, held, established — Conviction thereunder upheld — Evidence Act, 1872, Ss. 113-B and 32(1) — CrPC, 1973, S. 428*

The second dying declaration (Ext. P-25) recorded by PW 11, the Head Constable came into existence about 10 minutes after the first dying declaration (Ext. P-28) was recorded by the Munsif Magistrate. There is doubt as to the need for recording the statement when the Munsif Magistrate on a request made by the doctor had already recorded a dying declaration as per Ext. P-28. Further, when PW 11 recorded the statement, he did not take the precautions which the Munsif Magistrate took in sending the relatives of the victim out of the room. He also did not put preliminary questions to find out whether the patient was in a fit state of mind to make the said statement. The doctor in Ext. P-25 only states that the patient is conscious. In the said statement, the victim had stated that she set fire to herself being unable to bear the harassment meted out to her by her husband and in-laws. This part of the statement in Ext. P-25 directly contradicts her earlier statement made to the Munsif Magistrate as per Ext. P-28. Ext. P-28 is a document which exculpates the accused person of an offence under Section 304-B IPC. The Magistrate by the preliminary questions had satisfied himself that the victim was in a fit condition to make the statement. From the questions put by the Munsif Magistrate, and from the answers given by the victim to the said questions as recorded by the Munsif Magistrate, there is no reason to come to any conclusion other than that this statement is made voluntarily and must be reflecting the true state of facts. The courts below have fallen in error in rejecting Ext. P-28 and preferring to place reliance on Ext. P-25; more so in the background of the fact that no suggestion whatsoever has been made either to the Munsif Magistrate or to the doctor as to the correctness of Ext. P-28. On facts, it is more appropriate to place reliance on Ext. P-28 rather than on Ext. P-25. If that be so, the death of the deceased will have to be related to her having suffered burn injuries accidentally and succumbed to the same. Since the death of the deceased occurred within 3 years of her marriage, a presumption under Section 113-B of the Evidence Act is available to the prosecution, but as the contents of Ext. P-28 have been accepted as true, that presumption stands rebutted. In such a case unless the prosecution is able to establish that the cause of death was not accidental, by evidence other than the dying declarations, the prosecution case under Section 304-B IPC as against the appellants must fail. (Paras 6 and 8)

However, the prosecution has established frequent demands for dowry as also harassment of the victim because of the non-payment of dowry. Hence, the material produced by the prosecution is sufficient to base a conviction under Section 498-A IPC. (Para 9). *Nallam Veera Stayanandam* v. *Public Prosecutor, High Court of A.P.*, (2004) 10 SCC 769: AIR 2004 SC 1708.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 24-2-2004]

[7818] — Ss. 304-B and 498-A — Not mutually exclusive provisions — *Accused charged but acquitted under S. 304-B can be convicted under S. 498-A even in absence of any charge under S. 498-A — So also acquittal under S. 498-A will not prevent finding conviction under S. 304-B — Better practice would be to frame charge under both sections and also convict under both though no separate sentence may be awarded under S. 498-A*

Sections 304-B and 498-A cannot be held to be mutually exclusive. These provisions deal with two distinct offences. Under S. 304-B it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in S. 498-A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. Further a person charged and acquitted under S. 304-B can be convicted under S. 498-A without charge being there, if such a case is made out. But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the sections and if the case is established they can be convicted under both the sections but no separate sentence need be awarded under S. 498-A in view of the substantive sentence being awarded for the major offence under S. 304-B. (Para 6). *Shanti* v. *State of Haryana*, (1991) 1 SCC 371: 1991 SCC (Cri) 191: AIR 1991 SC 1226.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 13-11-1990]

[7819] — Ss. 304-B and 498-A — Relative scope — *Held, not mutually exclusive — "Cruelty" by itself is an offence under S. 498-A, and there is no limiting time period thereunder within which the offence must be committed, unlike S. 304-B — Ss. 304-B and 498-A deal with two distinct offences, and if the case is established, there can be a conviction under both sections* (Para 12). *Kamesh Panjiyar* v. *State of Bihar*, (2005) 2 SCC 388: 2005 SCC (Cri) 511: AIR 2005 SC 785: 2005 Cri LJ 1418.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-2-2005]

[7820] — Ss. 304-B and 498-A — Relative scope — Held, cannot be held to be mutually inclusive — *Further held, though cruelty is a common essential to both the sections and needs to be proved, these provisions deal with two distinct offences* (Para 16). *Noorjahan* v. *State*, (2008) 11 SCC 55: (2008) 3 SCC (Cri) 915: AIR 2008 SC 2131: (2008) 66 AIC 79 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 23-4-2008]

[7821] — Ss. 304-B/34 and S. 498-A — Appellant charged under S. 304-B r/w S. 34, but convicted under S. 498-A — *Submission by appellant that omission of the trial court to frame specific charge under S. 498-A IPC had prejudiced him or that failure of justice had been occasioned on that count — Specific charge levelled against the accused was that they had subjected the deceased to cruelty for or in connection with demand for dowry and she had died unnatural death within seven years of her marriage — Cross-examination of PWs also unmistakably showing that the defence had made concerted effort to discredit the testimony of mother, sisters and brother of the deceased in the context of allegation of cruelty — Besides, in his statement under S. 313 of the Code, the appellant denied the allegation that he had subjected his wife to cruelty — Held, it is thus evident that the appellant was not only aware of the charge of cruelty but he got and availed the opportunity to defend himself with reference to that charge — Hence, submission of prejudice rejected — CrPC, 1973, Ss. 221, 222 and 464* (Paras 6 and 10 to 22). *Dinesh Seth* v. *State (NCT of Delhi)*, (2008) 14 SCC 94: (2009) 2 SCC (Cri) 783: 2008 Cri LJ 4345: (2008) 153 DLT 535.

Bench Strength **2**. Coram: *Altamas Kabir* and **G.S. Singhvi**, JJ. [Date of decision: 18-8-2008]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116; Gurbachan Singh v. State of Punjab, AIR 1957 SC 623; Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592, relied on

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690, held, overruled

(5) The charge and S. 304-B

See also '(4) Ss. 304-B, 306 and 498-A IPC and Ss. 113-A/113-B, Evidence Act — Relative scope', above

[7822] — S. 304-B — Dowry death — Addition of charge relating to dowry death [S. 304-B] during trial — *Death certificate already filed indicating probable cause of death to be cardio-respiratory failure due to acute respiratory failure — Production of another death certificate by prosecution which was issued by same doctor indicating a different cause of death — Objection raised against, by accused — Matter relating to production of subsequent certificate kept in abeyance to be decided after examination of doctor — However, on the same date, trial court allowing application filed for addition of charge under S. 304-B — Presence of certain chemicals in viscera was noted by trial court — Effect of, was to be considered in the background of both the certificates, in case the latter certificate was taken on record — Hence held, it would be proper for trial court to defer the question* *of framing charge under S. 304-B after examination of the doctor and relevance of the subsequent certificate and its acceptability — CrPC, 1973, S. 216*

There is no quarrel with the proposition that the charge can be altered at any stage. But the question is whether in view of the order passed on the same date the order relating to alteration of charge has been passed by the trial court. The trial court itself noted that as per the first certificate the cause of death was cardio-respiratory failure due to acute respiratory failure. It, however, noted that some chemicals were noted in the viscera. The effect of the presence of those chemicals has necessarily to be considered in the background of both the certificates, in case the latter certificate is taken on record. That being so, it would be proper for the trial court to defer the question of framing charge under Section 304-B after examination of the doctor and relevance of the subsequent certificate and its acceptability. (Para 7). *Ishwarchand Amichand Govadia* v. *State of Maharashtra*, (2006) 10 SCC 322: (2006) 3 SCC (Cri) 554.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 13-10-2006]

[7823] — **Ss. 304-B, 498-A & 201 r/w S. 34 — Conviction of accused under though he was charged only under S. 201 r/w S. 34 — Permissibility of** — *Held, since the offences under Ss. 304-B and 498-A IPC were not minor offences in relation to that under S. 201 IPC and all the said three offences were distinct and belonged to different categories, S. 222 CrPC had no application in present case — Hence, the said conviction was not permissible — CrPC, 1973, S. 222*

The only charge framed against A-2 was for an offence punishable under Section 201 read with Section 34 IPC. True that Section 222 CrPC clothes the court with the power to convict a person of an offence which is minor in comparison to the one for which he is charged and tried, but by no stretch of imagination, offences under Sections 304-B and 498-A IPC, under which appellant A-2 was convicted by the trial court, could be said to be minor offences in relation to that under Section 201 IPC, for which he was charged. In fact, the three offences are distinct and belong to different categories. The ingredients of the offences under the said sections are vastly different. Therefore, Section 222 CrPC had no application to the facts in hand. (Para 14). *Sukhram* v. *State of Maharashtra*, (2007) 7 SCC 502: (2007) 3 SCC (Cri) 426: AIR 2007 SC 3050: (2007) 57 AIC 90 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 17-8-2007]

[7824] — **Ss. 304-B and 498-A/34 — Dowry death — Appeal against framing of charge** — *Held, in the circumstances, material appearing on the record was not sufficient for proceeding against the three appellants for charge framed against them under Ss. 304-B, 498-A/34 IPC — Further held that the High Court committed no error in quashing the charge against the father-in-law of the deceased — Constitution of India, Art. 136. Anita* v. *State of M.P.*, 1997 SCC (Cri) 566.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 8-4-1997]

(6) Ingredients of dowry death and presumption under S. 113-B, Evidence Act

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(i) Broadly

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'(2) History of S. 304-B and Abuse of dowry laws', above

See also '(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises', and

'(vii) "Soon before her death" — Proximity of causation', below

[7825] — **S. 304-B — S. 113-B, Evidence Act, 1872 — Object of — Restated — "Dowry death" — Dowry — Meaning of** — *Dowry Prohibition Act, 1961, S. 2* (Para 10). *State of Rajasthan* v. *Jaggu Ram*, (2008) 12 SCC 51: AIR 2008 SC 982: (2008) 63 AIC 183 (SC): 2008 Cri LJ 1039.

Bench Strength **2**. Coram: *G.P. Mathur* and **G.S. Singhvi**, JJ. [Date of decision: 4-1-2008]

(6)(i) Broadly *(contd.)*

[7826] — S. 304-B — Object behind enactment of — Essential requirements for invoking the said section — *Victim dying within 7 years of her marriage — Subjected to cruelty and harassment both for and in connection with demand for dowry — Proximate and live link between cruelty and death established — Conviction under S. 304-B, held, was proper*

Section 304-B IPC was mainly introduced having regard to the increasing menace of dowry deaths by burns and bodily injury or otherwise than under normal circumstances and the insufficiency of the existing provisions of law to combat them effectively and also with the laudable object of curbing the menace of dowry deaths with a firm hand. In order to attract Section 304-B IPC the court must be satisfied that: (*i*) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (*ii*) such death must have occurred within seven years of her marriage; (*iii*) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by the relatives of her husband; (*iv*) such cruelty or harassment must be for, or in connection with, demand for dowry; and (*v*) such cruelty or harassment is shown to have been meted out to the woman soon before her death meaning thereby the proximity in point of time and not too remote or stale in point of time and relevance. (Para 6)

The materials on record in this case amply prove that soon before her unnatural death, which took place within seven years of her marriage, the victim was subjected to cruelty and harassment both for and in connection with a demand for dowry. The facts brought on record further prove the existence of a proximate and live link between the effect of cruelty related to dowry demand and the death concerned. (Para 6). *Vidhya Devi* v. *State of Haryana*, (2004) 9 SCC 476: 2004 SCC (Cri) 1473: AIR 2004 SC 1757.

Bench Strength 2. Coram: **Doraiswamy Raju** and *S.B. Sinha*, JJ. [Date of decision: 20-1-2004]

[7827] — S. 304-B — Applicability — Held, imperative for prosecution to prove cruelty or harassment meted out to deceased "soon before her death" and marriage within period of seven years preceding her death (Paras 22 to 25). *Suresh Kumar Singh* v. *State of U.P*, (2009) 17 SCC 243: (2009) 3 ECrN 451 (SC): (2009) 4 All LJ 662.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[7828] — S. 304-B — Conditions precedent for establishing offence under S. 304-B — Drawing of presumption under S. 113-B, Evidence Act — Proof of date of marriage — Onus — *Held, it is for the prosecution to prove the said fact — In the instant case, prosecution failed to do so — Courts below erred in shifting the onus of proving the date of marriage on the defence and drawing a presumption against it merely on the basis of allegation of death of victim within seven years — Evidence Act, 1872, S. 113-B*

The conditions precedent for establishing an offence under Section 304-B IPC are as follows: (*a*) that a married woman had died otherwise than under normal circumstances; (*b*) such death was within seven years of her marriage; and (*c*) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death. (Para 8)

Section 113-B of the Evidence Act permits a presumption to be drawn against the accused in regard to dowry death provided the prosecution establishes that soon before her death the woman was subjected to cruelty or harassment. (Para 9)

On a conjoint reading of Section 304-B IPC and Section 113-B of the Evidence Act it is clear that for drawing a presumption under Section 113-B firstly, there should be death of a woman otherwise than in normal circumstances, within seven years of marriage and the prosecution having shown that soon before her death she was subjected to cruelty or harassment in connection with any demand for dowry by persons accused of having committed the offence. Unless and until these preliminary facts are established by the prosecution, it is not open to the courts to draw a presumption against the accused invoking Section 113-B. (Para 10)

Thus, the law requires the prosecution to establish first by cogent evidence that the death in the case occurred within seven years of the marriage. (Para 17)

On facts, the prosecution has failed to produce the available evidence regarding the date of marriage of the deceased thereby failing to discharge its initial onus of proof. The question whether the defence has been able to establish its version of the date of marriage is immaterial because in the first instance it was for the prosecution to establish this fact. (Para 17)

Hence, both the courts below erred in shifting the onus of proving the date of marriage on the defence and drawing a presumption against it. (Para 17). *Baljeet Singh* v. *State of Haryana*, (2004) 3 SCC 122: 2004 SCC (Cri) 692: AIR 2004 SC 1714.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 24-2-2004]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088, explained and followed

[7829] — S. 304-B — Dowry death — *Ingredients to sustain conviction for: (i) Demand for dowry and consequent harassment for non-fulfilment thereof; (ii) Death of the deceased; and (iii) Death under unnatural circumstances within 7 years of marriage — Even in case of suicide S. 304-B attracted* (Para 35). *Ram Badan Sharma* v. *State of Bihar*, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166: AIR 2006 SC 2855: 2006 Cri LJ 4070.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 21-8-2006]

[7830] — S. 304-B — Dowry death — Applicability — *Held, mere evidence of cruelty and harassment is not sufficient to bring in application of S. 304-B IPC but it needs to be established that "soon before death", deceased was subjected to cruelty or harassment by her husband for, or "in connection with demand for dowry"* (Para 35). *Narayanamurthy* v. *State of Karnataka*, (2008) 16 SCC 512: AIR 2008 SC 2377.

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 13-5-2008]

[7831] — S. 304-B — Dowry death — Conviction — Ingredients for — Restated (Paras 24 and 25). *Kishan Singh* v. *State of Punjab*, (2007) 14 SCC 204: AIR 2008 SC 233: (2007) 60 AIC 206 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *P. Sathasivam*, JJ. [Date of decision: 12-10-2007]

[7832] — S. 304-B — Dowry death — Ingredients

The essential ingredients of the offence under Section 304-B are (*i*) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (*ii*) such death must have occurred within seven years of marriage; (*iii*) *soon before her death* she was subjected to cruelty or harassment by her husband or relative of her husband; (*iv*) such cruelty or harassment must be in connection with the demand of dowry; and (*v*) such cruelty is shown to have been meted out to the woman soon before her death. (Para 29). *T. Aruntperunjothi* v. *State*, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528: AIR 2006 SC 2475: 2006 Cri LJ 3290: (2006) 102 Cut LT 95.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[7833] — S. 304-B — Dowry death — Ingredients — On facts, conviction not sustainable — *Subjecting the deceased to cruelty and harassment must be shown to be for or in connection with the demand for dowry — In absence of such evidence in the instant case, held, conviction of accused cannot be upheld — Evidence Act, 1872, S. 113-B*

The deceased was married to the appellant on 6-3-1992. According to prosecution, the appellant and his family members were not satisfied with the dowry items given to the appellants at the time of marriage and the deceased was put under pressure to bring more dowry. The deceased time and again reported about the persistent demand of the appellants to her father and brothers. The deceased's brother on different occasions requested the appellants not to harass the deceased for not satisfying the dowry demands. The deceased committed suicide at the house of the appellants by consuming poison on 27-7-1992. The trial court convicted the appellants (deceased's husband, her father-in-law and mother-in-law) under Sections 304-B/34 and 498-A/34 IPC and also under Sections 3 and 4 of the DP Act.

Allowing the appeal,

Held :

The basic ingredients to attract the provisions of Section 304-B are as follows:

(*1*) the death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances;

(*2*) such death should have occurred within seven years of her marriage;

(*3*) she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(*4*) such cruelty or harassment should be for or in connection with demand for dowry. (Para 10)

Alongside insertion of Section 304-B in IPC, the legislature also introduced Section 113-B of the Evidence Act. If Section 304-B IPC is read together with Section 113-B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives. (Paras 11 and 13)

In this case there is practically no evidence to show that there was any cruelty or harassment for or in connection with the demand of dowry. There is also no finding in that regard. This deficiency in evidence proves fatal for the prosecution case. Even otherwise mere evidence of cruelty and harassment is not sufficient to bring in application of Section 304-B IPC. It has to be shown in addition that such cruelty or harassment was for or in connection with

(6)(i) Broadly *(contd.)*

the demand for dowry. Since the prosecution failed to prove that aspect, the conviction as recorded cannot be maintained. (Para 14). *Biswajit Halder* v. *State of W.B.*, (2008) 1 SCC 202: (2008) 1 SCC (Cri) 172: (2007) 54 AIC 136 (SC): 2007 Cri LJ 2300.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-3-2007]

Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191; Kanchy Komuramma v. State of A.P., 1995 Supp (4) SCC 118: 1996 SCC (Cri) 31, relied on

[7834] — S. 304-B — Dowry death — Ingredients and applicability of S. 304-B IPC and S. 113-B, Evidence Act, 1872 — *Essentials required to be proved in respect thereof, restated — Expression "soon before" used in both sections, held, is very relevant — Thus, prosecution must show that soon before the occurrence the victim was subjected to cruelty or harassment — Further, no straitjacket formula can be laid down as to what would constitute a period of "soon before" the occurrence — It has to be determined by courts, depending upon facts and circumstances of each case — Existence of a proximate and live link between cruelty and death, held, essential*

The essential ingredients to attract the application of Section 304-B IPC are that (*i*) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances, (*ii*) such a death should have occurred within seven years of her marriage, (*iii*) she must have been subjected to cruelty or harassment by her husband or any relative of her husband, (*iv*) such cruelty or harassment should be for, or in connection with, demand for dowry, and (*v*) such cruelty or harassment is shown to have been meted out to the woman soon before her death. (Para 9)

Further, presumption under Section 113-B of the Evidence Act is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The essentials required to be proved for raising the said presumption are that: (*i*) the question before the court must be whether the accused has committed the dowry death of a woman, (*ii*) the woman was subjected to cruelty or harassment by her husband or his relatives, (*iii*) such cruelty or harassment was for, or in connection with, any demand for dowry, and (*iv*) such cruelty or harassment was soon before her death. (Para 10)

Thus, one of the essential ingredients, amongst others, in both the provisions i.e. Sections 304-B and 113-B is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, the demand for dowry". There must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the presumption operates. Evidence in that regard has to be led by the prosecution. (Para 10)

"Soon before" is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. (Para 11). *Kunhiabdulla* v. *State of Kerala*, (2004) 4 SCC 13: 2004 SCC (Cri) 907: AIR 2004 SC 1731: (2004) 2 KLT 152.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **Arijit Pasayat**, JJ. [Date of decision: 9-3-2004]

[7835] — S. 304-B — Dowry death — Ingredients of — *It being a deeming provision and having regard to gravity of punishment prescribed, court should take greater care and caution in examining* *the evidence and reaching its conclusion — On facts held, prosecution failed to establish two essential ingredients viz. soon before death, the deceased had been subjected to cruelty or harassment by her husband or relatives and the same was for or in connection with demand of dowry — Hence accused husband cannot be convicted under S. 304-B*

The prosecution case was that the appellant was married to *S* in 1991. He used to ask *S* to bring money from her parents and her parents were giving money to her from time to time. In June 1995 *S* told her mother that the appellant was demanding Rs 20,000 and that he had illegal relations with girls of doubtful character and used to bring those girls to his house who had beaten her. The appellant was ill-treating and harassing her and subjecting her to cruelty with the result that within a period of seven years of marriage, *S* committed suicide by burning herself by sprinkling kerosene on herself. The trial court convicted the appellant under Section 304-B IPC on the basis of evidence of PWs 4, 5, 6 and 9 (being mother, father and brother of *S* and the doctor who conducted post-mortem examination on the dead body respectively) as well as a letter written by *S* to her father (Ext. P-9) before her death and sentenced the appellant to 7 years' RI. The High Court in a summary way without discussing the oral evidence of the said PWs confirmed the conviction and sentence. Allowing the accused's appeal on reappreciation of evidence

Held :

In order to convict an accused for an offence under Section 304-B IPC, the following essentials must be satisfied:

(*1*) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(*2*) such death must have occurred within 7 years of her marriage;

(*3*) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

(*4*) such cruelty or harassment must be for or in connection with demand of dowry. (Para 5)

It is only when the aforementioned ingredients are established by acceptable evidence such death shall be called "dowry death" and such husband or his relative shall be deemed to have caused her death. (Para 6)

Normally, in a criminal case the accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, maybe direct or circumstantial or both. But in case of an offence under Section 304-B IPC, an exception is made by deeming provision as to nature of death as "dowry death" and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the abovementioned ingredients of the offence are proved by the prosecution. (Para 6)

In the present case there was no dispute that the first two ingredients of Section 304-B mentioned above were satisfied. Question was whether the remaining two ingredients were also satisfied or not.

From the evidence on record it was clear that there was no evidence of demand of dowry or subjecting *S* to cruelty for or in connection with dowry other than general, vague and inconsistent statements of interested and motivated witnesses PWs 4, 5 and 6, being the parents and brother of *S*. It had come in the evidence of these witnesses that the appellant and his family members were well-placed financially and the parents of *S* have a big family, were not that comfortable financially. There was no demand of dowry either at the time of marriage or subsequently. There was no evidence as to how the father of *S* arranged the money said to have been demanded by the appellant. There were contradictions and serious omissions in the statements of PWs 4, 5 and 6. The conduct of the appellant bringing girls of bad character to his house and those girls troubling *S* appeared to be the cause of her misery. But there was nothing to establish that this mental cruelty was for and in connection with demand of dowry; maybe *S* could not withstand and tolerate the conduct of her husband of being in the company of other girls of bad character and maybe on account of the same she has put an end to her life. PWs 4, 5 and 6, on account of *S* having died of burns, obviously were angry against the appellant and had every reason to involve the appellant in the offence under Section 304-B IPC. (Para 10). *Sunil Bajaj* v. *State of M.P.*, (2001) 9 SCC 417: AIR 2001 SC 3020.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Shivaraj V. Patil**, JJ. [Date of decision: 11-10-2001]

(6)(i) Broadly *(contd.)*

[7836] — S. 304-B — Dowry death — Ingredients to be proved by prosecution for establishing offence of "dowry death" under S. 304-B, reiterated

For making out an offence of "dowry death" under Section 304-B IPC, the following ingredients have to be proved by the prosecution:

(*a*) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(*b*) such death must have occurred within seven years of her marriage;

(*c*) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(*d*) such cruelty or harassment must be in connection with the demand for dowry. (Para 12). *Bachni Devi* v. *State of Haryana*, (2011) 4 SCC 427.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 8-2-2011]

[7837] — S. 304-B — Dowry death — Ingredients to sustain conviction — Restated (Paras 16 and 17). *G.V. Siddaramesh* v. *State of Karnataka*, (2010) 3 SCC 152.

Bench Strength **2**. Coram : *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision : 5-2-2010]

V. Bhagat v. D. Bhagat, (1994) 1 SCC 337, relied on

[7838] — S. 304-B — Dowry death — Object behind insertion of S. 304-B IPC and S. 113-B, Evidence Act, 1872 — Ingredients and applicability of said sections — *Essentials required to be proved in respect of, restated — Expression "soon before" used in both sections, held, is very relevant — Thus, prosecution must show that soon before the occurrence the victim was subjected to cruelty or harassment — Further, no straitjacket formula can be laid down as to what would constitute a period of "soon before the occurrence" — It has to be determined by the courts, depending upon the facts and circumstances of each case — Existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned, held, essential — If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, held, it would be of no consequence — Evidence Act, 1872, S. 113-B*

Section 304-B IPC and Section 113-B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. (Para 4)

The essential ingredients to attract application of Section 304-B are that (*i*) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances, (*ii*) such a death should have occurred within seven years of her marriage, (*iii*) she must have been subjected to cruelty or harassment by her husband or any relative of her husband, (*iv*) such cruelty or harassment should be for or in connection with demand for dowry, and (*v*) such cruelty or harassment is shown to have been meted out to the woman soon before her death. (Para 4)

Further, presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The essentials required to be proved for raising the said presumption are that (*i*) the question before the court must be whether the accused has committed the dowry death of a woman, (*ii*) the woman was subjected to cruelty or harassment by her husband or his relatives, (*iii*) such cruelty or harassment was for, or in connection with any demand for dowry, and (*iv*) such cruelty or harassment was soon before her death. (Para 4)

Thus, one of the essential ingredients, amongst others, in both the provisions i.e. Sections 304-B and 113-B is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". There must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. (Paras 4 and 5)

On facts, the appellant father-in-law has been rightly convicted for offence punishable under Section 304-B and Section 498-A. So far as the appellant mother-in-law is concerned, there is inadequacy of material to attract culpability under Section 304-B. (Para 12). *Kaliyaperumal* v. *State of T.N.*, (2004) 9 SCC 157: 2004 SCC (Cri) 1417: AIR 2003 SC 3828: 2003 Cri LJ 4321.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-8-2003]

[7839] — S. 304-B — Dowry death — Object behind insertion of S. 304-B IPC and S. 113-B, Evidence Act, 1872 — Ingredients and applicability of said sections — *Essentials to be proved for raising the legal presumption as to dowry death — Expression "soon before" occurring in both sections, held, is very relevant — Proximity test — Prosecution must show that soon before the occurrence the victim was subjected to cruelty or harassment — No straitjacket formula can be laid down as to what could constitute a period of "soon before" the occurrence — It has to be determined on the facts and circumstances of each case — Existence of a proximate and live link between cruelty and death, held, essential — Evidence Act, 1872, S. 113-B*

The deceased and A-3 were married on 6-7-1989. The deceased committed suicide at about 11.30 a.m. on 2-4-1990. Three persons i.e. A-1 (brother-in-law of the deceased), A-2 (mother-in-law of the deceased) and A-3 faced trial in relation to the said suicidal death. The trial court found the evidence of PWs 2, 3, 4 and 6 about the demand of dowry made by A-1 and A-2 cogent and credible. A-3 was held guilty as he extended tacit support, albeit indirectly.

In the appeal before the High Court the primary stand taken was that there was no evidence to show about any agreement or demand for payment of dowry before the marriage. Even if any subsequent demand was made, as alleged, that could not bring in application of Section 304-B IPC. Considering the grounds urged by the accused persons, the High Court held that the conviction of the accused under Sections 304-B and 498-A IPC could not be maintained. The High Court observed that if there was no agreement between the parties to give or take any property or valuable security or where the property or valuable security had been given or taken but thereafter further amounts were demanded after the marriage, such demands would not fall within the meaning of dowry.

During the pendency of the appeal before the High Court, A-2 expired and the appeal was held to have abated so far as she was concerned.

Allowing the appeal in relation to A-1, but dismissing the same in respect of A-3,

Held :

Section 304-B IPC and Section 113-B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. (Para 10)

Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The essentials required to be proved for raising the said presumption are that (*i*) the question before the court must be whether the accused has caused the dowry death of a woman, (*ii*) the woman was subjected to cruelty or harassment by her husband or his relatives, (*iii*) such cruelty or harassment was for, or in connection with, any demand for dowry, and (*iv*) such cruelty or harassment was soon before her death. (Para 10)

(6)(i) Broadly *(contd.)*

Now, one of the essential ingredients, amongst others, in both the provisions i.e. Sections 304-B and 113-B is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, the demand for dowry". There must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the aforesaid presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. (Paras 10 and 11). *State of A.P.* v. *Raj Gopal Asawa*, (2004) 4 SCC 470: 2004 SCC (Cri) 1306: AIR 2004 SC 1933: 2004 Cri LJ 1791.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016; Vidhya Devi v. State of Haryana, (2004) 9 SCC 476, relied on

[7840] — S. 304-B — Essential conditions for applicability of stated

Section 304-B has the following essentials:

"(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;

(2) Such death should have occurred within seven years of her marriage;

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(4) Such cruelty or harassment should be for or in connection with demand for dowry." (Para 4). *Shanti* v. *State of Haryana*, (1991) 1 SCC 371: 1991 SCC (Cri) 191: AIR 1991 SC 1226.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 13-11-1990]

[7841] — S. 304-B — Essential ingredients of — Listed — Words "soon before her death" — Scope of — Necessity of insertion of S. 304-B IPC and S. 113-B, Evidence Act, 1872 — *Held, prosecution has to rule out the possibility of a natural or accidental death so as to bring it within purview of "death occurring otherwise than in normal circumstances" — Expression "soon before her death" is very relevant — Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case does the presumption under S. 113-B operate — "Soon before" is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down — Analogy drawn with S. 114 Ill. (a), Evidence Act, 1872 — "Soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question — There must be a proximate and live link between the effects of cruelty based on dowry demand and the death concerned — If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of woman concerned, it would be of no consequence — On facts, no evidence was led to show that death was due to normal reasons — Evidence of PWs amply establishing demand of dowry and ill-treatment of deceased shortly before date of occurrence — Held, courts below were justified in drawing conclusion of guilt of accused — Attempt to get treatment for deceased by appellants shortly after incident was nothing more than an attempt to create a smokescreen — Appeal dismissed — Evidence Act, 1872, S. 113-B*

In order to attract application of Section 304-B IPC, the essential ingredients are as follows:

(*i*) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(*ii*) Such a death should have occurred within seven years of her marriage.

(*iii*) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(*iv*) Such cruelty or harassment should be for or in connection with demand of dowry.

(*v*) Such cruelty or harassment is shown to have been meted out to the woman soon before her death. (Para 10)

Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory for the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(*i*) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)

(*ii*) The woman was subjected to cruelty or harassment by her husband or his relatives.

(*iii*) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(*iv*) Such cruelty or harassment was soon before her death. (Para 10)

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that "soon before her death", the victim was subjected to cruelty or harassment "for or in connection with the demand of dowry". Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before her death" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test as indicated by the said expression both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. A reference to the expression "soon before" used in Section 114 Illustration (*a*) of the Evidence Act is relevant. The determination of the period which can come within the term "soon before" under Section 114 Illustration (*a*) is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effects of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. (Paras 11, 10 and 15)

The necessity for insertion of Section 304-B, IPC and Section 113-B, Evidence Act, 1872 has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. (Para 10). *Kamesh Panjiyar* v. *State of Bihar*, (2005) 2 SCC 388: 2005 SCC (Cri) 511: AIR 2005 SC 785: 2005 Cri LJ 1418.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-2-2005]

[7842] — S. 304-B — Evidence Act, 1872 — S. 113-B — Dowry death — Object behind insertion of Ss. 304-B and 113-B of Evidence Act, 1872 — Ingredients and applicability of said sections — Essentials required to be proved in respect of, restated — *Expression "soon before" used in both sections, held, is very relevant — Thus, prosecution must show that soon before the occurrence the victim was subjected to cruelty or harassment — Further, no straitjacket formula can be laid down as to what would constitute a period of "soon before" the occurrence — It has to be determined by the courts, depending upon the facts and circumstances of each case — Existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned, held, essential — If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, held, it*

(6)(i) Broadly *(contd.)*

would be of no consequence — On facts, the basic requirement of cruelty or harassment soon before the death, held, absent — Conviction under S. 304-B, held, not sustainable

Section 304-B IPC and Section 113-B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. (Para 8)

The essential ingredients to attract application of Section 304-B are that (*i*) the death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance, (*ii*) such a death should have occurred within seven years of her marriage, (*iii*) she must have been subjected to cruelty or harassment by her husband or any relative of her husband, (*iv*) such cruelty or harassment should be for or in connection with demand of dowry, and (*v*) such cruelty or harassment is shown to have been meted out to the woman soon before her death. (Para 8)

Further, presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The essentials required to be proved for raising the said presumption are that (*i*) the question before the court must be whether the accused has committed the dowry death of the woman, (*ii*) the woman was subjected to cruelty or harassment by her husband or his relatives, (*iii*) such cruelty or harassment was for or in connection with any demand for dowry, and (*iv*) such cruelty or harassment was soon before her death. (Para 8)

Thus, one of the essential ingredients, amongst others, in both the provisions i.e. Sections 304-B and 113-B is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". There must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. (Paras 8 and 9)

In the instant case, there is no definite evidence about the ill-treatment to the deceased at any time having immediate proximity to the date of death of the deceased on 14-4-1999, about ill-treatment by the accused persons to attach culpability under Section 304-B IPC. Therefore, the basic requirement of cruelty or harassment soon before the death to bring application of Section 304-B is absent. (Para 10). *Hira Lal* v. *State (Govt. of NCT), Delhi*, (2003) 8 SCC 80: 2003 SCC (Cri) 2016: AIR 2003 SC 2865: (2003) 105 DLT 705: 2003 Cri LJ 3711.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-7-2003]

[7843] — S. 304-B — Ingredients — Restated (Para 22). *Narayanamurthy* v. *State of Karnataka*, (2008) 16 SCC 512: AIR 2008 SC 2377.

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 13-5-2008]

[7844] — S. 304-B — Ingredients of

The essential components of Section 304-B are: (*i*) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (*ii*) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under Section 304-B. To be within the province of the first ingredient the provision stipulates that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances". It may appear that the former limb which is described by the words "death caused by burns or bodily injury" is a redundancy because such death would also fall within the wider province of "death caused otherwise than under normal circumstances". The former limb was inserted for highlighting that by no means death caused by burns or bodily injury should be treated as falling outside the ambit of the offence. (Para 14). *Satvir Singh* v. *State of Punjab*, (2001) 8 SCC 633: 2002 SCC (Cri) 48: AIR 2001 SC 2828.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 27-9-2001]

Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191; Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, relied on

[7845] — S. 304-B — Ingredients of — *Held, are: (1) that the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal; (2) such death occurs within 7 years from the date of her marriage; (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) such cruelty or harassment should be for or in connection with the demand of dowry; and (5) it is established that such cruelty and harassment was made soon before her death* (Paras 20 and 21). *Devi Lal* v. *State of Rajasthan*, (2007) 14 SCC 176: AIR 2008 SC 332: (2007) 59 AIC 115 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417; Ram Badan Sharma v. State of Bihar, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166; T. Aruntperunjothi v. State, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528, relied on

[7846] — S. 304-B — Ingredients of — Dowry death — Cruelty or harassment for dowry "soon before her death" — Proof — *Prosecution case that appellant husband of deceased had been demanding more dowry after the marriage which took place on 25-2-1996, about which deceased having informed her father on telephone on 10-4-1996, further dowry had been given on 21-4-1996, but demand for more dowry made in July 1998 remained unfulfilled because of which appellant and his family members continued to harass the deceased and on 26-3-1999 deceased again made a telephone call to her father informing him that her husband and in-laws were conspiring to kill her whereafter on 28-3-1999 deceased was admitted in hospital in unconscious state and serious condition and she died on 30-3-1999 — Cause of death found to be intake of poisonous substance — Fact about conspiracy to kill the deceased, as informed by her to her father mentioned in FIR — Courts below, having regard to facts of the case and evidence on record, finding prosecution case proved and appellant guilty under S. 304-B — Held on facts, ingredients of S. 304-B satisfied — Hence presumption arises under S. 113-B of Evidence Act which though rebuttable could not be rebutted by appellant — Even without the aid of S. 113-B of Evidence Act, prosecution proved its case — Hence conviction under S. 304-B upheld*

The ingredients necessary for the application of Section 304-B IPC are:

(*i*) that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances;

(*ii*) within seven years of her marriage;

(*iii*) it must be shown that before the death she was subject to cruelty or harassment by her husband or any relative of the husband for or in connection with the demand of dowry. (Para 17)

In the light of these ingredients, the evidence of the prosecution is to be scanned. (Para 18)

The courts below, after appreciation of the facts and evidence recorded, have reached the conclusion that the deceased died an unnatural death at the house of her in-laws within a period of seven years of her marriage with the appellant, due to intake of poisonous substance. The only controversy between the parties is with regard to the third ingredient as to whether soon before the death the deceased was harassed and was subjected to cruelty on account of demand of dowry. (Paras 21 and 19)

There is no substance in the argument that the interested evidence of the parents of the deceased has not been supported by independent evidence or witness of the locality. Likewise, there is no substance in the submission that there was no demand of dowry by the appellant or by any of his family members soon before the death of the deceased and that the deceased was never harassed or tortured by the appellant or by any of his family members for demand of dowry. (Para 26)

(6)(i) Broadly *(contd.)*

Once the three essentials of Section 304-B are satisfied, the presumption under Section 113-B of the Evidence Act would follow. This rule of evidence is added in the statute by amendment to obviate the difficulty of the prosecution to prove as to who caused the death of the victim. Of course, this is a rebuttable presumption and the accused by satisfactory evidence can rebut the presumption. In the instant case, the appellant could not rebut the presumption, and the prosecution, even without the aid of this presumption under Section 113-B proved that the appellant was responsible for the death of the deceased. Hence, the conviction of the appellant for the offence under Section 304-B IPC is confirmed. (Para 28). *Arun Garg* v. *State of Punjab*, (2004) 8 SCC 251: (2004) 3 KLT 435.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 29-9-2004]

[7847] — S. 304-B — Ingredients of — Dowry death — Presumption regarding — Burden on accused to prove otherwise — Demand for dowry is itself punishable if other ingredients of S. 304-B are established — Cruelty or harassment of wife in connection with demand of dowry by husband soon before her suicidal death — Proof of — "Demand for dowry" — *Demand does not conceive any agreement for dowry — Cruelty or harassment may not only be physical but also mental — Demand for scooter and fridge made soon after the marriage by the husband and his relatives and deceased's failure to meet the demand leading to repeated taunts and maltreatment — Quarrel taking place between husband and deceased wife at deceased's sister's house one day before her death — While going back to husband's home, deceased regretting that it would be difficult to see her face in future — Held, cruelty and harassment in connection with dowry demand proved — Conviction and sentence under S. 304-B upheld — Evidence Act, 1872, S. 113-B — Dowry Prohibition Act, 1961, Ss. 2, 3, 4*

The deceased and the appellant were married in 1985. After a few days of the marriage there was a demand of scooter and fridge. On account of not satisfying the demand of the aforesaid goods, right from the next day, she was repeatedly taunted, maltreated and mentally tortured by being called ugly etc. In April 1987 when deceased's maternal uncle died, she along with her husband visited Delhi to offer condolences. And by evening on the same day instead of returning to her husband's place came to her sister's house. She remained there for a few days. Both her sister and brother-in-law deposed that she told them that her husband was maltreating her in view of dowry demand, and that not being satisfied was harassing her. When her husband came to take her back she was reluctant but her sister brought her down and sent her with her husband. She went with the husband but with the last painful words that "it would be difficult now to see her face in the future". On the very next day, she committed suicide.

Held :

The ingredients necessary for the application of Section 304-B are:

(*a*) When the death of a woman is *caused* by any burns or bodily injury, or

(*b*) *occurs* otherwise than under normal circumstances

(*c*) and the aforesaid two facts spring within 7 years of girl's marriage

(*d*) and soon before her death, she was subjected to cruelty or harassment by her husband or his relative,

(*e*) this is in *connection* with the demand of dowry.

If these conditions exist, it would constitute a dowry death; and the husband and/or his relatives shall be deemed to have caused her death. In the present case, it is not in dispute that the deceased died of burn injuries, that she died otherwise than under normal circumstances, and that the death was within a period of 7 years of marriage. The only consideration has to be: whether she was subjected to any cruelty or harassment by the appellants soon before her death, and whether the same was for or in connection with any demand of dowry.

It is true that in criminal jurisprudence benefit of doubt is extendable to the accused. But that benefit of doubt would arise in the context of the application of penal law, and in the facts and circumstances of a case. The concept of benefit of doubt has an important role to play but within the confines of the stringency of laws. Since the cause of death of a married woman was to occur not in normal circumstances but as a "dowry death", for which the evidence was not so easily available, as it is mostly confined within the four walls of a house, namely the husband's house, where all likely accused reside the amendments [by Criminal Law (Second Amendment) Act, 1983 (46 of 1983)] brought in the concept of deemed "dowry death" by the husband or the relatives, as the case may be. This deeming clause has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost. Of course, the prosecution has to prove the ultimate essential ingredients beyond all reasonable doubt after raising the initial presumption of "deemed dowry death". In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect.

Demand for dowry neither conceives nor would conceive of any agreement. The word "agreement" referred to in Section 2 of the Dowry Prohibition Act, 1961 has to be inferred on the facts and circumstances of each case. The interpretation that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B IPC. It is not always necessary that there be any agreement for dowry.

In the present case after a few days of the marriage, there was demand of scooter and fridge, which when not being met led to repetitive taunts and maltreatment. Such demands cannot be said to be not in connection with the marriage. Hence the evidence qualifies to be demand for dowry in connection with the marriage and in the circumstances of the case constitutes to be a case falling within the definition of "dowry" under Section 2 of 1961 Act and Section 304-B IPC.

Cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Sections 304-B and 498-A IPC. Explanation (*a*) to Section 498-A itself refers to both mental and physical cruelty. Again wilful conduct means, conduct wilfully done; this may be inferred by direct or indirect evidence which could be construed to be such. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for any bride. There was a quarrel a day before her death. This by itself, would constitute to be a wilful act to be a cruelty both within the meaning of Section 498-A and Section 304-B IPC.

The Court must adopt that construction which, "suppresses the mischief and advances the remedy". The earlier law was not sufficient to check dowry deaths hence aforesaid stringent provisions were brought in, so that persons committing such inhuman crimes on married women should not escape, as evidence of a direct nature is not readily available except of the circumstantial kind. Hence stringent provisions were brought in by shifting the burden onto the accused by bringing in the deemed clause. It is that interpretation which suppresses the mischief, subserves the objective and advances the remedy, which would be acceptable. According to Section 8-A of the 1961 Act which came into force w.e.f. 2-10-1985 for taking or abetting any dowry, the burden to explain is placed on such person against whom the allegation of committing an offence is made. Similarly, under Explanation to Section 113-B of the Indian Evidence Act, which was also brought in by the aforesaid Act 43 of 1986, there is presumption that such death is on account of dowry death. Thus the burden, if at all, was on the accused to prove otherwise.

The evidence would, on the facts and circumstances of the present case, bring to an inescapable conclusion that the quarrel between the deceased and her husband a day before the actual death of the deceased, cumulatively with other evidence constitutes to be cruelty and harassment in connection with marriage and that too at her own sister's place which has direct corelation with the preceding evidence of repeated demand of dowry, to be a case covered both under Sections 304-B and 498-A IPC. However, it was open to the accused to prove otherwise or dispel by means of evidence to destroy that deeming clause. But he has not been able to do so. Such burden is placed on the accused with a purpose. Evidence also includes harassment to the deceased within the meaning of Section 498-A Explanation (*b*), as she was repeatedly coerced for not meeting the demands leading to her mental torture and agony which ultimately led her to commit suicide.

Accordingly the appellant is sentenced to 7 years' rigorous imprisonment with a fine of Rs 500, in default of payment of fine for further rigorous imprisonment for 6 months under Section 304-B IPC, The appellant is also sentenced to 2 years' rigorous imprisonment and to pay fine of Rs 200, and in default of payment of fine further rigorous imprisonment for three months, under Section 498-A IPC. *Pawan Kumar* v. *State of Haryana*, (1998) 3 SCC 309: 1998 SCC (Cri) 740: AIR 1998 SC 958: 1998 Cri LJ 1144.

Bench Strength **2**. Coram: *M.M. Punchi, C.J.* and **A.P. Misra**, J. [Date of decision: 9-2-1998]

(6)(i) Broadly *(contd.)*

[7848] — S. 304-B — Ingredients of, restated — *Held, once prosecution establishes the said ingredients, presumption under S. 113-B, Evidence Act relating to dowry death can be drawn against the accused — Onus lies on the accused to rebut the said presumption — On facts, death of victim occurred within seven years of her marriage — Death was not under normal circumstances — Victim was harassed for not bringing more dowry — Demand of Rs 7000 made by in-laws ten days prior to the incident — Held, ingredients of S. 304-B had been established by the prosecution — Defence plea that the deceased died of heart attack, not acceptable — Hence, conviction of husband and his brother and parents, upheld — Evidence Act, 1872, S. 113-B* (Paras 5, 7, 8 and 12). *Satbir Singh* v. *State of Haryana*, (2005) 12 SCC 72: 2005 Cri LJ 4137: AIR 2005 SC 3546.

Bench Strength 2. Coram: **H.K. Sema** and *G.P. Mathur*, JJ. [Date of decision: 14-9-2005]

State of Karnataka v. M.V. Manjunathegowda, (2003) 2 SCC 188: 2003 SCC (Cri) 467, relied on

State of Orissa v. Niranjan Mohapatra, (2005) 9 SCC 578: 2005 SCC (Cri) 1251; Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, distinguished on facts

[7849] — S. 304-B — Ingredients of the offence under, stated

In order to seek conviction under Section 304-B IPC against a person for the offence of dowry death, the prosecution is obliged to prove that:

(*a*) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(*b*) such death should have occurred within 7 years of her marriage;

(*c*) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(*d*) such cruelty or harassment should be for or in connection with the demand of dowry; and

(*e*) to such cruelty or harassment the deceased should have been subjected soon before her death. (Para 9). *Kans Raj* v. *State of Punjab*, (2000) 5 SCC 207: 2000 SCC (Cri) 935: AIR 2000 SC 2324: 2000 Cri LJ 2993.

Bench Strength 3. Coram: *G.B. Pattanaik*, **R.P. Sethi** and *Shivaraj V. Patil*, JJ. [Date of decision: 26-4-2000]

[7850] — S. 304-B or S. 302 — S. 113-B, Evidence Act, 1872 — Presumption under — Invocation of — Expression "soon before her death" — Relevance of — *Held, one of the essential ingredients, amongst others, is that the "woman" must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, any demand for dowry" — Further held, presumption in terms of S. 113-B is one of law but such a presumption can be raised only on proof of the following essentials: viz. (1) accused must be tried for offence under S. 304-B; (2) the woman was subjected to cruelty or harassment by her husband or his relatives; (3) such cruelty or harassment was for, or in connection with, any demand for dowry; (4) such cruelty or harassment was soon before her death — In the instant case harassment meted out to deceased was said to be on three counts: (1) insufficient dowry; (2) inability to bear a child; and (3) insistence by her parents that every time appellant husband must go to her parents' house for bringing her back — FIR stating only two causes of harassment, namely, (1) previously on pretext of bringing insufficient dowry, and (2) thereafter for not bearing a child — Thus, nothing on record to show that any demand of dowry was made soon before her death — Hence, held, cause of action for committing the offence appears to be an ego problem on part of appellant, namely, deceased had not been coming to her matrimonial home on her own, while he had been coming to his home on leave — High Court erred in convicting appellant under S. 304-B since no evidence was brought on record to show that the cruelty or harassment was meted out to her for bringing insufficient dowry, in absence whereof ingredients of S. 304-B cannot be said to have been proved — Legal fiction sought to be created must be raised only on fulfilment of the conditions precedent therefor — All the requisite ingredients of the offence must be brought home before the presumptive evidence is put to use by the court for holding the accused guilty under S. 304-B — Hence, appellant husband could not have been convicted under S. 304-B — Evidence Act, 1872, S. 113-B* (Paras 13 and 17 to 22). *Tarsem Singh* v. *State of Punjab*, (2008) 16 SCC 155: AIR 2009 SC 1454: (2009) 73 AIC 50 (SC): (2009) 2 ECrN 520 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 12-12-2008]

Hira Lal v. State (Govt. of NCT of Delhi), (2003) 8 SCC 80: 2003 SCC (Cri) 2016; T. Aruntperunjothi v. State, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528; Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417, considered and relied on

[7851] — Ss. 304-B and 306 — Dowry death due to suicide — Presumption of causing — Ingredients of evidence to sustain such presumption — *Proof of subjecting victim to cruelty and harassment prior to her death, held, not sufficient — It must also be proved that she committed suicide on account of such cruelty and harassment — These* *are also the ingredients of evidence required to be led for the presumption under S. 113-B, Evidence Act — Moreover, it has also to be shown that such cruelty or harassment was for, or in connection with, any demand for dowry — Only then can resultant death be called "dowry death" — Hence, where no charges against accused persons were framed under Dowry Prohibition Act, 1961 and evidence led related to demand of a fan only, held, requirements of both S. 113-B, Evidence Act, 1872 as well as S. 304-B IPC remained unproved — Dowry Prohibition Act, 1961, S. 4* (Paras 16 to 20). *Durga Prasad* v. *State of M.P.*, (2010) 9 SCC 73: (2010) 3 SCC (Cri) 1154: 2010 Cri LJ 3419: (2010) 91 AIC 5 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *H.L. Gokhale*, JJ. [Date of decision: 14-5-2010]

Biswajit Halder v. State of W.B., (2008) 1 SCC 202: (2008) 1 SCC (Cri) 172, followed

Anand Kumar v. State of M.P., (2009) 3 SCC 799: (2009) 2 SCC (Cri) 28, distinguished

[7852] — Ss. 304-B and 498-A — Bride burning — Ingredients — *Deceased woman died due to strangulation and burning within seven years of her marriage — Demand for a car in dowry persistently made by deceased's husband and her mother-in-law (accused persons) since after six months of marriage — Deceased subjected to maltreatment, torture, cruelty and harassment by accused persons on non-fulfilment of the demand — Cruelty and harassment meted out to deceased, soon before her death — Held, ingredients of S. 304-B satisfied — Presumption under S. 113-B of Evidence Act attracted which defence failed to displace — Evidence Act, 1872, S. 113-B — Dowry Prohibition Act, 1961, S. 4* (Paras 57, 58 and 55)

In this case, the prosecution has been able to prove the following:

(*1*) The death of the deceased was caused by strangulation and burning within seven years of her marriage.

(*2*) The deceased had been subjected to cruelty by her husband and mother-in-law (the two appellant-accused) over the demand of Maruti car in dowry raised and persistently pressed by them after about six months of the marriage and continued till her death.

(*3*) The cruelty and harassment was in connection with the demand of dowry i.e. Maruti car.

(*4*) The cruelty and harassment is established to have been meted out soon before her death.

(*5*) The two accused were the authors of this crime who caused her death by strangulation and burning on the given date, time and place. (Para 57)

The accused are established to have committed the offences under Sections 498-A and 304-B IPC and under Section 4 of the Dowry Prohibition Act. (Para 58). *Satya Narayan Tiwari* v. *State of U.P.*, (2010) 13 SCC 689.

Kunhiabdulla v. State of Kerala, (2004) 4 SCC 13: 2004 SCC (Cri) 907, relied on

Bench Strength **2**. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 28-10-2010]

(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises

See also '(i) Ingredients of dowry death and presumption under S. 113-B, Evidence Act — Broadly', above and

'(vii) "Soon before her death" — Proximity of causation', below

[7853] — S. 304-B — Evidence Act, 1872 — S. 113-B — Death of deceased within four months of her marriage with the appellant — Prosecution alleging that the deceased committed suicide by consuming poison on account of cruelty and harassment meted out by the appellant and his relatives — *Both the trial court and High Court accepting the case of prosecution and convicting the appellant under S. 304-B — Held, the letters written by the family members of the deceased to her after her marriage unmistakably showed that there was cordial relationship between the deceased and the appellant and his relatives — Further, the non-production of any letters written by the deceased to her family members was fatal to the prosecution and supported the defence case — The evidence of PWs 4, 5 and 14 could not be accepted as their evidence was diametrically opposed to that of the unassailable documentary evidence — The courts below also erred in totally ignoring the suicide note written by the deceased before her death — The concurrent and cumulative effect of the entire evidence when scrupulously examined showed that the deceased was not subjected to cruelty or harassment by the appellant for or in connection with any demand for dowry — In the absence of the necessary ingredients under S. 304-B the presumption of dowry death as envisaged in S. 113-B, Evidence Act was not attracted — In the result, the conviction under S. 304-B and the sentence imposed therefor on the appellant set aside — Evidence Act, 1872, S. 113-B. Rajnesh Tandon* v. *State of Punjab*, 1995 SCC (Cri) 817.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *J.S. Verma*, JJ. [Date of decision: 12-1-1994]

(6)(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises *(contd.)*

[7854] — S. 304-B — Dowry death — Bride burning — Burden of proof — *Held, husband being a companion, is supposed to explain circumstances of his wife's death but initial burden remains on prosecution to prove husband's guilt beyond reasonable doubt — Unless initial burden is discharged, husband's conviction is not sustainable — Minimum standard of proof, which may even be based on circumstantial evidence, also indicated — Evidence Act, 1872, Ss. 101-103*

It was argued on behalf of the State that the husband could not escape liability, considering that there was no explanation from him about burning of his wife. This argument cannot be accepted. It is true that the husband being a bedroom companion ought to explain the circumstances, but initial burden is on the prosecution to prove guilt beyond all reasonable doubt. System of criminal jurisprudence of the country has been to that effect. There is neither any departure nor any escape from it. The courts below have not accepted the explanation that the victim sustained burn injuries due to bursting of stove while warming up milk early in the morning. Non-acceptance of this explanation does not mean that the appellant should be held guilty of murder. (Paras 21 and 22). *Arvind Singh* v. *State of Bihar*, (2001) 6 SCC 407: 2001 SCC (Cri) 1148: AIR 2001 SC 2124: 2001 Cri LJ 2556.

Bench Strength **2**. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 26-4-2001]

[7855] — S. 304-B — Dowry death — Burden of proof — Presumption under S. 113-B, Evidence Act — *Applicability of — Suicide — Death of wife within three years of her marriage — Harassment of victim by appellants due to non-payment of dowry, established — On such facts, held, presumption under S. 113-B was available to the prosecution — Hence, it was for defence to discharge the onus and establish that the death of the deceased in all probability did not occur because of suicide but was an accidental death — Evidence Act, 1872, Ss. 113-B, 101 and 102* (Para 5). *Nallam Veera Stayanandam* v. *Public Prosecutor, High Court of A.P.*, (2004) 10 SCC 769: AIR 2004 SC 1708.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 24-2-2004]

[7856] — S. 304-B — Dowry death — Ingredients of S. 304-B — Effect of presumption under S. 113-B of Evidence Act — *Initial burden of proof lies on prosecution — Burden would not shift on accused merely on the basis of prosecution's allegation that death had occurred within seven years of marriage without even proving the required preliminary facts — On facts held, one of the essential ingredients of S. 304-B viz. demand of dowry could not be established by prosecution — Hence respondent husband of the deceased cannot be convicted under S. 304-B — Evidence Act, 1872, S. 113-B*

For proving the offence under Section 304-B of the Indian Penal Code, the prosecution has to prove the following things:

(*a*) The death of the married woman was within seven years of the marriage.

(*b*) A little prior to death; her husband or relative, on the point of demand of dowry subjected her to cruelty or harassed her. (Para 15)

A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B of the Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". (Para 18)

In this case, the Sessions Judge proceeded as if the prosecution is available against the accused merely because an allegation of death within seven years of marriage was made without even the prosecution having proved the required preliminary fact. Having so shifted the onus, the court then proceeded to hold that the accused had not discharged the said onus and hence convicted the accused primarily based on the presumption under Section 113-B of the Evidence Act. The approach by the Sessions Court is not correct. (Para 24)

In this case the deceased woman's death took place within seven years of her marriage had been proved. But with regard to the demand of dowry there were different versions of PWs and there was lack of evidence to prove the same. The evidence led by the prosecution bristles with discrepancies and contradictions. On the basis of the evidence, it could not be treated to have been proved that actually the accused had made a demand of dowry and that was made soon before the death and due to this, the deceased was harassed. (Paras 16 and 20)

Thus one of the main ingredients of the offence of demand of dowry being absent, the High Court is right in acquitting the accused for the offence under Section 304-B of the Indian Penal Code. The prosecution has failed to prove the circumstances alleged against the accused persons. (Paras 23 and 25). *State of Rajasthan* v. *Teg Bahadur*, (2004) 13 SCC 300: 2005 SCC (Cri) 218.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 29-9-2004]

[7857] — S. 304-B — Dowry death — Ingredients of S. 304-B, if established — Legal fiction under — *Soon before the death, deceased was subjected to cruelty or harassment by her husband for or in connection with demand of dowry — Once this is established, a legal fiction is created under S. 304-B whereby such death would be called dowry death — On facts held, ingredients of S. 304-B IPC r/w S. 113-B, Evidence Act not satisfied — Evidence Act, 1872, S. 113-B*

The deceased was married to the appellant on 5-10-1986. She delivered a male child at her parents' house on 23-4-1988. At the time of delivery she had developed some complications as a result of which she had to be shifted to a nursing home. There was some dispute as to who took her to the nursing home, her husband (appellant) or her father. The delivery of the child was premature and the child expired within two days of its birth. The deceased died of poisoning on 26-7-1988 at her matrimonial home. On the basis of statements made by the deceased's father before the IO, a case under Section 304-B IPC was registered against the appellant (the deceased's husband) and others on the allegation that after solemnisation of marriage of the appellant's younger brother on 24-1-1988, the accused started taunting and harassing the deceased for bringing less dowry as the wife of the appellant's younger brother had brought refrigerator, television and cooler. Allegedly, to fulfil the said demand of the accused, the complainant paid a sum of Rs 3000 around Diwali on one occasion and Rs 1000 on two other occasions within two months therefrom. It was further alleged that in the month of March 1988, when the deceased's father went to the house of the in-laws to bring her to his house as she was in the family way, the accused refused to send her with him. It was further alleged that when the deceased's brother went to the deceased's matrimonial home, the deceased had told him that his father should take her away otherwise the accused would kill her at the time of the delivery. However, from the records it appears that the deceased's father had merely stated: "My daughter had died due to non-payment of dowry to the satisfaction of the accused, by me." He did not say that any other demand was made or his daughter was subjected to any other form of cruelty or harassment. In the cross-examination he contended that he had stated before the investigating officer that the accused persons started taunting his daughter for not bringing refrigerator, cooler and television but such a statement was not found to have been made before the investigating officer. He even did not make any statement before the police that the accused persons either in unison or individually demanded dowry. His statement was also recorded by a Magistrate holding the post of DORG. He did not make any statement before the Magistrate in regard to the demand of or taking of Rs 3000 for purchase of refrigerator, cooler and television although he made such a statement in court. He also made a statement before the DORG to the effect that his daughter and son-in-law collected Rs 3000 for purchasing a stereo and two months thereafter his daughter took Rs 1000 for installation of hand pump. However, the deceased's mother categorically admitted that she had no grievance as against her son-in-law, nor did she ever make any complaint.

The trial court convicted the appellant and his mother under Section 304-B IPC and sentenced them to undergo seven years' RI. The trial court relying upon or on the basis of the evidence of the prosecution witnesses arrived at a finding that the dowry was paid to the appellant and his mother. The High Court, on the other hand, did not discuss the merit of the matter so far as the appellant is concerned but concentrated on the role played by his mother and came to the finding that she did not accept any dowry. It propounded a theory which was not the prosecution case that the deceased must have consumed poison to finish herself allegedly on the ground that when the deceased's father came to see her on 25-7-1988, he must have been insulted or hurt that his daughter was not happy in the house of her in-laws.

Allowing the appeal of the accused-appellant,

Held :

By virtue of Section 304-B IPC a legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. From a conjoint reading of Section 304-B of the Penal Code and Section 113-B of the Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Penal Code. (Paras 16 and 17)

The ingredients of the aforementioned provisions are:

(*1*) That the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal; (2) such death occurred within 7 years from the date of her marriage; (*3*) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;

(6)(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises *(contd.)*

(*4*) such cruelty or harassment was for or in connection with the demand of dowry; and (*5*) it is established that such cruelty and harassment was made soon before her death. (Para 18)

Even proceeding on the basis that in this case prosecution has established the case of payment of dowry to the extent of Rs 5000, the question still would remain as to whether the demand for dowry was made soon before the deceased was treated cruelly or harassed by the appellant. The brother of the deceased was not examined. It was, therefore, not proved that any apprehension was expressed by the deceased that she would be killed during delivery of the child. Concededly, there is no evidence on record to show that the deceased was subjected to any cruelty or harassment between April 1988 and the date of her death. In the aforementioned situation, the presumption arising either under Section 304-B of the Penal Code or Section 113-B of the Evidence Act could not be invoked against the appellant. The prosecution, therefore, must be held to have failed to establish any case against the appellant. (Paras 8, 14 and 22)

In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. Omission to frame charges under Section 306 in terms of Section 215 of the Code of Criminal Procedure may or may not result in failure of justice, or prejudice the accused. It cannot, therefore, be said that in all cases, an accused may be held guilty of commission of an offence under Section 306 of the Penal Code wherever the prosecution fails to establish the charge against him under Section 304-B thereof. Moreover, ordinarily such a plea should not be allowed to be raised for the first time before the court unless the materials on record are such which would establish the said charge against the accused. (Paras 19, 24 and 25). *Harjit Singh* v. *State of Punjab*, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417: AIR 2006 SC 680: (2006) 37 AIC 104 (SC): 2006 Cri LJ 554.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016; Kaliyaperumal v. State of T.N., (2004) 9 SCC 157: 2004 SCC (Cri) 1417; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511; State of A.P. v. Raj Gopal Asawa, (2004) 4 SCC 470: 2004 SCC (Cri) 1306; K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271, relied on

[7858] — S. 304-B — Dowry death — Ingredients of S. 304-B, restated — Presumption when arises — *Held, the said ingredients have to be established before the presumption as to dowry death can be drawn under S. 113-B, Evidence Act — In the present case, there was no evidence to show that soon before her death the victim was subjected to cruelty by the husband or in-laws in connection with a demand of dowry — Hence held, the aforesaid ingredient having not been established, the appellants (husband and mother-in-law) were entitled to benefit of doubt — Their conviction and sentence set aside — Evidence Act, 1872, S. 113-B* (Paras 3 to 6). *Tirath Kumari* v. *State of Haryana*, (2005) 12 SCC 561: AIR 2005 SC 4429.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 4-10-2005]

[7859] — S. 304-B — Dowry death — Presumption as to, not rebutted — Wife committing suicide due to harassment for dowry — Conviction confirmed — *A-1 and A-2 (mother-in-law and husband of deceased, respectively, both appellant-accused herein) raised a demand for purchase of motorcycle from PW 8 (father of deceased), giving reason that A-2 wanted to start milk vending business and for that a motorcycle was needed for carrying milk to the city — This demand was raised within two months of marriage, and when this demand was not met, deceased was maltreated and harassed continuously, which led her to take extreme step of committing suicide by hanging in appellants' house — Held, it is clearly established that deceased died otherwise than under normal circumstances — No dispute that death occurred within seven years of marriage — Deceased subjected to harassment and ill-treatment by A-1 and A-2, after PW 8 refused to accede to their demand for purchase of motorcycle, established by evidence of PWs 8 and 9 (father and mother of deceased, respectively) — Also, there is evidence of PW 10, that PW 8 had called him and one other to his house, where A-1 had made demand of motorcycle, and that when PW 10 sought to reason with A-1 about inability of PW 8, because of his poverty, to give motorcycle, A-1 got angry and warned that deceased would not be allowed to stay in her matrimonial home — All essential ingredients to bring home guilt under S. 304-B against appellants, established by prosecution evidence — Appellants failed to rebut presumption under S. 113-B, Evidence Act — Defence case that demand of motorcycle does not qualify as a "demand for dowry", warrants no merit — Dowry Prohibition*

Act, 1961, Ss. 2 and 4 — Evidence Act, 1872, S. 113-B (Paras 19 to 22). *Bachni Devi* v. *State of Haryana*, (2011) 4 SCC 427.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 8-2-2011]

S. Gopal Reddy v. State of A.P., (1996) 4 SCC 596: 1996 SCC (Cri) 792; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511, relied on

[7860] — S. 304-B — Dowry death — Presumption available under S. 113-B — Applicability — *Deceased tortured and subjected to harassment for non-supply of demanded articles — Her death was not in normal circumstances — Death took place within seven years of marriage — Held, presumption available under S. 113-B in the background of S. 304-B IPC was clearly applicable to the present case — Evidence Act, 1872, S. 113-B* (Para 8). *Thakkan Jha* v. *State of Bihar*, (2004) 13 SCC 348.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-9-2004]

[7861] — S. 304-B — Dowry death — Presumption available under S. 113-B against accused — Inapplicability of — Condition that "soon before" her death the victim was subjected to cruelty or harassment by the accused for or in connection with any demand of dowry — *Law relating to — Expression "soon before" — Interpretation of — Held, the said presumption would not be drawn if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter — But, mere lapse of some time by itself would not provide the accused a defence, if the course of conduct relating to cruelty or harassment is shown to have existed earlier in time not too late and not too stale before the date of death of the victim — This is so because the expression used in the relevant provision is "soon before" — The term "soon before" is not synonymous with the term "immediately before" — The said term would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question i.e. there must be existence of a proximate and live link between the two — The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case — No strait-jacket formula can be laid down by fixing any time-limit in this regard — Evidence Act, 1872, S. 113-B* (Para 7). *Thakkan Jha* v. *State of Bihar*, (2004) 13 SCC 348.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-9-2004]

Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016, relied on

[7862] — S. 304-B — Dowry death — Presumptive evidence — Persistent demand for dowry and harassment consequent to non-fulfilment thereof "soon before" the death, within seven years of marriage, proved — *Deceased in good condition until she consumed "prasad" and only thereafter complained of acute stomach pain — She neither taken to any doctor, nor any doctor called, nor any medical treatment administered to her — Her parents living only a few miles away informed after three days of occurrence by a letter sent through a barber — Dead body hurriedly disposed of and no autopsy conducted — Held, no infirmity in the impugned judgment of the High Court confirming the conviction of the appellants discernible — Evidence Act, 1872, S. 113-B* (Paras 3, 4, 22, 23 and 33). *Ram Badan Sharma* v. *State of Bihar*, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166: AIR 2006 SC 2855: 2006 Cri LJ 4070.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 21-8-2006]

Hem Chand v. State of Haryana, (1994) 6 SCC 727: 1995 SCC (Cri) 36; Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016; Dhian Singh v. State of Punjab, (2004) 7 SCC 759: 2004 SCC (Cri) 2077; Sarojini v. State of M.P., 1993 Supp (4) SCC 632: 1994 SCC (Cri) 124; State of Karnataka v. M.V. Manjunathegowda, (2003) 2 SCC 188: 2003 SCC (Cri) 467; Muthu Kutty v. State, (2005) 9 SCC 113: 2005 SCC (Cri) 1202; Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511; State of Punjab v. Iqbal Singh, (1991) 3 SCC 1: 1991 SCC (Cri) 513, relied on

[7863] — S. 304-B — Dowry death — Rebuttable presumption that death caused by husband or his relative — *Held, presumption under S. 113-B, Evidence Act begins to operate if prosecution is able to prove the circumstances set out in S. 304-B — If defence of accused is only total denial, presumption remains unrebutted — Where accused-Respondent 1 was charged under S. 302 IPC and in the alternative under S. 304-B and evidence on record established (i) that marriage had been agreed to by accused on condition of payment of dowry (Rs 10,000 and 3 gold sovereigns); (ii) that marriage took place (on 17-5-1987) after part-payment (Rs 8000); (iii) that only a few days prior to her death, deceased wife had pleaded with her father and brother, during a visit to them, that she was being tortured by her husband and mother-in-law because of non-payment of balance and that she did not want to return to matrimonial home without it; (iv) that her father escorted her*

(6)(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises *(contd.)*

back there anyway, and (v) that she was found dead in a dry well, as a result of head injuries within 48 hours (on 14-11-1987), held on facts, High Court erred in allowing appeal of accused-Respondent 1, setting aside his conviction under S. 302 and not considering the charge under S. 304-B at all — Respondent 1 convicted by Supreme Court under S. 304-B and sentenced to 10 years' RI — Evidence Act, 1872, S. 113-B — CrPC, 1973, S. 313

Accused 1 (Respondent 1 herein), *M*, was charged under Section 302 IPC and in the alternative under Section 304-B for the murder of *K*, his wife. *M* married *K* on 17-5-1987 in unusual circumstances. *K* was originally supposed to marry somebody else, but that person never came to the venue fixed for the solemnization of the marriage. Relatives and well-wishers who had gathered there discussed the matter and decided that *K* must be married. At that point *M* put himself forward as a potential bridegroom for *K*, but only on the condition that he be given Rs 10,000 and three sovereigns of gold as dowry. As PW 6, father of *K* was unable to arrange for the money and gold straight away, the relatives and elders present decided to contribute money of their own. In this way they collected Rs 8000, which was given to *M* and it was agreed that the balance amount as well as the gold would be given after PW 6 harvested his crops. The marriage was then solemnized. To establish this part of the sequence of events, the prosecution relied on the testimony of PW 1, brother of *K*, PW 6, father of *K*, PW 7, an independent witness who testified as to his participation in the collection of the money, and PW 12, also an independent witness, who testified as to the demand for dowry and the payment to *M*.

On 14-11-1987 *K* was found dead in a dry well. In the post-mortem examination carried out the next day, *K* was found to have died of shock and haemorrhage resulting from head injuries, which the examining doctor concluded were ante-mortem. He also felt that the head injuries were sufficient to cause death in the ordinary course of nature; that the death was homicidal.

On the issue of whether *M* had subjected *K* to cruelty and harassment in connection with the demand for dowry just before her death, the testimony of PW 1 and that of PW 6 were significant. PW 1 had testified that *K*, his sister had come to their parental home and asked him and their father to pay the balance amount due to *M*; *K* had also told them that *M*, her husband and her mother-in-law had been torturing her because of the non-payment. PW 1 promised to pay in January, after the harvest. *K* on the other hand pleaded that she should not be sent back to the matrimonial home without the money and gold. In spite of her pleas *K* was escorted back on 12-11-1987 by PW 6, who stayed overnight at *M*'s place and returned home on 13-11-1987. There was no evidence on record indicating that any compromise had been reached about the balance payment between 13-11-1987 and 14-11-1987, the date on which *K* was killed.

The trial court found *M* solely responsible for the death of *K* and convicted him under Sections 302 and 201 IPC, sentencing him to life imprisonment and two years' RI. The trial court also convicted *M* under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. *M*'s appeal, however, was allowed by the High Court and his convictions were set aside.

The Supreme Court, upholding the acquittal of *M*, Respondent 1, under Section 302 IPC, but finding him guilty under Section 304-B IPC

Held :

In order to establish the offence under Section 304-B IPC the prosecution is obliged to prove that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances and such death occurs within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband. Such harassment and cruelty must be in connection with any demand for dowry. If the prosecution is able to prove these circumstances then the presumption under Section 113-B of the Evidence Act will operate. It is a rebuttable presumption and the onus to rebut shifts on the accused. The defence of the accused was a total denial. Therefore, the presumption as to dowry death envisaged under Section 113-B of the Evidence Act remains unrebutted. (Paras 22 to 24)

In the present case it is clear that PW 6 took his daughter, the deceased to the house of the accused on 12-11-1987 and halted overnight there and returned to his house the next day i.e. 13-11-1987 and the deceased was murdered on 14-11-1987, stated to be early in the morning. There was no evidence on record which would throw some light that in the intervening period of 13-11-1987 and 14-11-1987 there was some settlement or resolution with regard to the balance amount of dowry being paid to the accused. From the testimony of PW 1 and PW 6, it clearly appears that soon before her death she was subjected to cruelty or harassment in connection with the demand for dowry by her husband. In the absence of the evidence on record showing any settlement or resolution for payment of balance of dowry amount and gold in the intervening period of 13-11-1987 and 14-11-1987, the cruelty and harassment in connection with any demand for dowry as on 12-11-1987 would continue till her death on 14-11-1987. This would constitute cruelty and harassment in connection with demand for dowry soon before her death. (Para 24)

The marriage of the deceased with the accused was solemnized on 17-5-1987 and she died within 7 years of marriage. Having regard to the entire facts and circumstances and evidence on record, it must be concluded that the offence under Section 304-B IPC is found to be well established against A-1. (Para 24)

Respondent-Accused 1 is accordingly convicted under Section 304-B IPC and sentenced to rigorous imprisonment for ten years. The impugned order of the High Court is set aside and the appeals filed by the State are allowed to the extent indicated. (Para 25). *State of Karnataka* v. *M.V. Manjunathegowda*, (2003) 2 SCC 188: 2003 SCC (Cri) 467: AIR 2003 SC 809: 2003 Cri LJ 900.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 7-1-2003]

Followed in Rameshwar Dass v. State of Punjab, (2007) 14 SCC 696

[7864] — S. 304-B — Dowry death — Suicide by wife within 7 years of her marriage — *Evidence of mother and brother of the deceased that she was subjected to ill-treatment by her husband for demand of dowry — Husband neither making any effort to inform the parental family of the deceased of her death nor reporting it to a Magistrate — Defence plea that the deceased had stomach-ache and on that account had died a natural death found not acceptable — Held, in the circumstances, accused rightly convicted under S. 304-B — However, sentence of life imprisonment reduced to the minimum i.e. seven years' RI. Sant Raj* v. *State of Haryana*, (1998) 8 SCC 605: 1998 SCC (Cri) 1600.

Bench Strength **2**. Coram: *M.M. Punchhi* and *A.P. Misra*, JJ. [Date of decision: 17-12-1997]

[7865] — S. 304-B — Dowry death — Unnatural death of married woman in her husband's house within seven years of her marriage — *Ill-treatment and harassment by the husband for not bringing sufficient dowry established — Medical evidence showing that the deceased died due to asphyxia as a result of smothering which is an unnatural death — No explanation offered by the husband as to how the deceased sustained several abrasions and contusions on her body — Held, in the circumstances, presumption of dowry death can be raised against the husband — High Court justified in reversing his acquittal — However, mother of the husband who resided separately, did not stand to gain from the demand of additional dowry and whose presence in the house at the time of the incident not established entitled to benefit of doubt — Evidence Act, 1872, S. 113-B. Prem Singh* v. *State of Haryana*, (1998) 8 SCC 70: AIR 1998 SC 2628.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 6-8-1998]

[7866] — S. 304-B — Duty of prosecution under — Presumption under — When arises — *Held, such presumption can be rebutted by pleading and proving a probable defence — Duty of court regarding evidence adduced in defence, whether it be oral, circumstantial or documentary, is to see if the presumption is rebutted — Essentially a matter of appreciation of evidence — Evidence Act, 1872, S. 113-B*

Under Section 304-B IPC the prosecution is required to establish that the death was caused by any burn or bodily injury or occurred otherwise than under normal circumstances, that such death took place within seven years of the marriage, and that it is shown that soon before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry. If these facts are established by the prosecution, the presumption under Section 113-B, Evidence Act, 1872 arises and the court shall presume that such person who had subjected the woman to cruelty or harassment in connection with any demand for dowry shall be presumed to have caused the dowry death. The presumption that arises in such cases may be rebutted by the accused. (Para 16)

If the accused successfully rebuts the presumption by pleading and proving a probable defence, the presumption under Section 113-B, Evidence Act stands rebutted and the prosecution must prove its case without the aid of such presumption. It must logically follow that in a case where such presumption arises, the evidence, oral, circumstantial or documentary, adduced in defence must be examined by the court with a view to find out whether the presumption stands rebutted. It is essentially a matter of appreciation of evidence. (Para 17). *Sanjiv Kumar* v. *State of Punjab*, (2009) 16 SCC 487: (2010) 3 SCC (Cri) 330.

Bench Strength **2**. Coram: **B.P. Singh** and *Tarun Chatterjee*, JJ. [Date of decision: 7-11-2006]

(6)(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises *(contd.)*

[7867] — S. 304-B — Presumption under — Availability — *Held, cannot be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment, the dispute stood resolved and there was no evidence of cruelty or harassment thereafter — However, mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim — Evidence Act, 1872, S. 113-B* (Paras 9 and 10). *Kailash* v. *State of M.P.*, (2006) 12 SCC 667: (2007) 2 SCC (Cri) 359: AIR 2007 SC 107: (2006) 47 AIC 823 (SC).

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 9-10-2006]

Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, relied on

[7868] — S. 304-B — S. 113-B, Evidence Act, 1872 — Dowry death — Conviction justified — Unnatural death of deceased within seven years of marriage undisputed — *Testimonies of PWs clearly establishing harassment and cruelty meted out to deceased for and in connection with dowry demand — Demand of dowry not abating at any point of time and even made both before and after the birth of a son — No omnibus allegations made against members of appellant's family but made only against deceased's husband and her mother-in-law — Her father-in-law was said to be a gentleman who tried to persuade the appellant and his mother not to insist for dowry or at least not harass her therefor — Hence, case of false implication ruled out — Evidence of PW 1 supported in material particulars by PW 2 — Held, very fact that harassment or cruelty on deceased did not abate even after her coming back to the matrimonial home with a son and the fact that she had been assaulted even a few days prior to the incident, tests of S. 304-B of the Penal Code stood satisfied — PW 1 when went to meet his daughter found her dead and even cremated — Supplementary statement filed by police wherein PW 1 alleged to have purportedly stated that he attended funeral of his daughter disbelieved — Conviction of appellant under S. 304-B calls for no interference — Evidence Act, 1872, S. 113-B* (Paras 24 to 30). *Devi Lal* v. *State of Rajasthan*, (2007) 14 SCC 176: AIR 2008 SC 332: (2007) 59 AIC 115 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Hans Raj v. State of Haryana, (2004) 12 SCC 257: 2004 SCC (Cri) Supp 217, followed

[7869] — S. 304-B — S. 113-B, Evidence Act, 1872 — Dowry death — Dowry demand on various occasions — Conviction upheld — *Demand satisfied on some occasions but demand of Rs 40,000 during marriage ceremony remaining unfulfilled, consequent to which appellant husband alleged to have tortured the deceased, resulting in the deceased committing suicide — Death occurring within seven years of marriage and during the pregnancy of deceased — Demand drafts of Rs 25,000 on 1-2-1986 and of Rs 5000 on 19-3-1986 drawn in favour of appellant proved by the Bank Manager — Maltreatment meted out to deceased proved by PWs — Neither the defence of the appellant that the marital relations were cordial nor the letters purported to have been written by the deceased to the accused in evidence thereof proved — Defence of appellant that deceased was suffering from severe depression wherefor she was also given a "taveej" rejected — Moreover, when IO reached the hospital on receiving information about the incident, appellant was not there — Statement of the appellant that he was detained in hospital also not proved — Incident occurring on or about 4-6-1986, while the appellant was arrested only on 12-6-1986 — Why he was not available for six days not explained by the appellant — Nothing on record to show that it was either DW 1 or the appellant, who got the deceased admitted in the hospital — Held, a pregnant woman ordinarily would not commit suicide unless relationship with her husband comes to such a pass that she would be compelled to do so — Further held, prosecution having discharged its primary onus, as envisaged under S. 304-B of the Penal Code, the onus of proof was upon the appellant in terms of S. 113-B, Evidence Act — Appellant having failed to discharge the onus, conviction of appellant under S. 304-B calls for no interference* (Paras 2 and 23 to 28). *Rameshwar Dass* v. *State of Punjab*, (2007) 14 SCC 696: AIR 2008 SC 890: 2008 Cri LJ 1400: (2008) 62 AIC 242 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 13-12-2007]

State of Karnataka v. M.V. Manjunathegowda, (2003) 2 SCC 188: 2003 SCC (Cri) 467, followed

[7870] — S. 304-B — S. 113-B, Evidence Act, 1872 — Dowry death — Guilt established — *Death of deceased occurred within 1½ years of her marriage due to head injuries — Cruel treatment and harassment meted out to her immediately after her marriage till her death for bringing insufficient dowry proved by PWs — Recovery of lathi at instance of the husband of deceased — Held, in such circumstances, S. 304-B clearly attracted —*

High Court erred in acquitting the respondent-accused by giving undue weightage to minor discrepancies ignoring the most important factor that the deceased suffered head injuries in a dwelling unit belonging to her in-laws and she died due to those injuries and that the defence failed to offer any satisfactory explanation — Further, conduct of the accused and his family members in not informing the parents of the deceased about the injuries and consequential death and the fact that the cremation of the dead body was conducted in the wee hours go a long way to show that the accused had deliberately concocted the story that deceased was suffering from epilepsy and she suffered injuries on her head by colliding against the door bar during the bout of fits — Disposal of dead body in a hush-hush manner clearly establishes that the accused had done so with the sole object of concealing the real cause of the death — Conviction of respondent under S. 304-B r/w S. 201 IPC restored and he sentenced to 7 years' RI — Evidence Act, 1872, S. 113-B (Paras 2, 15, 16, 22 to 26 and 30). *State of Rajasthan* v. *Jaggu Ram*, (2008) 12 SCC 51: AIR 2008 SC 982: (2008) 63 AIC 183 (SC): 2008 Cri LJ 1039.

Bench Strength **2**. Coram: *G.P. Mathur* and **G.S. Singhvi**, JJ. [Date of decision: 4-1-2008]

Ram Gulam Chaudhary v. State of Bihar, (2001) 8 SCC 311: 2001 SCC (Cri) 1546; Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254: (2007) 1 SCC (Cri) 688; Raj Kumar Prasad Tamarkar v. State of Bihar, (2007) 10 SCC 433: (2007) 3 SCC (Cri) 716, relied on

[7871] — S. 304-B — "Shall be deemed to have caused her death" — Deeming fiction — Applicability — *Where basic ingredients of S. 304-B shown to have been satisfied, court will presume by deemed fiction that husband or his relatives caused death of the woman — However, husband or his relatives may rebut the presumption by proving that ingredients of S. 304-B were not satisfied*

The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under Section 304-B of the Code. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of Section 304-B were not satisfied, rebut the same. (Paras 23 and 24). *Ashok Kumar* v. *State of Haryana*, (2010) 12 SCC 350: AIR 2010 SC 2839: 2010 Cri LJ 4402: (2010) 93 AIC 129 (SC).

Bench Strength **2**. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision: 8-7-2010]

[7872] — Ss. 304-B, 302 and 498-A — Offence under S. 304-B — Necessary ingredients — Presumption as to dowry death under S. 113-B of Evidence Act — When may be invoked — *Imperative to prove that soon before her death the wife was subjected to cruelty and harassment for or in connection with the demand for dowry — Held on facts that there was no such proof — Hence appellant could not be convicted under S. 304-B — But this would not save the appellant from offence under S. 498-A for which there was overwhelming evidence — Accordingly, conviction of the appellant under S. 302 IPC set aside; conviction under S. 498-A substituted and a sentence of three years' RI imposed — Evidence Act, 1872, S. 113-B*

The High Court was not justified, on the circumstances established in the case, in concluding that the deceased was murdered by the appellant husband.

The primary requirement for finding the appellant guilty of the offence under Section 304-B, IPC, are that death of the deceased was caused by burns within seven years of her marriage and that 'soon before her death' she was subjected to cruelty or harassment by the appellant for or in connection with any demand for dowry.

The first premise stands established in this case that the death of the deceased took place within seven years of her marriage. The second premise that the death was caused by burns is a factum which has not been disputed. In order to establish the third ingredient, a plea is made to resort to the legal presumption envisaged in S. 113-B of the Evidence Act. It is imperative, for invoking the aforesaid legal presumption, to prove that soon before her death she was subjected to cruelty or harassment. In the present case there is nothing on record to show that the deceased was treated with cruelty or harassed with demand for dowry soon before her tragic end. In the absence of any such evidence it is not permissible to take recourse to legal presumption in S. 113-B of the Evidence Act.

(6)(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises *(contd.)*

The corollary of the aforesaid finding is that the appellant cannot be convicted of the offence under S. 304-B of IPC. But this would not save the husband from the offence under S. 498-A of the IPC for which there is overwhelming evidence. *Sham Lal* v. *State of Haryana*, (1997) 9 SCC 759: 1997 SCC (Cri) 759: AIR 1997 SC 1873: 1997 Cri LJ 1927.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K.T. Thomas*, JJ. [Date of decision: 20-2-1997]

[7873] — Ss. 304-B & 498-A — Dowry death — Demand for dowry, consequent harassment to deceased and driving out brother and father of deceased when they visited the accused's place because of their failure to satisfy the demand alleged — *Prosecution established beyond reasonable doubt that accused (mother-in-law of deceased and wife of brother of deceased's husband) treated the deceased cruelly within the meaning of S. 498-A for or in connection with demand of dowry — Death occurred within seven years of the marriage — Body of the deceased cremated hurriedly soon after the death without informing her father and brother — This ruled out natural death in absence of any evidence to that effect — Held, in the circumstance presumption under S. 113-B of Evidence Act applicable and essentials of S. 304-B made out. Shanti* v. *State of Haryana*, (1991) 1 SCC 371: 1991 SCC (Cri) 191: AIR 1991 SC 1226.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 13-11-1990]

[7874] — Ss. 304-B and 498-A — Dowry death — Evidence — *Deceased's younger sister married to the brother of the deceased's husband — FIR mentioning the names of the deceased's husband and mother-in-law — Subsequently, the deceased's sister filing a divorce petition and implicating therein her husband as well — The said addition in the divorce petition, held, not relevant to falsify the FIR — Hindu Marriage Act, 1955, S. 13 — Evidence Act, 1872, S. 113-B. Ram Kumar* v. *State of Haryana*, (1998) 9 SCC 1: 1998 SCC (Cri) 833: AIR 1999 SC 1491.

Bench Strength **2**. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 8-1-1998]

[7875] — Ss. 304-B and 498-A — Dowry death — Evidence — Where sufficient, non-production of remaining evidence, if necessary — *Where there was sufficient evidence to prove the charges under Ss. 304-B and 498-A, mere non-production of certain letters allegedly written by the deceased to her parents, held, did not falsify the prosecution case — CrPC, 1973, S. 231 — Evidence Act, 1872, S. 113-B. Ram Kumar* v. *State of Haryana*, (1998) 9 SCC 1: 1998 SCC (Cri) 833: AIR 1999 SC 1491.

Bench Strength **2**. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 8-1-1998]

[7876] — Ss. 304-B and 498-A — Dowry death — Evidence in rebuttal — *The mere fact that "muklawa" ceremony of the deceased's younger sister, who was married to the brother of the deceased's husband, was performed only a month and a half before the occurrence, held, did not belie the evidence of harassment meted out to the deceased — Evidence Act, 1872, S. 113-B. Ram Kumar* v. *State of Haryana*, (1998) 9 SCC 1: 1998 SCC (Cri) 833: AIR 1999 SC 1491.

Bench Strength **2**. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 8-1-1998]

[7877] — Ss. 304-B & 498-A and S. 113-B, Evidence Act, 1872 — Presumption as to dowry death — When arises — *Prosecution proving that soon before her death deceased had been subjected by appellant to taunts in connection with demand for dowry — Held, once such a fact is established, court has to presume that appellant has committed offence under S. 304-B — It is for appellant to rebut this presumption — Appellant had not examined any defence witness to rebut the presumption and in his examination under S. 313 CrPC had merely denied the allegations — Hence, conviction of appellant sustainable — Evidence Act, 1872, S. 113-B* (Paras 21 and 22). *Amar Singh* v. *State of Rajasthan*, (2010) 9 SCC 64: (2010) 3 SCC (Cri) 1130: AIR 2010 SC 3391: (2010) 94 AIC 137 (SC): (2010) 3 UPLJ 125 (SC).

Bench Strength **2**. Coram: *R.M. Lodha* and **A.K. Patnaik**, JJ. [Date of decision: 3-8-2010]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740, considered

[7878] — Ss. 304-B and 498-A and Ss. 113-A and 113-B, Evidence Act, 1872 — Purpose of — Conviction — *Held, before a person is found guilty, court must arrive at a firm conclusion that ingredients of offence alleged are satisfied — For said purpose, intention of Parliament in inserting the said provisions must also be borne in mind — Evidence Act, 1872, Ss. 113-A and 113-B* (Paras 14 and 29). *Suresh Kumar Singh* v. *State of U.P*, (2009) 17 SCC 243: (2009) 3 ECrN 451 (SC): (2009) 4 All LJ 662.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[7879] — Ss. 304-B, 498-A and 201 — Dowry death — Presumption in respect of — Applicability — Rebuttal of said presumption — *Whether the deceased died in circumstances otherwise than normal — Burden of proof — Deceased S was taken to hospital in a critical condition where she died within half an hour — No effort made by appellants (in-laws of S) to inform the parents of S about her death — Body of S cremated on the same night in a suspicious manner — Defence contending that S died of diarrhoea and vomiting — Where the evidence indicating (i) that the death of S occurred after about four years of her marriage, (ii) that she was persistently subjected to cruelty and harassment by her husband and in-laws in connection with demand for gold ornaments, and (iii) that the last demand was made only fifteen days prior to the occurrence, held, presumption as to dowry death arose — In such case, if the defence wanted to prove that S died a natural/accidental death, onus was on it to adduce evidence and rebut the aforesaid presumption — But, the defence failed to do so — Prosecution case established — Conviction and sentence upheld — Evidence Act, 1872, S. 113-B*

There was a persistent demand for gold ornaments ever since the marriage of the deceased with *K*, which demand was reiterated on many occasions and the demand last made was just 15 days before the occurrence. (Paras 8, 7 and 14)

The deceased was taken to Morena Hospital in a critical condition when she was about to die. According to PW 2 (nurse of the hospital), the death of the deceased took place within half an hour of her being brought to the hospital. The witness could not say what medicines were given to the deceased and what was the nature of her ailment. In fact this witness had to be declared hostile since she went back on the statements made by her in the course of investigation. (Paras 12 and 10)

That apart, the appellants (in-laws of the deceased) made no effort to inform the parents of the deceased about her death and on the contrary cremated the body of the deceased the same night in a suspicious manner. (Para 12)

The prosecution has successfully established that the deceased was married to *K* about 4 years before her death. The facts also reveal that the death was not under normal circumstances. There was also evidence to show that the deceased was persistently subjected to cruelty and harassment by her husband as well as by his parents in connection with demand for dowry, in particular the demand for gold ornaments. Once it is held that these facts stand established, under Section 304-B IPC a presumption arises that it is a case of dowry death, and that her husband or relatives who subjected her to cruelty and harassment shall be deemed to have caused her death. No doubt this is a rebuttable presumption, but in the absence of any evidence in rebuttal, the court may, with the aid of the presumption convict the accused of that charge. Once the prosecution proves the facts which give rise to the presumption under Section 304-B IPC, the onus shifts to the defence and it is for the defence to produce evidence to rebut that presumption. The defence may adduce evidence in support of its defence or may make suggestions to the prosecution witnesses to elicit facts which may support their defence. The evidence produced by the defence may disclose that the death was not caused by them, or that the death took place in the normal course on account of any ailment or disease suffered by the deceased or that the death took place in a manner with which they were not at all connected. (Paras 13 and 19)

In the instant case if the defence wanted to prove that the deceased had suffered from diarrhoea and vomiting and that resulted in her death, it was for the defence to adduce evidence and rebut the presumption that arose under Section 304-B IPC. The defence could have examined the doctor concerned or even summoned the record from the hospital to prove that in fact the deceased has suffered such ailment and had also been treated for such ailment. But, the defence failed to rebut the said presumption. (Paras 13 and 19)

The deceased was a young girl and there is no evidence even to suggest that she was suffering from any ailment. Fifteen days before her death she had gone to her matrimonial home in good health. Suddenly one day her parents came to know that she had died. Her death was therefore, clearly in circumstances which cannot be considered to be normal. If she had really died a natural or accidental death, the appellants were the best persons to disclose the relevant facts which were solely within their knowledge. In these circumstances and in the absence of any acceptable evidence whatsoever, to suspect that the death may have been accidental or on account of natural causes, will be speculative. Law does not permit a court to speculate or conjecture so as to imagine events about which there is absolutely no evidence on record. (Para 19)

The manner in which the dead body was disposed of at night has further added to the incriminating circumstances proved against the appellants. (Para 19). *Yashoda* v. *State of M.P.*, (2004) 3 SCC 98: 2004 SCC (Cri) 671.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-2-2004]

(6)(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises *(contd.)*

[7880] — Ss. 304-B, 498-A & 201 and 302 — Dowry death — Presumption of — *Unnatural death of a married woman within 7 years of her marriage — Presumption of dowry death can be raised if before her death she had been subjected to cruelty or harassment by the accused in connection with any demand of dowry — Proof of direct connection of the accused with her death not essential — Death of married woman caused by strangulation — Accused not charged under S. 302 — Absence of direct connection of accused with death — Held, S. 304-B attracted — Evidence Act, 1872, S. 113-B*

A reading of S. 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. Likewise there is a presumption under S. 113-B of the Evidence Act as to the dowry death. Practically this is the presumption that has been incorporated in S. 304-B IPC also. It can, therefore, be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned in the section are satisfied. In the instant case the prosecution has proved that the deceased died an unnatural death, but there is no direct evidence connecting the accused with the death. The accused has not been charged under S. 302 IPC. Therefore at the most it can be said that the prosecution proved that it was an unnatural death in which case also S. 304-B IPC would be attracted. But this aspect i.e. absence of direct connection of the accused with death has certainly to be taken into consideration in balancing the sentence to be awarded to the accused. *Hem Chand* v. *State of Haryana*, (1994) 6 SCC 727: 1995 SCC (Cri) 36: AIR 1995 SC 120.

Bench Strength **3**. Coram: *P.B. Sawant, G.N. Ray* and **K. Jayachandra Reddy**, JJ. [Date of decision: 6-10-1994]

[7881] — S. 304-B r/w Ss. 113-B & 4, Evidence Act, 1872 — Dowry death — Ingredients — Expressions "shall be deemed to have caused her death" in S. 304-B, "court shall presume" in S. 113-B and "it shall regard such fact as proved" in S. 4 — Implication of — *Statutory compulsion is on court to presume — Onus lies on accused to disprove that presumption by adducing evidence and/or by cross-examination of the witnesses — This is in contrast to the position under S. 302 where onus does not shift on the accused — So where no charge framed under S. 304-B and no notice of offence thereunder issued to accused and instead charge under S. 302 IPC alone framed, held, conviction under S. 304-B without affording opportunity to accused to discharge the onus which lies on him would result in serious miscarriage of justice — Evidence Act, 1872 — Ss. 113-B and 4*

When a person is charged with an offence under Sections 302 and 498-A IPC on the allegation that he caused the death of a bride after subjecting her to harassment with a demand for dowry, within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused. Nonetheless, all other ingredients necessary for the offence under Section 304-B IPC would stand established. Can the accused be convicted in such a case for the offence under Section 304-B IPC without the said offence forming part of the charge? In other words whether in a case where prosecution failed to prove the charge under Section 302 IPC, but on the facts the ingredients of Section 304-B have winched to the fore, can the court convict him of that offence in the absence of the said offence being included in the charge. That was the question raised before the Supreme Court, in this case.

Held :

The postulates needed to establish the offence under Section 304-B(1) are: (*1*) death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Reading Section 113-B of the Evidence Act, as a part of the said offence, the position is: If the prosecution succeeds in showing that soon before her death she was subjected by the husband to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances "the court *shall presume* that such person had caused the dowry death". In view of Section 4 of the Evidence Act the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both. (Paras 27 and 28)

But where the accused is called upon to defend only a charge under Section 302 IPC, the burden of proof never shifts onto him. It ever remains on the prosecution which has to prove the charge beyond all reasonable doubt. The said traditional legal concept remains unchanged even now. In such a case the accused can wait till the prosecution evidence is over and then to show that the prosecution has failed to make out the said offence against him. No compulsory presumption would go to the assistance of the prosecution in such a situation. If that be so, when an accused has no notice of the offence under Section 304-B IPC, as he was defending a charge under Section 302 IPC alone, it would lead to a grave miscarriage of justice when he is alternatively convicted under Section 304-B IPC and sentenced to the serious punishment prescribed thereunder, because he is deprived of the opportunity to disprove the burden cast on him by law. (Paras 31 to 33)

In such a situation, if the trial court finds that the prosecution has failed to make out the case under Section 302 IPC, but the offence under Section 304-B IPC has been made out, the court has to call upon the accused to enter on his defence in respect of the said offence. Even if no such count was included in the charge, when the court affords him an opportunity to discharge his burden by putting him to notice regarding the prima facie view of the court that he is liable to be convicted under Section 304-B IPC, it is possible for the court to enter upon a conviction of the said offence in the event of his failure to disprove the presumption. (Para 34)

As the appellant was convicted by the High Court under Section 304-B IPC, without such an opportunity being granted to him, it is necessary in the interest of justice to afford him that opportunity. The case in the trial court should proceed against the appellant (not against the other two accused whose acquittal remains unchallenged now) from the stage of defence evidence. He is put to notice that unless he disproves the presumption, he is liable to be convicted under Section 304-B IPC. (Para 35). *Shamnsaheb M. Multtani* v. *State of Karnataka*, (2001) 2 SCC 577: 2001 SCC (Cri) 358: AIR 2001 SC 921.

Bench Strength 3. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 24-1-2001]

(iii) Nature of death — Death "otherwise than under normal circumstances" due to dowry demand — Death if homicide or suicide — Relevance

See also under S. 306, below

See also under '(4) Ss. 304-B, 306 and 498-A IPC and Ss. 113-A/113-B, Evidence Act — Relative scope', above

See also '(v) Cruelty or harassment in connection with dowry demand',

'(vi) Dowry demand — What is and proof of [S. 304-B(1) Expln.]' and

'(vii) "Soon before her death" — Proximity of causation', below

[7882] — S. 304-B — Scope — Held, it is not relevant under S. 304-B, whether dowry related death is a case of homicide or suicide

It is settled by a series of decisions of the Supreme Court that so far as Section 304-B is concerned, it is not relevant whether it is a case of homicide or suicide. (Para 16)

In the present case, there is a clear nexus between the death of the victim *G* and the dowry related harassment inflicted on her. Even if *G* committed suicide, Section 304-B can still be attracted. A person commits suicide in a fit of depression due to extreme unhappiness. Thus, even if *G* committed suicide, it was obviously because she was extremely unhappy, and unless her husband gave a satisfactory alternative explanation for the suicide, it is to be taken that it was the persistent demand for dowry which led to her suicide. It is evident from the evidence that *G*'s father was a poor man and he did not have the money to give dowry immediately and he wanted time so that he could collect some funds from somewhere, but the appellant husband was heartless and he wanted immediate compliance with his demand. Since that was not fulfilled, he either killed *G* or harassed her so much that she was driven to suicide on account of the said dowry demand. In view of the above, the appeal of husband is dismissed. (Para 19). *Raja Lal Singh* v. *State of Jharkhand*, (2007) 15 SCC 415.

Bench Strength 2. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 8-5-2007]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48, relied on

[7883] — S. 304-B — Scope — Suicide — *Deceased committing suicide due to cruelty or harassment in relation to demand for dowry within seven years of marriage, held, covered. G.V. Siddaramesh* v. *State of Karnataka*, (2010) 3 SCC 152.

Bench Strength 2. Coram : *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision : 5-2-2010]

V. Bhagat v. D. Bhagat, (1994) 1 SCC 337, relied on

(6)(iii) Nature of death — Death "otherwise than under normal circumstances" due to dowry demand — Death if homicide or suicide — Relevance *(contd.)*

[7884] — S. 304-B — Covers dowry-related suicidal deaths also

It is, therefore, not possible to accept the contention that if the dowry-related death is a case of suicide it would not fall within the purview of Section 304-B IPC at all. Suicide is one of the modes of death falling within the ambit of Section 304-B IPC. (Para 18). *Satvir Singh* v. *State of Punjab*, (2001) 8 SCC 633: 2002 SCC (Cri) 48: AIR 2001 SC 2828.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 27-9-2001]

Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191; Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, relied on

[7885] — S. 304-B — Dowry death — *Ingredients to sustain conviction for: (i) Demand for dowry and consequent harassment for non-fulfilment thereof; (ii) Death of the deceased; and (iii) Death under unnatural circumstances within 7 years of marriage — Even in case of suicide S. 304-B attracted* (Para 35). *Ram Badan Sharma* v. *State of Bihar*, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166: AIR 2006 SC 2855: 2006 Cri LJ 4070.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 21-8-2006]

[7886] — S. 304-B — Dowry death — Death caused "otherwise than under normal circumstances" — Meaning

It is established that the death of the deceased by suicide had occurred within 7 years of her marriage and such death cannot be stated to have occurred in normal circumstances. The term "normal circumstances" apparently means natural death. The expression "otherwise than under normal circumstances" would mean death not in the usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury. (Paras 19 and 20). *Kans Raj* v. *State of Punjab*, (2000) 5 SCC 207: 2000 SCC (Cri) 935: AIR 2000 SC 2324: 2000 Cri LJ 2993.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **R.P. Sethi** and *Shivaraj V. Patil*, JJ. [Date of decision: 26-4-2000]

Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191, relied on

[7887] — S. 304-B — Dowry death — Death must occur otherwise than under normal circumstances — This essential ingredient must be fully established on evidence — *In this context framing of charge and the circumstances that are put to accused under S. 313 CrPC assume importance — Death due to asphyxia — Poisoning not even mentioned in examination under S. 313 CrPC — Merely because deceased was young and death was not accidental, it cannot be surmised that death occurred otherwise than under normal circumstances — CrPC, 1973, S. 313. Akula Ravinder* v. *State of A.P.*, 1991 Supp (2) SCC 99: 1991 SCC (Cri) 990: AIR 1991 SC 1142.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 11-1-1991]

[7888] — S. 304-B — Dowry death — Dowry demand soon before death of wife, would attract S. 304-B, irrespective of whether death was homicidal or suicidal

If the suicide was due to demand of dowry soon before her death then Section 304-B IPC may be attracted, whether it is a case of homicide or suicide. In the present case, since no charge under Section 304-B has been framed, obviously the accused cannot be convicted under that provision. (Paras 16 and 17). *Bhagwan Das* v. *Kartar Singh*, (2007) 11 SCC 205: AIR 2007 SC 2045.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 14-5-2007]

Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935; Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191, relied on

[7889] — S. 304-B — Dowry death — Suicide by wife — Death due to burn injuries — Husband accused — *Prosecution must establish that there was nexus between cruelty meted out by accused and the suicide, that the cruelty induced the victim to commit suicide — No other reason pointed out by accused for the deceased to commit suicide — Evidence showing that accused had demanded dowry and he had sent her away from his house and only after mediation of panchayatdars was she taken back to the accused's house — Death happened within a period of two months thereafter — Held, facts clearly show that suicide was the result of harassment or cruelty meted out to deceased — Presumption under S. 113-B of Evidence Act could be invoked against accused — Accused-appellant liable to be convicted under S. 304-B — Evidence Act, 1872, S. 113-B* (Para 7). *Dhian Singh* v. *State of Punjab*, (2004) 7 SCC 759: 2004 SCC (Cri) 2077.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 10-8-2004]

[7890] — S. 304-B — Expression "normal circumstances" — Meaning and scope — *Held, the same apparently means natural death — Further held, the expression "otherwise than under normal circumstances" means death not being in the usual* *course but apparently under suspicious circumstances if not caused by burns or bodily injury* (Para 11). *Kailash* v. *State of M.P.*, (2006) 12 SCC 667: (2007) 2 SCC (Cri) 359: AIR 2007 SC 107: (2006) 47 AIC 823 (SC).

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 9-10-2006]

Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191; Thakkan Jha v. State of Bihar, (2004) 13 SCC 348: (2006) 1 SCC (Cri) 309, relied on

[7891] — S. 304-B — Expressions "normal circumstances" and "otherwise than under normal circumstances" — Meaning of — *Held, "normal circumstances" apparently means natural death — "Otherwise than under normal circumstances" means death not being in the usual course but apparently under suspicious circumstances if not caused by burns or bodily injury* (Para 8). *Thakkan Jha* v. *State of Bihar*, (2004) 13 SCC 348.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-9-2004]

Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191, relied on

[7892] — S. 304-B — Suicidal death of a married woman within seven years of her marriage, held, is covered by the expression "death of woman is caused ... or occurs otherwise than under normal circumstances" in S. 304-B — *Evidence Act, 1872, S. 113-A* (Paras 14 and 12). *Kamesh Panjiyar* v. *State of Bihar*, (2005) 2 SCC 388: 2005 SCC (Cri) 511: AIR 2005 SC 785: 2005 Cri LJ 1418.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-2-2005]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48, followed

[7893] — S. 304-B — Suicidal death of a woman — Whether she was subjected to cruelty or harassment by her husband for or in connection with demand for dowry soon before her death — Proof — *Conduct of family members of deceased was relevant as no complaint was made by them and they took back all articles given in marriage — Instead deceased's husband (appellant) himself lodged the FIR — Demand for dowry not established by cogent evidence — No evidence, direct or indirect, as regards harassment or cruelty by appellant against his wife — Necessary ingredients of circumstantial evidence for holding appellant guilty not considered by trial court as well as High Court — Even if there was misunderstanding between appellant and deceased, that would not automatically lead to the conclusion that appellant committed offence under S. 304-B as law does not raise such a presumption — Trial court took erroneous view that another person had made demands from deceased's parents as messenger of appellant and that his insistence revealed that what was demanded by that person was a dowry demand — Such a hypothesis could not be made basis for conviction of appellant under S. 304-B — Defence version that cause of death was that deceased had insisted to go to her mother's house but she was not allowed, plausible — Having regard to the peculiar features of the case, held, cruelty or harassment for dowry being the cause for death of the deceased, not established beyond all reasonable doubt — Conviction under S. 304-B not sustainable. T. Aruntperunjothi* v. *State*, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528: AIR 2006 SC 2475: 2006 Cri LJ 3290: (2006) 102 Cut LT 95.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

State of A.P. v. Raj Gopal Asawa, (2004) 4 SCC 470: 2004 SCC (Cri) 1306; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511, relied on

Sudhakar v. State of Maharashtra, (2000) 6 SCC 671: 2000 SCC (Cri) 1250, distinguished

[7894] — S. 304-B — Whether the unnatural death was homicidal or suicidal not material — 'Suicide' is covered under death 'otherwise than under natural circumstances'

If suicidal death occurs in unnatural circumstances, S. 304-B is attracted. (Para 5)

There is absolutely no material to indicate even remotely that it was a case of natural death. It is nobody's case that it was accidental death. In the result it was an unnatural death; either homicidal or suicidal. But even assuming that it is a case of suicide even then it would be death which had occurred in unnatural circumstances. Even in such a case, S. 304-B is attracted and this position is not disputed. Therefore, the prosecution has established that the appellants have committed an offence punishable under S. 304-B beyond all reasonable doubt. (Para 5). *Shanti* v. *State of Haryana*, (1991) 1 SCC 371: 1991 SCC (Cri) 191: AIR 1991 SC 1226.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 13-11-1990]

(iv) "Within seven years of marriage"

[7895] — S. 304-B — Conditions precedent for establishing offence under S. 304-B — Drawing of presumption under S. 113-B, Evidence Act — Proof of date of marriage — Onus — *Held, it is for the prosecution to prove the said fact — In the instant case, prosecution failed to do so — Courts below erred in shifting the onus of proving the date*

(6)(iv) "Within seven years of marriage" *(contd.)*

of marriage on the defence and drawing a presumption against it merely on the basis of allegation of death of victim within seven years — Evidence Act, 1872, S. 113-B

The conditions precedent for establishing an offence under Section 304-B IPC are as follows: (*a*) that a married woman had died otherwise than under normal circumstances; (*b*) such death was within seven years of her marriage; and (*c*) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death. (Para 8)

Section 113-B of the Evidence Act permits a presumption to be drawn against the accused in regard to dowry death provided the prosecution establishes that soon before her death the woman was subjected to cruelty or harassment. (Para 9)

On a conjoint reading of Section 304-B IPC and Section 113-B of the Evidence Act it is clear that for drawing a presumption under Section 113-B firstly, there should be death of a woman otherwise than in normal circumstances, within seven years of marriage and the prosecution having shown that soon before her death she was subjected to cruelty or harassment in connection with any demand for dowry by persons accused of having committed the offence. Unless and until these preliminary facts are established by the prosecution, it is not open to the courts to draw a presumption against the accused invoking Section 113-B. (Para 10)

Thus, the law requires the prosecution to establish first by cogent evidence that the death in the case occurred within seven years of the marriage. (Para 17)

On facts, the prosecution has failed to produce the available evidence regarding the date of marriage of the deceased thereby failing to discharge its initial onus of proof. The question whether the defence has been able to establish its version of the date of marriage is immaterial because in the first instance it was for the prosecution to establish this fact. (Para 17)

Hence, both the courts below erred in shifting the onus of proving the date of marriage on the defence and drawing a presumption against it. (Para 17). *Baljeet Singh* v. *State of Haryana*, (2004) 3 SCC 122: 2004 SCC (Cri) 692: AIR 2004 SC 1714.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 24-2-2004]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088, explained and followed

[7896] — S. 304-B — Dowry death — Death within seven years of marriage — Proof and conclusion in respect of — *Death of deceased took place in the night of 20/21-7-1999 — PWs 3 and 4 categorically stated that the marriage took place in the month of Baisakh of 1993 — No cross-examination of these witnesses with reference to the date of marriage — Held, in view of the undisputed testimony of PWs 3 and 4 about the date of marriage, the courts below were justified in concluding that the death took place within seven years of marriage — Evidence Act, 1872, S. 113-B* (Para 8). *Thakkan Jha* v. *State of Bihar*, (2004) 13 SCC 348.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-9-2004]

[7897] — S. 304-B — Dowry death — Marriage having taken place more than seven years earlier to the incident, held, acquittal of husband under S. 304-B was proper — *Evidence Act, 1872, S. 113-B* (Para 8). *Dalbir Singh* v. *State of U.P.*, (2004) 5 SCC 334: 2004 SCC (Cri) 1592: AIR 2004 SC 1990: 2004 All LJ 1448: 2004 Cri LJ 2025.

Bench Strength **3**. Coram: *S. Rajendra Babu*, *Dr. Ar. Lakshmanan* and **G.P. Mathur**, JJ. [Date of decision: 8-4-2004]

[7898] — Ss. 304-B and 306 — Dowry death — Demand for dowry not established — Suicide committed by deceased *G* within 2 months of her marriage — *According to prosecution there was a persistent demand for a car and the appellants (in-laws) and the husband were constantly harassing G for dowry — Suicide note not containing any statement which could be used against the accused persons — Prosecution case based on the evidence of father, mother and sister of G — Several letters written by G to her mother, sister and friend, also produced by the prosecution — Letters, however, not showing that G was being subjected to cruelty or harassment in connection with any demand for dowry — On the contrary, letters indicating that G received abundant love and affection in her matrimonial home — Further, G was keen to get her brother-in-law married — Suicide committed by G as she was unable to adjust in her matrimonial home — On facts, prosecution failed to prove its case beyond reasonable doubt — Appellants acquitted — Benefit of this judgment also extended to accused husband who did not appeal to the Supreme Court*

The letters written by *G* (deceased) to her mother (PW 4), sister and friend as well as the letters written by PW 4 to her daughter and son-in-law, when considered do not support the prosecution case that *G* was being subjected to torture and harassment or was being constantly taunted for not bringing a car in dowry. On the contrary, it appears from these letters that she was loved by all members of her matrimonial family who showered affection on her. The only indication, if at all, is about her finding it difficult to adjust in the new surroundings for which she found herself guilty for entertaining such feelings. She has referred to the freedom that she enjoyed in her parental home but now feels suppressed because she cannot do all that she used to do in her parental home. Further, the fact that she was keen to get her brother-in-law married and was requesting her sister to find a good match, if at all, is indicative of the fact that she found her husband, father-in-law, mother-in-law and other members of the family to be good-natured persons, and was therefore keen to get her brother-in-law married. (Paras 15 to 24)

That apart, the suicide note also does not contain any statement which can be used against the accused, as there is nothing in the suicide note which may even remotely suggest that *G* was ending her life because of the maltreatment meted out to her by the members of her matrimonial family. In fact the note says that no one was responsible for what she was doing, and that what she was doing was entirely of her own will. (Para 26)

Further, if the parents of the deceased thought of sending her an old car after repairs, it does not necessarily follow that the car was being sent in response to any demand by the husband or in-laws of the deceased. (Para 27)

The case projected by the prosecution at the trial about the demand of a car cannot be accepted. Even the story about PW 1 (father of the deceased) having asked PW 5 to get a demand draft prepared for the purchase of a car appears to be an afterthought because PW 5 admitted that he neither got a demand draft made nor was he paid any amount by the father of the deceased for the purpose. Moreover, no one informed the deceased that demand draft was about to be sent for the purchase of a car. In normal circumstances one would have expected that the deceased would have been informed of the fact that a demand draft was being sent for the purchase of a car, particularly when it is the case of the prosecution that *G* was under a terrible strain and depression on account of her being consistently taunted for not bringing a car in dowry. That apart, PW 1 has not mentioned about the decision to send a demand draft for purchase of a car either in the FIR or in his two subsequent statements before the police. Moreover, this story is not consistent with the version given out in the letter Ext. P-33 of 13-7-1990 wherein it was stated that a car was being repaired for being sent to *G*. (Paras 28 and 29)

Thus, the evidence on record does not suggest that *G* was subjected to cruelty or harassment by her husband or by her father and mother-in-law for or in connection with any demand for dowry. *G* may have committed suicide, as she was unable to adjust herself in the changed surroundings of her matrimonial home being a highly emotional person. Hence, the prosecution has failed to prove its case beyond reasonable doubt. (Paras 30 and 31). *Gurucharan Kumar* v. *State of Rajasthan*, (2003) 2 SCC 698: 2003 SCC (Cri) 675: AIR 2003 SC 992: 2003 Cri LJ 1234.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 8-1-2003]

Gurucharan Kumar v. State of Rajasthan, 1996 Cri LR 410 (Raj), reversed

Extension of benefit to non-appealing accused followed in Mohinder Singh v. State of Punjab, (2004) 12 SCC 311

[7899] — Ss. 304-B, 306 and 498-A — Death by burning — Deceased committing suicide within 11 months after her marriage with Appellant 1 — No direct evidence — *Appellants not attempting to save the deceased — Trial court acquitting Appellant 1 and his mother, Appellant 2, of all the charges on the grounds that the dying declaration was not recorded in the language in which it was made, there were some minor contradictions in the dying declaration and the report made to the Head Constable, and that there was doubt whether the deceased was in a fit condition to make the dying declaration — Further, the trial court held that the scolding and taunting of the deceased for not preparing proper food or that she was not good-looking was not such a cruelty so as to push her to commit suicide — Where the dying declaration was recorded and signed by the Magistrate, endorsement was made thereon by the doctor that the deceased made the statement in a fit state of mind, and the deceased put a thumb impression on her declaration which was made in Urdu and recorded in English and thereafter explained in Hindi to the deceased, held on facts, the appellants were rightly convicted under Ss. 306 and 498-A by the High Court — Further, High Court rightly held that the continuous taunting or teasing of the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life — CrPC, 1973, Ss. 386 and 378*

PW 1, the Magistrate has certified that he had signed the dying declaration and had taken the endorsement of the doctor on duty that the deceased was in a fit state of mind to make a statement; the deceased had made the dying declaration in question-answer form in Urdu and he had translated the version and recorded the declaration in English. After recording her statement, he explained the statement in Hindi to the deceased who admitted its correctness. Thereafter, he took the thumb impression of the deceased on her declaration. In cross-examination, he has stated that he could read and speak in Hindi; the deceased had made statement in Urdu which he could understand as Urdu and Hindi languages are almost similar and in Hyderabad, Urdu and Hindi languages are spoken in the same way, there being not much difference. PW 11, the doctor, corroborated the statement of PW 1 to the effect that the deceased was in a fit mental condition to make statement and that he was present when the statement was recorded by the Magistrate. (Para 5)

Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. Each case has to be decided on its own facts to decide whether the mental cruelty was established or not. In the facts and circumstances of the case, the High Court rightly concluded that the continuous taunting or teasing of the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life. Out of 11 months of married life, the deceased was forced to live in her parents' house and could live with her husband for a period of two months in different spells. The High Court also took note of the fact that the appellants did not try to save the deceased although they were present when the burn injuries were caused to her. (Para 6)

Having regard to the evidence brought on record and looking to the reasons recorded by the High Court, the trial court committed manifest error in disbelieving the dying declaration and the evidence of PWs 3 to 7. The High Court was right and justified in reversing the order of acquittal and convicting and sentencing the appellants for the offences under Sections 306 and 498-A IPC. However, having regard to the fact that both the appellants were in imprisonment for about two months, the incident took place on 9-3-1988, Appellant 2 is the mother of Appellant 1 and she is aged 60 years, it would be just and appropriate to modify the sentence of imprisonment to the period already undergone. (Para 8). *Mohd. Hoshan* v. *State of A.P.*, (2002) 7 SCC 414: 2002 SCC (Cri) 1765: AIR 2002 SC 3270.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Shivaraj V. Patil**, JJ. [Date of decision: 16-9-2002]

[7900] — Ss. 304-B, 306 and 498-A — Dowry death — Suicide by married woman within four months of her marriage — *Demand of dowry or ill-treatment of wife by the respondents not established — Acquittal upheld. Meka Ramaswamy* v. *Dasari Mohan*, 1998 SCC (Cri) 604: AIR 1998 SC 774.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.S.M. Quadri*, JJ. [Date of decision: 8-1-1998]

[7901] — Ss. 304-B, 306 and 498-A — Dowry suicide-death — Sustainability of conviction — Direct and reasonable nexus between suicide and cruelty meted out — *Death of the bride within four months of her marriage — Harassment and cruelty meted out to the deceased demanding more dowry/tape recorder immediately after her marriage proved — Reluctance of the deceased to return to her matrimonial home established — Held, there was direct and reasonable nexus of the commission of suicide by the deceased with the act of cruelty to which the deceased was subjected to by the accused-appellants — Hence, conviction of the appellants under Ss. 306 and 498-A sustainable — Evidence Act, 1872, S. 113-A* (Paras 14 to 22). *Sahebrao* v. *State of Maharashtra*, (2006) 9 SCC 794: (2006) 3 SCC (Cri) 408: AIR 2006 SC 2002: 2006 Cri LJ 2881.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 3-5-2006]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740; Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619: 2002 SCC (Cri) 461; Mohd. Hoshan v. State of A.P., (2002) 7 SCC 414: 2002 SCC (Cri) 1765; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; Hans Raj v. State of Haryana, (2004) 12 SCC 257: 2004 SCC (Cri) Supp 217, relied on

[7902] — Ss. 304-B and 498-A — Conviction confirmed — Death of deceased within one month of marriage by suicide by hanging herself — *Demand for dowry and effort made by complainant to meet same proved by PWs — PWs 2 and 3 (brother and sister respectively of deceased) who had visited deceased on day of occurrence stating that there was further demand of dowry, pursuant to which deceased was harassed and ill-treated, and that she was mentally disturbed — Held, threats by* *appellant husband over course of two days, when deceased was in her matrimonial home might have been enough for deceased who was in fragile state of mind to reach breaking point and end her life — Defence of appellant that deceased was having an affair prior to her marriage, and was disturbed because she was unable to marry that person, not proved — Further, post-occurrence behaviour of appellant also generating suspicion against him — In such circumstances, conviction of appellant under S. 304-B sustainable — Dowry Prohibition Act, 1961, Ss. 2 and 3 — Evidence Act, 1872, S. 113-B* (Paras 16 to 23, 25 and 27 to 29). *G.V. Siddaramesh* v. *State of Karnataka*, (2010) 3 SCC 152.

Bench Strength **2**. Coram : *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision : 5-2-2010]

V. Bhagat v. D. Bhagat, (1994) 1 SCC 337, relied on

[7903] — Ss. 304-B and 498-A — Conviction under Ss. 304-B and 498-A — Legality — Dowry death — Death within the time-limit mentioned in S. 304-B, when not amounts to — *Accused-appellant making demands of property and cash which partially met by his father-in-law — Appellant, however, turning out his wife and one month old child and consequently the wife staying with her father — Cross-litigation under S. 9 of Hindu Marriage Act and S. 125 of CrPC between the appellant and wife — However, compromise effected between the parties and the wife going to the appellant's house — After a few months two problems arising, viz., the appellant starting to beat the wife and the appellant's father refusing to accommodate the spouses in his own house — The spouses shifting to a rented house — The wife, due to the harassment and maltreatment meted out to her by the appellant, asking her father to accommodate her but her father refusing to do so — Impending delivery of a child in these very circumstances having a further depressing effect on her — These circumstances leading her to commit suicide by taking poison — Having been occasioned not by any demand of dowry but by other factors, the wife's death although within seven years of marriage, held, not dowry death so as to attract S. 304-B — However, the cruelty otherwise inflicted upon her, held, a relevant factor to maintain the appellant's conviction under S. 498-A — Hindu Marriage Act, 1955, S. 13(i-a). Pyare Lal* v. *State of Haryana*, (1997) 11 SCC 552: AIR 1999 SC 1563.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K.T. Thomas*, JJ. [Date of decision: 20-2-1997]

[7904] — Ss. 304-B and 498-A — Date of marriage — Burden of proof — *Dispute as to whether it had taken place in 1983 or 1987 — Held, burden lay on prosecution to prove same, in order to take benefit of Ss. 113-A and 113-B, Evidence Act, 1872 and Ss. 498-A and 304-B — Evidence Act, 1872, Ss. 113-A, 113-B, 50, 101 and 102* (Para 13). *Suresh Kumar Singh* v. *State of U.P*, (2009) 17 SCC 243: (2009) 3 ECrN 451 (SC): (2009) 4 All LJ 662.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[7905] — Ss. 304-B and 498-A — Dowry death — Benefit of doubt — Deceased committing suicide — No evidence by prosecution to show that there was a demand for dowry — *In the light of this deficiency, Supreme Court declining to send matter back to High Court for considering allegations on merit. State of Punjab* v. *Gurdev Kaur*, (2002) 9 SCC 397.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Phukan*, JJ. [Date of decision: 23-1-2002]

[7906] — Ss. 304-B and 498-A — Dowry death — Suicide by wife — Acquittal by trial court — Interference by High Court — On facts, held, not justified — Deceased committed suicide within seven years of marriage — *At the time of marriage appellant husband was studying — Few days before the death, deceased met and told her parents that the accused had completed his course and wanted her to bring Rs one lakh from them and that if she failed to do so accused would turn her out of the house — Fact that while going back to the village of her in-laws she told her father to arrange for the money otherwise her in-laws would not allow her to live, and many other vital things not stated during investigation by PWs — DW 1, who settled the marriage stated that there was no demand of dowry at the time of marriage and the deceased or her parents never complained to him for any such demand — No amount was sent to the appellant while he was prosecuting studies — Father of the appellant promptly sent intimation of death to her parents — Held, it was rightly noted by trial court that there was no evidence towards the claim regarding any demand of dowry — Reasoning of High Court that something must have happened otherwise deceased would not have committed suicide, is clearly indefensible — That certainly could not have been a reason to set aside trial court's well-reasoned judgment of acquittal* (Para 16). *Nepal Singh* v. *State of Haryana*, (2009) 12 SCC 351.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577, followed

(6)(iv) "Within seven years of marriage" *(contd.)*

[7907] — Ss. 304-B, 498-A, 306 and 324 — Dowry death — Cause of death — Relevance — *Deceased allegedly subjected to cruelty and harassment by her husband, mother-in-law and sister-in-law in connection with dowry demand soon after marriage — Mother-in-law giving her a drati blow causing incised wound on forehead of the deceased — Deceased committing suicide on the same day by consuming naphthalene balls — Death resulting due to poisoning and not due to injury caused by her mother-in-law — Held, injuries found on the deceased not being cause of her death, despite there being demand of dowry, the offence would not attract mischief of S. 304-B — Mother-in-law is liable to be convicted under S. 324 — On facts, there being no evidence of harassment within the meaning of Expln. (b) of S. 498-A none of the accused can be held liable for offences under S. 306 — In view of old age of the mother-in-law instead of imposing substantive imprisonment a fine of Rs 3000 imposed — Fine, if realised, directed to be paid to the parents of the deceased — Evidence Act, 1872, Ss. 113-A and 113-B. State of H.P.* v. *Nikku Ram*, (1995) 6 SCC 219: 1995 SCC (Cri) 1090: AIR 1996 SC 67.

Bench Strength **2**. Coram: *K. Ramaswamy* and **B.L. Hansaria**, JJ. [Date of decision: 30-8-1995]

[**Ed.**: In the present case the Court has acquitted the accused mother-in-law under Section 304-B on the ground that the injuries inflicted by her could not have caused the death of the deceased (para 7). In para 14 it has been laid down that "having held the injuries as found on the person of the deceased could not have caused her death, despite the demand being dowry, the offence would not attract the mischief of Section 304-B".

It is submitted that causing of fatal injury is not an essential ingredient of Section 304-B. The following essentials of Section 304-B have been laid by the Supreme Court in *Shanti* v. *State of Haryana*, (1991) 1 SCC 371: 1991 SCC (Cri) 191:

(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances; (The expression "otherwise than under normal circumstances" covers suicide);

(2) Such death should have occurred within 7 years of her marriage;

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(4) Such cruelty or harassment should be for or in connection with demand for dowry. (emphasis added)

In effect the observations in the present case would, it is submitted, render Section 304-B otiose and superfluous. The situation of fatal injury being the cause of the death was already covered by IPC in Section 302 and Section 304. The new Section 304-B was designedly inserted to cover dowry deaths, which have been held to include cases of suicide (provided other ingredients are satisfied). It is another matter that the Court in the present case recorded as a finding of fact (para 16) that there was no reliable evidence to hold that the deceased was being harassed within the meaning of Expln. (*b*) of Section 498-A and so on this ground alone the Court acquitted all the accused persons under Sections 304-B and 306 IPC.]

[7908] — Ss. 304-B(1) and 498-A — Dowry death — Suicide — *Death by falling in well, whether on facts was a dowry death — Evidence of wife's parents showing that since the date of marriage appellant was insisting upon dowry — On betrothal day itself land transferred in his favour and at the time of marriage some ornaments given to the deceased wife by her parents — Since 3rd day of marriage, appellant making further demand for dowry and ultimately given a certain sum — Evidence further showing that even till two years after marriage the appellant continued to make demands for dowry and subjected his wife to cruelty both mental and physical on that score — Appellant putting forth a further demand for a certain sum and a certain number of sovereigns as the balance of dowry and asking the cousin of his wife to persuade the deceased's parents to hand over the same — But before the wife's cousin could communicate to the appellant the outcome of his efforts, the appellant's wife meeting her death by falling in a well — Incident taking place within 3½ years of marriage [much less than the time-limit postulated by S. 304-B(1)] — Moreover, two independent witnesses stating that the appellant's mother-in-law had told them that the appellant was quarrelling with the deceased for more dowry — Obviously, because his continuous and persistent demands for dowry were not met, the appellant in his statement under S. 313 CrPC going to the extent of stating that the deceased was not his wife — In such circumstances, the High Court rightly held that the deceased was subjected to cruelty for dowry soon before her death for which she committed suicide — Hence, conviction under S. 304-B, upheld — CrPC, 1973, S. 313. Rajayyan* v. *State of Kerala*, (1998) 4 SCC 85: 1998 SCC (Cri) 811: AIR 1998 SC 1211: 1998 Cri LJ 1633.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 3-3-1998]

[7909] — S. 304-B r/w S. 34 — Dowry death — Wife allegedly committed suicide by jumping into a well — *Death after about 2½ years of marriage — Conviction of husband and mother-in-law of deceased — Harassment meted out to deceased for non-payment of dowry — Considering evidence* *of neighbours (PWs 3 and 4) and other witnesses (PWs 8 and 12), held, accusations against husband clearly established — But, no credible evidence brought on record to substantiate accusations against mother-in-law — Hence, conviction and sentence of husband upheld — But, mother-in-law acquitted* (Para 12). *Kunhiabdulla* v. *State of Kerala*, (2004) 4 SCC 13: 2004 SCC (Cri) 907: AIR 2004 SC 1731: (2004) 2 KLT 152.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **Arijit Pasayat**, JJ. [Date of decision: 9-3-2004]

(v) Cruelty or harassment in connection with dowry demand

See also S. 498-A, below

See also '(iii) Nature of death — Death "otherwise than under normal circumstances" due to dowry demand — Death if homicide or suicide — Relevance', above and

'(vi) Dowry demand — What is and proof of [S. 304-B(1) Expln.]', below

[7910] — S. 304-B — Dowry death — Delay by prosecution in making statement regarding ill-treatment or beating or demand of dowry — Effect of — *Held, no hard-and-fast rule can be laid down in this regard — Shock suffered by a parent having seen his daughter dead in an unnatural manner can in some cases prevent immediate outpouring of reasons — Hence, each case would have to be tested on its own facts* (Para 9). *Alamgir Sani* v. *State of Assam*, (2002) 10 SCC 277: 2003 SCC (Cri) 1447: AIR 2003 SC 2108.

Bench Strength 2. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 20-12-2002]

Ravindra Pyarelal Bidlan v. State of Maharashtra, 1993 Cri LJ 3019 (Bom), mentioned as laying down bad law

[7911] — S. 304-B — Dowry death — One of the key ingredients of the offence, held, is that deceased must have been subjected to cruelty and harassment "in connection with the demand for dowry" shortly before her death — *Where father of deceased had given her as customary gift (pasupukumkuma) at time of marriage, some land and a house site and 3 to 4 months after marriage Respondent 1 husband had begun demanding that deceased execute deed transferring land and house site to him, and wife ultimately committed suicide, held, on facts offence of dowry death not made out because there was no evidence on record to indicate that the transfer had been demanded as dowry*

To attract the provisions of Section 304-B IPC, one of the main ingredients of the offence which is required to be established is that "soon before her death" the victim was subjected to cruelty and harassment "in connection with the demand for dowry". In the present case there is no evidence on record to show that the land was demanded as a dowry. It was given by the father to the deceased in a marriage ritual as *pasupukumkuma*. The harassment or cruelty meted out to the deceased by the husband after the marriage to force her to transfer the land in his name was "not in connection with any demand for dowry". One of the main ingredients of the offence of "demand of dowry" being absent in this case, the High Court cannot be said to have committed any error in acquitting Accused 1 for the offence under Section 304-B IPC. (Para 16). *K. Prema S. Rao* v. *Yadla Srinivasa Rao*, (2003) 1 SCC 217: 2003 SCC (Cri) 271: AIR 2003 SC 11: 2003 Cri LJ 69.

Bench Strength 3. Coram: *M.B. Shah*, *K.G. Balakrishnan* and **D.M. Dharmadhikari**, JJ. [Date of decision: 25-10-2002]

[7912] — Ss. 304-B, 306 and 120-B — Essential ingredient of offence under S. 304-B — "Subjected to cruelty or harassment ... for, or in connection with, any demand for dowry" — Import — *Held, on facts it is clear that story of demand of dowry by appellants was developed ex post facto by parents of deceased — In absence of demand of dowry, harassment if any meted out to deceased, will not come within the ambit of S. 304-B — Of course, there is sufficient evidence to show that the appellant husband used to assault and harass deceased frequently, and it is therefore that she committed suicide — Thus there is clear evidence that he was abetting her suicide — Hence offence committed by appellant husband would come under S. 306 — He having already gone imprisonment for 9 years, sentence already undergone would be sufficient to meet ends of justice — However, there is no allegation or specific evidence that parents of appellant husband were causing any cruelty to deceased, except for their physical presence in the house — Hence, their complicity in committing offence under S. 304-B is not established, nor can they be held guilty under S. 120-B — Moreover, there is no evidence as regards actual commission of suicide — Hence parents of appellant husband acquitted* (Paras 6 to 9). *Angoori* v. *State of Rajasthan*, (2005) 10 SCC 210: 2005 SCC (Cri) 1503.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 29-7-2004]

[7913] — Ss. 304-B and 498-A — 'Cruelty' — Meaning of, to be gathered from Explanation to S. 498-A

(6)(v) Cruelty or harassment in connection with dowry demand *(contd.)*

'Cruelty' is a common essential to both the sections and that has to be proved. The Explanation to S. 498-A gives the meaning of 'cruelty' while in S. 304-B there is no such explanation about the meaning of 'cruelty'. But having regard to the common background to these offences the meaning of 'cruelty and harassment' has to be taken to be the same as is in the explanation to S. 498-A under which 'cruelty' by itself amounts to an offence and is punishable. (Para 6). *Shanti* v. *State of Haryana*, (1991) 1 SCC 371: 1991 SCC (Cri) 191: AIR 1991 SC 1226.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 13-11-1990]

[7914] — Ss. 304-B and 498-A — Dowry death — "Harassed" and "tortured" — Proof — Nature of — Need to describe exact conduct which amounted to harassment and torture — False implication of relatives of husband — *Held, PW who merely uses word "harassed" or "tortured" and does not describe exact conduct of accused which, according to him, amounted to harassment or torture may not be believed by court in cases under Ss. 498-A and 304-B — Evidence of PWs merely showing that accused* ***J*** *and* ***G*** *(brother and mother respectively of appellant) had a role in demand of dowry — But demand of dowry by itself is not an offence under S. 498-A or S. 304-B — It is the act of cruelty or harassment by husband or relative of husband on the woman that is punishable and which must be established for court to presume that accused has caused dowry death — PWs in instant case failed to describe exact conduct of mother-in-law and other in-laws on account of which deceased felt tortured and taunted — On the other hand they had clearly stated that appellant husband of deceased used to taunt her that she had come from a "hungry house", and thus, there was evidence as to exact conduct which caused harassment to deceased — Hence, finding of High Court that charges against* ***J*** *and* ***G*** *had not been established beyond reasonable doubt and that their case was distinguishable from that of appellant and that* ***J*** *and* ***G*** *appear to have been implicated because they were members of appellant's family, calls for no interference* (Paras 29 to 33). *Amar Singh* v. *State of Rajasthan*, (2010) 9 SCC 64: (2010) 3 SCC (Cri) 1130: AIR 2010 SC 3391: (2010) 94 AIC 137 (SC): (2010) 3 UPLJ 125 (SC).

Bench Strength **2**. Coram: *R.M. Lodha* and **A.K. Patnaik**, JJ. [Date of decision: 3-8-2010]

Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, followed

[7915] — Ss. 304-B and 498-A — Humiliating remarks as regards the poor quality of gifts of meagre value given at the time of marriage — *Held, amounts to harassment on account of insufficient dowry — Evidence Act, 1872 — S. 113-B. Baldev Krishan* v. *State of Punjab*, (1997) 4 SCC 486: 1997 SCC (Cri) 575: AIR 1997 SC 1666: 1997 Cri LJ 1162.

Bench Strength **2**. Coram: *Faizan Uddin* and **S.P. Kurdukar**, JJ. [Date of decision: 28-1-1997]

[7916] — Ss. 304-B and 498-A Expln. — Meaning of "cruelty" or "harassment" in S. 304-B — *Held, is the same as prescribed in S. 498-A Expln.* (Para 12). *Kamesh Panjiyar* v. *State of Bihar*, (2005) 2 SCC 388: 2005 SCC (Cri) 511: AIR 2005 SC 785: 2005 Cri LJ 1418.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-2-2005]

Akula Ravinder v. State of A.P., 1991 Supp (2) SCC 99: 1991 SCC (Cri) 990, relied on

(vi) Dowry demand — What is and proof of [S. 304-B(1) Expln.]

See also '(iii) Nature of death — Death "otherwise than under normal circumstances" due to dowry demand — Death if homicide or suicide — Relevance' and

'(v) Cruelty or harassment in connection with dowry demand', above

See also under Dowry Prohibition Act, 1961

[7917] — S. 304-B — Applicability of — Agreement for payment of dowry — Necessity to prove existence of — *Held, S. 304-B makes "demand of dowry" itself punishable — Demand neither conceives nor would conceive of any agreement — Hence, judgment of High Court holding that in absence of agreement for demand of dowry S. 304-B was not applicable, could not be sustained — Since High Court not examining evidence to adjudicate whether there was any demand of dowry, matter remanded to High Court for decision afresh — Dowry Prohibition Act, 1961, Ss. 2 and 4* (Paras 3 and 4). *Public Prosecutor* v. *Mytheswar Gangadhar*, (2009) 16 SCC 255: (2010) 3 SCC (Cri) 248.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 13-11-2002]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740, followed

[7918] — S. 304-B — "Demand of dowry" — Meaning of — *Held, it refers to demand of property or valuable security as referred to in the definition of "dowry" under the Dowry Prohibition Act, 1961*

— Dowry Prohibition Act, 1961, Ss. 2 and 4 (Para 3). *Public Prosecutor* v. *Mytheswar Gangadhar*, (2009) 16 SCC 255: (2010) 3 SCC (Cri) 248.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 13-11-2002]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740, followed

[7919] — S. 304-B — "Dowry" — Definition of — Words "at any time" after the marriage — Scope — *Held, there are three occasions related to dowry — One before the marriage, second at time of marriage and third at "any time" after the marriage — Third occasion may appear to be an unending period, but the crucial words are "in connection with the marriage of the said parties" — Hence, payments which are customary payments e.g. given at time of birth of a child or other ceremonies as are prevalent in different societies, are not covered by "dowry" — Dowry Prohibition Act, 1961, S. 2* (Para 14). *Kamesh Panjiyar* v. *State of Bihar*, (2005) 2 SCC 388: 2005 SCC (Cri) 511: AIR 2005 SC 785: 2005 Cri LJ 1418.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-2-2005]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633, relied on

[7920] — S. 304-B — "Dowry" — Meaning — *It should be any property or valuable security given or agreed to be given in connection with the marriage — Customary gift or payment in connection with birth of child or other ceremonies unrelated to the marriage ceremony, held, do not fall within the ambit of "dowry" — Dowry Prohibition Act, 1961, S. 2*

The word "dowry" in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". (Paras 20 and 21). *Satvir Singh* v. *State of Punjab*, (2001) 8 SCC 633: 2002 SCC (Cri) 48: AIR 2001 SC 2828.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 27-9-2001]

[7921] — S. 304-B — Dowry — Meaning of — *Demand of property or valuable security after marriage covered — Even under unamended definition the same would constitute dowry — Dowry Prohibition Act, 1961, S. 2 (as amended by Act 63 of 1984 and Act 43 of 1986)*

Despite the unamended definition of dowry having stated that the property or valuable security given or agreed to be given has to be as "consideration for the marriage", demands made after the marriage could also be a part of the consideration, because an implied agreement has to be read to give property or valuable securities, even if asked after the marriage, as a part of consideration for marriage. When the Dowry Prohibition Act was enacted, the Legislature was well aware of the fact that demands for dowry are made, and indeed very often, even after the marriage has been solemnized, and this demand is founded on the factum of marriage only. Such demands, therefore, would also be, as consideration for marriage. (Para 11)

The definition as amended by Act 63 of 1984 and Act 43 of 1986 does not leave anything to doubt that demands made after the solemnization of marriage would be dowry. The amended definition makes it clear that the property or the valuable security need not be as a consideration for marriage, as was required to be under the unamended definition. This apart, the addition of the words "any time" before the expression "after the marriage" would clearly show that even if the demand is made long after the marriage the same could constitute dowry, if other requirements of the section are satisfied. (Para 13). *State of H.P.* v. *Nikku Ram*, (1995) 6 SCC 219: 1995 SCC (Cri) 1090: AIR 1996 SC 67.

Bench Strength **2**. Coram: *K. Ramaswamy* and **B.L. Hansaria**, JJ. [Date of decision: 30-8-1995]

Inder Sain v. State, 1981 Cri LJ 1116: (1981) 20 DLT 309 (Del), overruled

[7922] — S. 304-B — Conviction — Agreement for payment of dowry — Showing of, held, not essential — *Dowry Prohibition Act, 1961, Ss. 3 and 4* (Para 7). *Vidhya Devi* v. *State of Haryana*, (2004) 9 SCC 476: 2004 SCC (Cri) 1473: AIR 2004 SC 1757.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *S.B. Sinha*, JJ. [Date of decision: 20-1-2004]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740, relied on

[7923] — S. 304-B — Dowry death — Applicability of S. 304-B — Agreement for dowry — *Showing of, held, not essential — Relevant provisions under the Dowry Prohibition Act, 1961 taken note of — Demand of dowry itself is punishable —*

(6)(vi) Dowry demand — What is and proof of [S. 304-B(1) Expln.] *(contd.)*

Proof of demand can be based on circumstantial evidence and inferences drawn from evidence that could be direct or indirect — Dowry Prohibition Act, 1961, Ss. 2, 3 and 4

The offence alleged against the respondents is under Section 304-B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence, that could be either direct or indirect. So the agreement referred to in Section 2 of the Dowry Prohibition Act has to be inferred on the facts and circumstances of each case. The argument that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry. (Para 9). *State of A.P.* v. *Raj Gopal Asawa*, (2004) 4 SCC 470: 2004 SCC (Cri) 1306: AIR 2004 SC 1933: 2004 Cri LJ 1791.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

[7924] — S. 304-B — Dowry death — Subjecting wife "to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry" — Proof — *In absence of the deceased, testimony of her parents would be most relevant — Evidence regarding continuous dowry demands and consequent cruelty and harassment to the wife becomes more believable where a young woman having a small child of 15 months and another in her womb ended her life — Having regard to the facts and circumstances, held, prosecution case established and appellants rightly convicted and sentenced under S. 304-B by courts below*

The deceased was married with the first appellant. The deceased died an unnatural death having sustained burn injuries in her matrimonial home. The case of the prosecution was that the deceased was being taunted and harassed on account of dowry related demands by appellants viz. her husband, father-in-law and mother-in-law, which led to her taking her own life. The deceased left behind a son who was at the time of the incident aged about 15 months. She was also found to be 12 weeks' pregnant at the time of the incident. According to the father of the deceased all the three appellants started ill-treating and taunting his daughter for bringing less dowry about a year after her marriage. They were demanding colour TV, a fridge and a cooler, besides ornaments. He further stated that the accused had threatened his daughter that if she did not bring those items, she would be done to death. About two months prior to the incident, his daughter was turned out from their house by the accused persons after giving her a beating. The wife returned to the house of her parents and told them about the incident. The father of the deceased convened a Panchayat of respectable persons of the locality and took them to the house of the appellants along with his daughter. The accused were told that in view of the poor financial position of the father of the girl he was not able to meet their demands, still the accused were assured that whatever could be possible within the means of the father he would continue to do. With this assurance he left his daughter with the accused persons. Again, a month earlier to the incident, the victim was sent back to her parents' house by the accused persons after being given some beating with the instruction to bring the items which were demanded by them. The deceased's father sent his daughter back along with his wife to the house of the accused with cash of Rs 1200 and five ladies suits. His wife left her daughter in the house of the accused and came back. This was followed by the incident. The deceased's dead body was found lying in the kitchen of the matrimonial home smeared with kerosene oil all over the body. A stove, a matchbox and a plastic can were also found near the body. According to the trial court, it was a case of suicide. The appellants were convicted for the offence under Section 304-B IPC and were sentenced to imprisonment for ten years to Appellant 1 and seven years each to Appellant 2 and Appellant 3. The High Court dismissed the appeal of the appellants and maintained the judgment of the trial court regarding conviction and sentence of the accused persons.

Dismissing the accused's appeal,

Held :

In the present case, all the ingredients of Section 304-B are satisfied except that there is argument about the last ingredient about cruelty or harassment in connection with demand for dowry. It is a case of death of a woman, caused by burns i.e. it is an unnatural death and the death has taken place within seven years of the marriage. Thus, the argument in the present appeal centres around only the last ingredient i.e. whether there was cruelty or harassment on account of demands for dowry. (Para 3)

The deceased wife who could be the best person to speak about such demands; as the demands were allegedly made to her, is no more, the only remaining evidence can be that of the parents of the deceased to whom she would be supposed to mention about such demands in order to ascertain if they could meet the same. (Para 4)

In this case, the incident of Panchayat being held and the three panchas being taken to the house of the accused persons, as stated by the deceased's father, was admitted by the defence witness himself. The argument that this shows that the dispute stood settled/compromised and thereafter there could be no question of making allegation of dowry-related demands cannot be accepted. The father of the deceased stated again that about a month prior to the incident the girl had been turned out of the house after being beaten with instructions to bring the demanded articles from her parents. That would show that the dowry-related demands by the accused persons continued, otherwise there was no reason for the young wife to take the extreme step of ending her life specially when she had a young son of about 15 months and another child in her womb. There is no reason to disbelieve the testimony of the deceased's father. The trial court rightly observed that a father will not take Panchayat of respectable persons to the house of the in-laws of her daughter without her having problem in living there peacefully. This fact which is admitted by a witness produced by the accused persons, supports the prosecution case that there were demands in connection with dowry made by the accused persons. One of the panchas corroborated the version of the deceased's father about the dowry demands and the Panchayat. From the facts and circumstances the conclusion is inescapable that the accused made demands for dowry from the deceased and made her life miserable. It became unbearable for her to face the accused persons in such circumstances and she had to ultimately take her life. The High Court has affirmed the findings of the Sessions Court. There is no reason to differ with the view taken by the courts below. (Para 6). *Devinder Singh* v. *State of Punjab*, (2005) 12 SCC 104: 2005 Cri LJ 4160: AIR 2005 SC 3501.

Bench Strength **2**. Coram: **Arun Kumar** and *A.K. Mathur*, JJ. [Date of decision: 26-9-2005]

[7925] — S. 304-B — Dowry demand — Proof of — *Held, not necessary that demand of any particular item should have been made* (Para 26). *Devi Lal* v. *State of Rajasthan*, (2007) 14 SCC 176: AIR 2008 SC 332: (2007) 59 AIC 115 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

[7926] — S. 304-B — Expression "demand for dowry" under — Meaning of, explained — *Held, if a demand for property or valuable security, directly or indirectly, has a nexus with marriage, such demand would constitute "demand for dowry" — Cause or reason for such demand is immaterial — Hence demand for motorcycle to establish a business, covered under "demand for dowry" — Dowry Prohibition Act, 1961, Ss. 2 and 4* (Paras 18 and 14). *Bachni Devi* v. *State of Haryana*, (2011) 4 SCC 427.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 8-2-2011]

Appasaheb v. State of Maharashtra, (2007) 9 SCC 721: (2007) 3 SCC (Cri) 468, clarified

[7927] — Ss. 304-B, 306 and 498-A — Dowry demand — Plausibility of — Abuse of dowry laws — *Alleged dowry demand raised for first time six years after marriage, and that too involving a trivial amount considering socio-economic status of the parties — Held, such allegation unnatural and improbable — It was a clear-cut case of gross abuse of dowry laws — Dowry Prohibition Act, 1961, Ss. 4 and 3* (Paras 57 to 59). *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of Maharashtra*, (2010) 13 SCC 657.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 11-11-2010]

[7928] — Ss. 304-B and 498-A — Demand for dowry — Proof — *Deceased dying within fifteen months of her marriage under unnatural circumstances — Submission that there was absolutely no evidence that any demand for dowry was made "soon before her death" or harassment in connection with the demand was proximate cause of her death — Held, on facts, dowry demand and consequent cruelty and harassment clearly established — Dowry Prohibition Act, 1961, Ss. 3 and 4* (Paras 11 to 16). *Deen Dayal* v. *State of U.P.*, (2009) 11 SCC 157: (2009) 3 SCC (Cri) 1278: AIR 2009 SC 1238: (2009) 74 AIC 60 (SC): 2009 Cri LJ 1119: (2009) 1 ECrN 838 (SC): (2009) 2 All LJ 169.

Bench Strength **2**. Coram: *L.S. Panta* and **Aftab Alam**, JJ. [Date of decision: 7-1-2009]

(6)(vi) Dowry demand — What is and proof of [S. 304-B(1) Expln.] *(contd.)*

[7929] — Ss. 304-B and 498-A — S. 113-B, Evidence Act, 1872 — Dowry death — Conviction justified — *Deceased alleged to have consumed poison because of persistent dowry demands and consequent harassment meted out to her by her husband and in-laws for non-fulfilment of demands — Appellant-accused married to deceased on 8-6-1991, while the deceased dying on 3-9-1992 other than in normal circumstances i.e. within 7 years of marriage — Evidence of PWs 4 and 5 proving dowry demand just before the deceased committed suicide — Though demand of share in ancestral property does not amount to dowry demand but evidence of PWs proving additional demands too — Held, under such circumstances conviction of appellant under S. 304-B calls for no interference — However, custodial sentence of 10 years imposed appears to be on higher side and hence, reduced to 7 years* (Paras 2 and 17 to 19). *Baldev Singh* v. *State of Punjab*, (2008) 13 SCC 233.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 4-8-2008]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740, relied on

[7930] — S. 304-B(1) Expln. — "Dowry" — Meaning — *Demand made subsequent to marriage, held, also covered — Dowry Prohibition Act, 1961, S. 2 (as amended by Act 43 of 1986)* (Para 7). *Vidhya Devi* v. *State of Haryana*, (2004) 9 SCC 476: 2004 SCC (Cri) 1473: AIR 2004 SC 1757.

Bench Strength 2. Coram: **Doraiswamy Raju** and *S.B. Sinha*, JJ. [Date of decision: 20-1-2004]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740, relied on

[7931] — S. 304-B(1) Expln. — "Dowry" — Meaning — Demand made subsequent to marriage, held, also covered — *Dowry Prohibition Act, 1961, S. 2 (as amended by Act 43 of 1986)* (Para 8). *State of A.P.* v. *Raj Gopal Asawa*, (2004) 4 SCC 470: 2004 SCC (Cri) 1306: AIR 2004 SC 1933: 2004 Cri LJ 1791.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

[7932] — S. 304-B(1) Expln. — Dowry — Word "agreed" referred to in S. 2 DP Act — *Contention that conviction can only be if there is agreement for dowry, held, misconceived — Definition of dowry is to be interpreted with the other provisions of the Act including Ss. 3 and 4 — Dowry Prohibition Act, 1961, S. 2*

The argument that there has to be an agreement at the time of the marriage in view of the words "agreed to be given" occurring in Section 2 of the Dowry Prohibition Act, and in the absence of any such evidence it would not constitute a dowry is not tenable since the definition of dowry in Section 2 of the Act by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. (Para 8). *State of A.P.* v. *Raj Gopal Asawa*, (2004) 4 SCC 470: 2004 SCC (Cri) 1306: AIR 2004 SC 1933: 2004 Cri LJ 1791.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740, relied on

Ayyala Rambabu v. State of A.P., (1993) 1 An LT (Cri) 73, impliedly overruled

[7933] — S. 304-B r/w S. 34 — Demand for dowry — Requisites for — Demand for monies to meet domestic expenses and for purchasing manure about 1½ years after marriage — *Held, cannot be said to be a demand for dowry — Hence, since an essential ingredient of S. 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained — Dowry Prohibition Act, 1961, S. 2* (Para 11). *Appasaheb* v. *State of Maharashtra*, (2007) 9 SCC 721: (2007) 3 SCC (Cri) 468: AIR 2007 SC 763: (2007) 50 AIC 1 (SC): (2007) 4 KLT 463.

Bench Strength 2. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 5-1-2007]

[7934] — Ss. 304-B/34 and 498-A — Demand for dowry and harassment — Main part of charge under S. 304-B IPC not established — Conviction under Ss. 3 and 4 of Dowry Prohibition Act improper — *Dowry Prohibition Act, 1961, Ss. 3 and 4*

The appellant, who was the sister-in-law of the deceased was convicted under Sections 304-B/34, 498-A IPC and under Sections 3 and 4 of the Dowry Prohibition Act. On appeal, the High Court acquitted her of the charges under Sections 304-B/34 IPC giving her the benefit of doubt. However, her conviction under Sections 3 and 4 of the Dowry Prohibition Act was maintained. It was contended before the Supreme Court that having recorded her acquittal from the charges under Section 304-B IPC, it was not possible to maintain the convictions under Sections 3 and 4 of the Dowry Prohibition Act. Allowing the appeal by special leave,

Held :

Demand for dowry and harassment for that reason are the essential ingredients of the offence under Section 304-B. (Para 4)

Sections 3 and 4 of the Dowry Prohibition Act make out independent offences, but in the instant case it was the demand for dowry coupled with harassment which constitutes the basis of the prosecution case. Once the main part of the charge under Section 304-B was not found established, it was not possible to record conviction under Sections 3 and 4 of the Dowry Prohibition Act. (Para 6). *Sakhi Mandalani* v. *State of Bihar,* (1999) 5 SCC 705: 1999 SCC (Cri) 1039.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and *S. Rajendra Babu*, JJ. [Date of decision: 29-4-1999]

[7935] — Ss. 304-B/498-A — Dowry death — Bride burning — Appreciation of evidence — Conviction upheld — Material that may be considered — Dowry list (chuktiparta) executed at time of marriage — *Held, "chuktiparta" is a material and relevant piece of evidence and can be taken into consideration by courts — On facts, discrepancy between dowry list and dowry items stated in court not material — FIR lodged by father of deceased could not be faulted for not being elaborate and specific, as it was a tragic moment for him — Death was not disputed and large number of witnesses attested to specific allegations of dowry demand and harassment to which deceased was subjected during less than two years for which marriage survived — All material and crucial aspects stood duly corroborated — Hence, offence under Ss. 304-B/498-A made out — Therefore conviction of appellants, upheld* (Paras 11 to 16). *Uday Chakraborty* v. *State of W.B.*, (2010) 7 SCC 518.

Bench Strength **2**. Coram : *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision : 8-7-2010]

Hazarilal v. State of M.P., (2009) 13 SCC 783: (2010) 1 SCC (Cri) 1247; Arulvelu v. State, (2009) 10 SCC 206: (2010) 1 SCC (Cri) 288, distinguished

(vii) "Soon before her death" — Proximity of causation

See also ' Ingredients of dowry death and presumption under S. 113-B, Evidence Act — (i) Broadly',

'(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises',

'(iii) Nature of death — Death "otherwise than under normal circumstances" due to dowry demand — Death if homicide or suicide — Relevance',

'(v) Cruelty or harassment in connection with dowry demand', and

'(vi) Dowry demand — What is and proof of [S. 304-B(1) Expln.]', above

[7936] — S. 304-B — Aid taken of S. 114 Ill. (a) in interpretation of expression "soon before" occurring in S. 113-B, Evidence Act and S. 304-B IPC — *Evidence Act, 1872, Ss. 114 Ill. (a) & 113-B* (Para 7). *Thakkan Jha* v. *State of Bihar,* (2004) 13 SCC 348.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-9-2004]

[7937] — S. 304-B — Dowry death — Expression "soon before her death" in S. 304-B — What would constitute — *Held, said expression has to be given its due meaning as legislature has not specified any time which would be the period prior to death, that would attract provisions of S. 304-B — Concept of reasonable time would be applicable, which would primarily depend upon facts of a given case, conduct of parties and impact of cruelty and harassment inflicted upon deceased in relation to demand of dowry to cause of unnatural death of deceased — Herein, as marriage itself had not survived even for a period of two years, entire period would be relevant* (Para 15). *Uday Chakraborty* v. *State of W.B.*, (2010) 7 SCC 518.

Bench Strength **2**. Coram : *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision : 8-7-2010]

[7938] — S. 304-B — Dowry death — Ingredients — Expression "soon before her death" — *Should be assigned plain language and common parlance meaning — Expression implied a reasonable time gap indicating a proximate link between cruelty inflicted for or in connection with demand of dowry and death of the woman — Court should attach specific significance to time of alleged cruelty and time of death and whether alleged demand was in connection with the marriage — Conviction confirmed*

The deceased and the appellant were married on 9-10-1986. The appellant, his brother and his mother were not satisfied with the dowry given by the deceased's father at the time of the deceased's marriage. They allegedly used to harass and maltreat the deceased and used to beat her. They had demanded refrigerator, television, etc. One week prior to the occurrence the deceased came to her father's house and narrated the ill treatment meted out to her and specifically mentioned that her husband wanted to set up a new business for which he required a sum of Rs 5000. The deceased's father having failed to arrange the money, the appellant, his brother and his mother were alleged to have burnt the deceased by sprinkling kerosene on her as a result of which she died in hospital at about 4 p.m. on 16-5-1988. The information about her death was received by the deceased's father from his sister's son. The deceased's father moved a complaint on 17-5-1988 before SI who made endorsement on the

(6)(vii) "Soon before her death" — Proximity of causation *(contd.)*

basis of which FIR was recorded. This was done by the SI on the basis of ruqua received on 16-5-1988 at about 5.45 a.m.

After completion of investigation and recording of statements of witnesses, the investigating officer submitted charge-sheet. The case was committed to the Court of Session which framed charge under Section 304-B read with Section 34 IPC. Upon completion of evidence of the prosecution, statement of the accused under Section 313 CrPC was recorded. The trial court held the appellant, his brother and his mother guilty of the offence punishable under Section 304-B IPC and sentenced them to 10 years' RI and fine of Rs 1000 each. But the High Court on appeal acquitted the brother and mother of the appellant and upheld the conviction and sentence of the appellant. The appellant thereupon filed the present appeal.

Disposing of the appeal,

Held :

Section 304-B IPC spells out the basic ingredients as well as the matters which required to be construed strictly and with significance to the cases where death is caused by burns, bodily injury or the death occurring otherwise than under normal circumstances, in any manner, within seven years of a marriage. It is the first criteria which the prosecution must prove. Second is that "soon before her death" she had been subjected to cruelty or harassment by the husband or any of the relatives of the husband for, or in connection with, any demand for dowry. (Paras 11 and 24)

The words "soon before her death" must be understood in their plain language and with reference to their meaning in common parlance. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, has been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry-related cruelty or harassment inflicted on her. There has to be a reasonable time gap and proximate link between the acts of cruelty along with the demand of dowry and the death of the victim. For want of any specific period, the concept of reasonable period would be applicable. Thus, the cruelty, harassment and demand of dowry should not be so ancient, whereafter, the couple and the family members have lived happily as it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case. (Paras 19 to 22)

The cruelty and harassment by the husband or any relative could be directly relatable to or in connection with, any demand for dowry. The expression "demand for dowry" will have to be construed ejusdem generis to the word immediately preceding this expression. Thus for constituting an offence under Section 304-B of the Code, the Court has to attach specific significance to the time of alleged cruelty and harassment to which the victim was subjected to and the time of her death, as well as whether the alleged demand of dowry was in connection with the marriage. Once these ingredients are satisfied, it would be called the "dowry death". (Paras 22 and 25)

The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under Section 304-B of the Code. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of Section 304-B were not satisfied, rebut the same. (Paras 23 and 24)

These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other. (Para 19)

These expressions should be given appropriate meaning to avoid undue harassment or advantage to either of the parties. These are penal provisions but ultimately these are the social legislations, intended to control offences relating to the society as a whole. Dowry is something which existed in our country for a considerable time and the legislature in its wisdom considered it appropriate to enact the law relating to dowry prohibition so as to ensure that any party to the marriage is not harassed or treated with cruelty for satisfaction of demands in consideration and for subsistence of the marriage. (Para 22)

The expression "soon before her death" has to be accorded its appropriate meaning in the facts and circumstances of a given case. In the present case, there is definite evidence to show that nearly 20-22 days prior to her death the deceased had come to her parental home and informed her father about the demand of Rs 5000 and harassment and torture to which she was subjected to by the accused and her in-laws. Her father had consoled her ensuring that he would try to arrange for the same and thereafter took her at her matrimonial home 7-8 days prior to the incident. (Para 43)

On the face of the aforesaid evidence read in conjunction with the statement of DW 3, it has to be concluded that ingredients of Section 304-B have been satisfied in the present case. It was for the accused to prove his defence. But the version put forward by the defence was not believable. Thus, the conviction of the accused is sustained. (Paras 44 and 47). *Ashok Kumar* v. *State of Haryana*, (2010) 12 SCC 350: AIR 2010 SC 2839: 2010 Cri LJ 4402: (2010) 93 AIC 129 (SC).

Bench Strength 2. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision: 8-7-2010]

Kaliyaperumal v. State of T.N., (2004) 9 SCC 157: 2004 SCC (Cri) 1417; Tarsem Singh v. State of Punjab, (2008) 16 SCC 155: (2010) 4 SCC (Cri) 27; Yashoda v. State of M.P., (2004) 3 SCC 98: 2004 SCC (Cri) 671; Ran Singh v. State of Haryana, (2008) 4 SCC 70: (2008) 2 SCC (Cri) 182; Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Madhu Sudan Malhotra v. Kishore Chand Bhandari, 1988 Supp SCC 424: 1988 SCC (Cri) 854; State of A.P. v. Raj Gopal Asawa, (2004) 4 SCC 470: 2004 SCC (Cri) 1306, relied on

[7939] — S. 304-B — Dowry death — Presumption available under S. 113-B, Evidence Act, 1872 against accused — Inapplicability of — Condition that "soon before" her death the victim was subjected to cruelty or harassment by the accused for or in connection with any demand of dowry — *Law relating to — Expression "soon before" — Interpretation of — Held, the said presumption would not be drawn if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter — But, mere lapse of some time by itself would not provide the accused a defence, if the course of conduct relating to cruelty or harassment is shown to have existed earlier in time not too late and not too stale before the date of death of the victim — This is so because the expression used in the relevant provision is "soon before" — The term "soon before" is not synonymous with the term "immediately before" — The said term would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question i.e. there must be existence of a proximate and live link between the two — The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case — No strait-jacket formula can be laid down by fixing any time-limit in this regard — Evidence Act, 1872, S. 113-B* (Para 7). *Thakkan Jha* v. *State of Bihar*, (2004) 13 SCC 348.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-9-2004]

Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016, relied on

[7940] — S. 304-B — Dowry death — Proximity of the cause — Appreciation of — Conviction of two sisters-in-law of deceased — Propriety — *High Court confirming conviction of appellants and husband of deceased **B** — But, acquitting father-in-law and mother-in-law of **B** as their names not mentioned in FIR — General allegations without particulars of time and date regarding the alleged harassment meted out by appellants — Specific allegations made only against husband and his father — Appellants not parties to demand for buffalo and Rs 25,000 which appeared to be the proximate cause of **B** committing suicide — If at all the prosecution case against the appellants was to be accepted it would only show that soon after the marriage i.e. about 2½ years prior to the death of **B**, there was some alleged harassment for lack of dowry — Hence, allegations not proximate to the death of **B** — Improvement in evidence of PW 7 — No ground to differentiate the case of appellants from that of their mother who was acquitted on same set of evidence — Held, courts below erred in convicting the appellants — Appeal allowed* (Paras 6 to 10). *Surinder Kaur* v. *State of Haryana*, (2004) 4 SCC 109: 2004 SCC (Cri) 926: AIR 2004 SC 1747: 2004 Cri LJ 1765: (2004) 16 AIC 872 (SC).

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 25-2-2004]

[7941] — S. 304-B — Dowry death — "Soon before her death" — *Facts and circumstances must show existence of a proximate live link between the effect of cruelty or harassment for or in*

(6)(vii) "Soon before her death" — Proximity of causation *(contd.)*

connection with dowry demand and death of the victim — Where deceased not shown to have been subjected to cruelty or harassment by her husband for at least 15 months prior to her death, held, S. 304-B not attracted

"Soon before" is an expression which permits of elasticity, and therefore the proximity test has to be applied keeping in view the facts and circumstances of each case. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim. (Para 10)

Since one of the ingredients of the offence under Section 304-B is that such cruelty should have been meted out to the deceased soon before her death, it is for the prosecution to establish affirmatively that the victim was subjected to cruelty and harassment based on dowry demand soon before her death. In the instant case, at least for a year and three months before her death there is no evidence to even remotely suggest that the victim was subjected to cruelty or harassment of the nature specified in Section 304-B IPC. The proximity test is, therefore, not satisfied. We, therefore, hold that there is not sufficient evidence on the basis of which conviction under Section 304-B IPC can be founded. (Para 11). *Balwant Singh* v. *State of Punjab*, (2004) 7 SCC 724: 2004 SCC (Cri) 2057.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.P. Singh*, JJ. [Date of decision: 12-8-2004]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016, relied on

[7942] — S. 304-B — Dowry death — "Soon before her death" — What would constitute, held, depends upon facts and circumstances of each case (Para 31). *T. Aruntperunjothi* v. *State*, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528: AIR 2006 SC 2475: 2006 Cri LJ 3290: (2006) 102 Cut LT 95.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[7943] — S. 304-B — Dowry death/Bride burning — Expression "soon before" occurring in said section and in Evidence Act, 1872, S. 113-B *— Held, is a relative term which requires to be construed in the context of specific circumstances of each case — No hard-and-fast rule of any universal application can be laid down by fixing any time-limit — Evidence Act, 1872, S. 113-B* (Para 6). *Vidhya Devi* v. *State of Haryana*, (2004) 9 SCC 476: 2004 SCC (Cri) 1473: AIR 2004 SC 1757.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *S.B. Sinha*, JJ. [Date of decision: 20-1-2004]

[7944] — S. 304-B — Expression "soon before" — Meaning and scope — *Held, is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit — It is pregnant with the idea of proximity test and is not synonymous with the term "immediately before" — Further held, determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case — However, it normally implies that the interval should not be much between the cruelty or harassment concerned and the death in question — There must be existence of a proximate and live link — Evidence Act, 1872, S. 113-B and S. 114 Ill. (a)* (Para 10). *Kailash* v. *State of M.P.*, (2006) 12 SCC 667: (2007) 2 SCC (Cri) 359: AIR 2007 SC 107: (2006) 47 AIC 823 (SC).

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 9-10-2006]

Hira Lal v. State (NCT of Delhi), (2003) 8 SCC 80: 2003 SCC (Cri) 2016, relied on

[7945] — S. 304-B — "Soon before her death" — *Expression indicates that there must be a perceptible nexus between the infliction of dowry-related harassment and cruelty on the woman and death — Court has to decide in the facts and circumstances of the case whether or not the interval between the infliction of dowry-related harassment or cruelty and the death is wide enough to snap the nexus*

The victim, PW 5 in her evidence said that 4 or 5 months after her marriage, she was ill-treated on the ground of insufficiency of dowry and then she reported the matter to her father. But she did not say anything about any other ill-treatment relating to dowry thereafter. It was not testified that Rs 20,000 paid by PW 6 to A-1 was part of dowry or in connection with the marriage. During the long interval of 3 years PW 5 gave birth to two sons. The payment of Rs 20,000 was made five months after the birth of the second son. Even PW 6 had no case that his daughter was subjected to any ill-treatment in connection with the demand for dowry on any day after she reported to him about the demand for further dowry way back in the early 1993 months. All amounts paid by the in-laws of the husband of a woman cannot become dowry. It is not possible to accept the contention that payment of the said sum should be presumed as part of the three-year-old demand for further dowry. When the very participants in the deliberations have no such case it is not proper for the court to make an incriminating presumption against the accused on a very crucial ingredient of the offence, more so when it is quite possible to draw a presumption the other way round as well. There is dearth of evidence to show that PW 5 was subjected to cruelty or harassment connected with the demand for dowry, soon before the attempt to commit suicide. When the position is such, it is an unnecessary exercise to consider whether Section 116 IPC can ever be linked with the offence under Section 304-B IPC. (Paras 23 to 25)

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death". (Para 22). *Satvir Singh* v. *State of Punjab*, (2001) 8 SCC 633: 2002 SCC (Cri) 48: AIR 2001 SC 2828.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 27-9-2001]

[7946] — S. 304-B — "Soon before her death" — Construction of — *Held, these words are to be understood in a relative and flexible sense — They cannot be construed as laying down a rigid period of time to be mechanically applied in each case — Whether or not the cruelty or harassment meted out to the victim for or in connection with the demand of dowry was soon before her death and the proximate cause of her death was under abnormal circumstances, held, would depend upon the facts of each case — There can be no fixed period of time in this regard — On facts held, unrelenting demand for dowry, and persistent cruelty and harassment meted out to deceased in connection with said demand had been clearly established — Her reluctance to go to her matrimonial house was the direct and positive evidence of her being subjected to harassment — There was nothing on record to show that after she had gone to her matrimonial home in July 1998, and till her death on 6-9-1998 i.e. merely two months later, situation had radically changed — Hence, held, it was established that in connection with demand for dowry deceased was subjected to cruelty which was the proximate cause of her homicidal death — Appellants rightly convicted under S. 304-B — Evidence Act, 1872, S. 113-A* (Paras 17 to 20). *Deen Dayal* v. *State of U.P.*, (2009) 11 SCC 157: (2009) 3 SCC (Cri) 1278: AIR 2009 SC 1238: (2009) 74 AIC 60 (SC): 2009 Cri LJ 1119: (2009) 1 ECrN 838 (SC): (2009) 2 All LJ 169.

Bench Strength 2. Coram: *L.S. Panta* and **Aftab Alam**, JJ. [Date of decision: 7-1-2009]

[7947] — S. 304-B — "Soon before her death" whether deceased was subjected to cruelty and harassment for or in connection with demand for dowry — Proximity test has to be applied keeping in view facts and circumstances of each case to determine what would amount to "soon before" the occurrence — Gap of three months between last demand for dowry made to deceased woman's father and death of deceased — Whether proximity test satisfied — *Deceased's marriage took place three years prior to her death — Demand for a car in dowry persistently made by deceased's husband and her mother-in-law (accused persons) since after six months of marriage and conveyed to her parents from time to time — Deceased being subjected to maltreatment, torture, cruelty and harassment by her husband and mother-in-law (accused persons) on non-fulfilment of the demand — Three months before her death, on receipt of a message from her, when her father along with a relative went to her marital home, accused humiliated them and turned them out with command not to enter their house again without meeting the dowry demand — Deceased's father had then no alternative but to wait and watch improvement in the situation — Deceased died due to strangulation and burns three months thereafter — On facts held, cruelty and harassment were meted out to deceased "soon before her death"* (Paras 28 to 30). *Satya Narayan Tiwari* v. *State of U.P.*, (2010) 13 SCC 689.

Bench Strength 2. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 28-10-2010]

Kunhiabdulla v. State of Kerala, (2004) 4 SCC 13: 2004 SCC (Cri) 907, relied on

Balwant v. State of Punjab, (2004) 7 SCC 724: 2004 SCC (Cri) 2057, distinguished

(6)(vii) "Soon before her death" — Proximity of causation *(contd.)*

[7948] — S. 304-B — Words "soon before her death" in S. 304-B IPC — Meaning of, clarified

The words "soon before her death" do not necessarily mean immediately before her death. This phrase is an elastic expression and can refer to a period either immediately before the death of the deceased or within a few days or few weeks before death. In other words, there should be a perceptible nexus between the death of the deceased and the dowry related harassment or cruelty inflicted on her. (Para 18). *Raja Lal Singh* v. *State of Jharkhand*, (2007) 15 SCC 415.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 8-5-2007]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48, relied on

[7949] — S. 304-B — Words "soon before" occurring in — Construction of — *Held, no straitjacket formula can be said down to determine what would constitute "soon before" in the said context — It has to be decided on the facts and circumstances of the case — Where (i) the deceased was persistently subjected to cruelty and harassment by her husband and in-laws in connection with demand for gold ornaments, and (ii) the last demand was made only fifteen days prior to the occurrence, held, it was proved that soon before her death the deceased was subjected to cruelty and harassment*

It is neither possible nor desirable to lay down any straitjacket formula to determine what would constitute "soon before" in the context of Section 304-B IPC. It all depends on the facts and circumstances of the case. (Para 16)

There was a persistent demand for gold ornaments ever since the marriage of the deceased with *K*. There is nothing to show that the demand had been given up or had been satisfied by the parents of the deceased. On the contrary, there is evidence to prove that even 15 days before the occurrence such a demand was reiterated and while leaving for her matrimonial home the deceased had wept and told her uncle that if the demand was not met, they will not let her live. In these circumstances, it cannot be said that there is no evidence on record to support the finding that soon before her death she was subjected to cruelty and harassment by the appellants (in-laws of the deceased) and her husband in connection with demand of dowry. (Paras 8 and 18). *Yashoda* v. *State of M.P.*, (2004) 3 SCC 98: 2004 SCC (Cri) 671.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-2-2004]

Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, applied

Sham Lal v. State of Haryana, (1997) 9 SCC 759: 1997 SCC (Cri) 759: AIR 1997 SC 1873, distinguished on facts

[7950] — S. 304-B — S. 113-B, Evidence Act, 1872 — Dowry death — Ingredients — Expression "soon before her death" — *Held, is to be decided by the court after analysing facts and circumstances leading to death of victim whether there is any proximate connection between the demand of dowry, the act of cruelty or harassment and the death — Evidence Act, 1872, S. 113-B* (Paras 11 and 13). *State of Rajasthan* v. *Jaggu Ram*, (2008) 12 SCC 51: AIR 2008 SC 982: (2008) 63 AIC 183 (SC): 2008 Cri LJ 1039.

Bench Strength **2**. Coram: *G.P. Mathur* and **G.S. Singhvi**, JJ. [Date of decision: 4-1-2008]

State of A.P. v. Raj Gopal Asawa, (2004) 4 SCC 470: 2004 SCC (Cri) 1306; Arun Garg v. State of Punjab, (2004) 8 SCC 251: 2005 SCC (Cri) 338; Kaliyaperumal v. State of T.N., (2004) 9 SCC 157: 2004 SCC (Cri) 1417; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511; Ram Badan Sharma v. State of Bihar, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166, relied on

[7951] — Ss. 304-B and 498-A — Evidence Act, 1872 — S. 113-B — Dowry death — "Soon before her death" — Meaning — *Proximate or live link must be shown to exist between the course of conduct relating to cruelty or harassment in connection with dowry demand and consequential death — Mere lapse of time by itself would not provide the accused a defence that cruelty or harassment was not "soon before her death"*

The deceased was married to accused *R* (Respondent 2) on 9-7-1985. On 23-10-1988 when her brother PW 5 had visited her in-laws' house to deliver some customary presents to her on the occasion of Karva Chauth, he found her dead body lying in the entrance room and the respondents were making preparations for her cremation. Noticing ligature marks on the neck of the deceased, PW 5 telephonically informed his parents about the death and himself went to the police station to lodge a report. On the basis of the statement of PW 5 a case under Section 306 IPC was registered against the respondents. On post-mortem it was found that the deceased had injuries on her person including a ligature mark, 20 cm x 2 cm on the front, right and left side of neck, reddish-brown in colour starting from left side of the neck, 2 cm below the left angle of the jaw passing just above the thyroid cartilage and going up to a point 2 cm below the right angle of the jaw. After investigation, the prosecution presented the charge-sheet against the husband *R*, mother-in-law, brother-in-law and sister-in-law of the deceased. The appellant, the father of the deceased, filed a separate complaint under Sections 302 and 304-B of the Indian Penal Code against all the respondents. The criminal case filed by the appellant was also committed to the Sessions Court and both the appellant's complaint and the police case were heard and decided together by the Additional Sessions Judge.

PW 5 deposed that *R* had raised a demand of Rs 15,000 for a scooter and a refrigerator immediately after the marriage which was fulfilled by giving him a sum of Rs 20,000. His demand of a colour TV was also fulfilled. The continuous harassment connected with the demand of dowry was shown to be in existence till 21-9-1988 when the deceased was reported to have come to her brother's house and met her parents. Thereafter she was not shown to have met anyone and no intervening circumstances showing the resolution or settlement regarding demands of dowry were brought on record. The deceased's father, PW 6 stated that a colour TV, clothes and jewellery were given to the accused husband as dowry. He deposed that his daughter had told him that the accused wanted her to bring further cash amount. The deceased, on persistent demands of the accused, had withdrawn the total sum of Rs 26,000 from the account which was opened by the father in her name. He was also given a new colour TV in lieu of the TV set given to him at the time of marriage as the same had allegedly gone out of order. PW 6 also deposed that the deceased had told him that she was being taunted by her mother-in-law, brother-in-law and sister-in-law (Respondents 3 to 5) besides her husband. However, details of the alleged taunting had not been spelt out. The only thing stated was that the accused used to tell the deceased that she being the daughter of a BJP leader, who used to boast about his financial position had brought inadequate dowry.

The trial court convicted the respondents under Section 304-B IPC and sentenced each of them to undergo 10 years' rigorous imprisonment. He also found them guilty for the commission of offence under Section 306 and sentenced them to undergo rigorous imprisonment for 7 years besides paying a fine of Rs 250 each. The respondents were also found guilty for the commission of offence punishable under Section 498-A IPC and were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs 250 each. All these sentences were to run concurrently.

The respondents filed an appeal against the trial court's judgment of conviction and sentence, while the appellant, father of the deceased, filed a revision against the said judgment praying for enhancement of the sentence to imprisonment for life on proof of the charge under Section 304-B IPC. Both the appeals and the revision were heard together by a Single Judge of the High Court who acquitted the respondents of all the charges. The revision petition filed by the father of the deceased was dismissed holding that the same had no merits. It was contended on behalf of the respondents that there being no direct evidence regarding the cause of the death or circumstances leading to death, particularly in the absence of demand of dowry soon before the death, none of the respondents could be held guilty for the offences with which they were charged, convicted and sentenced by the trial court. It was submitted that the statements made by the deceased before her death were not admissible in evidence even under Section 32(1) of the Evidence Act and in the absence of demand of dowry immediately before the alleged occurrence no inference or presumption could be drawn against the respondents. Partly allowing the present appeals,

Held :

It is not possible to accept the submission that the statement of the deceased in the context of the accused husband of the deceased could not be termed to be cruelty or harassment by the husband *soon before her death* under Section 304-B IPC. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (*a*) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the

(6)(vii) "Soon before her death" — Proximity of causation *(contd.)*

prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough. (Para 15)

There is reliable evidence on record to connect the deceased's husband with the commission of the crime. There is evidence showing that immediately after his marriage with the deceased the respondent husband started harassing her for the demand of dowry. The prosecution has proved the persistent demand of dowry and continuous cruelty and harassment of the deceased by her husband. The contradictions in the statements of PWs 5 and 6 are no major contradictions which could be made the basis of impeaching the credibility of the witnesses. The High Court appears to have adopted a casual approach in dealing with a specified heinous crime considered to be a social crime. Relying upon minor discrepancies and some omissions, the Court has wrongly acquitted the accused husband. The charges framed against Respondent 2 had been proved by the prosecution beyond reasonable doubt and there was no justification for interfering with the conviction recorded and sentence passed against him by the trial court. (Paras 6, 17 and 21)

However, Respondents 3 to 5 cannot be alleged to be involved in the commission of the crime and were rightly acquitted by the High Court. There is no evidence produced by the appellant worth the name against the aforesaid respondents. (Para 5)

Under the circumstances the present appeals are partly allowed by setting aside the judgment of the High Court insofar as it relates to Respondent 2, *R* the husband of the deceased and confirmed so far as it relates to other accused persons. The judgment of the trial court regarding conviction of *R* under Section 304-B is upheld but the sentence is reduced to seven years' rigorous imprisonment. His conviction under Section 306 is also upheld but his sentence is reduced to five years besides paying the fine as imposed by the trial court. In default of payment of fine Respondent 2 shall suffer rigorous imprisonment for one month more. Confirming his conviction under Section 498-A IPC, Respondent 2 is sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs 250, in default of payment of fine he will further undergo rigorous imprisonment for one month. All the sentences are directed to run concurrently. (Para 22). *Kans Raj* v. *State of Punjab*, (2000) 5 SCC 207: 2000 SCC (Cri) 935: AIR 2000 SC 2324: 2000 Cri LJ 2993.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **R.P. Sethi** and *Shivaraj V. Patil*, JJ. [Date of decision: 26-4-2000]

[7952] — Ss. 304-B and 498-A and Ss. 113-A and 113-B, Evidence Act, 1872 — Term "soon before her death" occurring in S. 304-B — Connotation of — Proximity test — Conviction reversed — *Held, said term is a flexible term and its application would depend upon factual matrix obtaining in each case — No fixed period can be indicated therefor — However, it must satisfy proximity test i.e. prosecution must establish that dowry demand was not too late or stale before death of victim — Held, some harassment meted out to deceased one year prior to her death without something more cannot be considered to be cruelty inflicted soon before her death — It does not satisfy proximity test — Further, as death did not take place within seven years of marriage, no presumption could be raised under S. 113-A or S. 113-B, Evidence Act, nor could it be concluded that appellant was guilty under S. 304-B — Hence, conviction under S. 304-B set aside — Evidence Act, 1872, Ss. 113-A and 113-B* (Paras 23 to 35). *Suresh Kumar Singh* v. *State of U.P*, (2009) 17 SCC 243: (2009) 3 ECrN 451 (SC): (2009) 4 All LJ 662.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Thakkan Jha v. State of Bihar, (2004) 13 SCC 348: (2006) 1 SCC (Cri) 309; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511; Ram Badan Sharma v. State of Bihar, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 116, considered and followed

Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417; Baldev Singh v. State of Punjab, (2008) 13 SCC 233; Devi Lal v. State of Rajasthan, (2007) 14 SCC 176: (2009) 1 SCC (Cri) 785; State of Rajasthan v. Jaggu Ram, (2008) 12 SCC 51: (2009) 1 SCC (Cri) 317, relied on

[7953] — Ss. 304-B & 498-A and 201 — Dowry death — Harassment with demand for dowry "soon before her death" — *Some of the witnesses stating that soon after marriage of the deceased, the appellants (father-in-law and mother-in-law of deceased) asked for more dowry but none of the witnesses stated that "soon before the death" of the deceased, appellants did anything so as to bring them within the sweep of Ss. 304-B & 498-A — Hence their conviction thereunder, held, cannot be sustained — As S. 201 cannot be separated from the substantive offences, it is an idle exercise to consider whether conviction under S. 201 can independently be fastened with the appellants. Mungeshwar Prasad Chaurasia* v. *State of Bihar*, (2002) 10 SCC 163: 2004 SCC (Cri) 456: AIR 2002 SC 2531: 2002 Cri LJ 3505.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Variava*, JJ. [Date of decision: 13-9-2001]

(viii) Husband or any relative of husband — Who are and their culpability

See also under S. 306 and S. 498-A, below

[7954] — S. 304-B — Dowry death — No evidence of cruelty or harassment by mother-in-law to deceased — *Only evidence against mother-in-law was that deceased's father had paid money by way of dowry to deceased's husband in presence of her mother-in-law — Held, there is no material to prove the charge against the mother-in-law — Mere fact that she happens to be mother-in-law is no ground to convict her on mere suspicion* (Para 6). *Balwant Singh* v. *State of Punjab*, (2004) 7 SCC 724: 2004 SCC (Cri) 2057.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.P. Singh*, JJ. [Date of decision: 12-8-2004]

[7955] — S. 304-B — Dowry death — Proximity of the cause — Appreciation of — Conviction of two sisters-in-law of deceased — Propriety — *High Court confirming conviction of appellants and husband of deceased* ***B*** *— But, acquitting father-in-law and mother-in-law of* ***B*** *as their names not mentioned in FIR — General allegations without particulars of time and date regarding the alleged harassment meted out by appellants — Specific allegations made only against husband and his father — Appellants not parties to demand for buffalo and Rs 25,000 which appeared to be the proximate cause of* ***B*** *committing suicide — If at all the prosecution case against the appellants was to be accepted it would only show that soon after the marriage i.e. about 2½ years prior to the death of* ***B****, there was some alleged harassment for lack of dowry — Hence, allegations not proximate to the death of* ***B*** *— Improvement in evidence of PW 7 — No ground to differentiate the case of appellants from that of their mother who was acquitted on same set of evidence — Held, courts below erred in convicting the appellants — Appeal allowed* (Paras 6 to 10). *Surinder Kaur* v. *State of Haryana*, (2004) 4 SCC 109: 2004 SCC (Cri) 926: AIR 2004 SC 1747: 2004 Cri LJ 1765: (2004) 16 AIC 872 (SC).

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 25-2-2004]

[7956] — S. 304-B — Dowry death — Unnatural death of married woman in her husband's house within seven years of her marriage — *Ill-treatment and harassment by the husband for not bringing sufficient dowry established — Medical evidence showing that the deceased died due to asphyxia as a result of smothering which is an unnatural death — No explanation offered by the husband as to how the deceased sustained several abrasions and contusions on her body — Held, in the circumstances, presumption of dowry death can be raised against the husband — High Court justified in reversing his acquittal — However, mother of the husband who resided separately, did not stand to gain from the demand of additional dowry and whose presence in the house at the time of the incident not established entitled to benefit of doubt — Evidence Act, 1872, S. 113-B. Prem Singh* v. *State of Haryana*, (1998) 8 SCC 70: AIR 1998 SC 2628.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 6-8-1998]

[7957] — S. 304-B and S. 201 — Dowry death — Acquittal of husband — Effect on culpability of other accused (relatives of husband) — *High Court acquitting respondent-accused (father-in-law of deceased) on ground that husband of deceased had been acquitted by trial court by accepting the defence version that (husband) was not present at the time when deceased suffered injuries on her head — State not preferring any appeal thereagainst — Held, that by itself did not justify a conclusion that the prosecution had failed to prove the charge against the remaining accused* (Para 21). *State of Rajasthan* v. *Jaggu Ram*, (2008) 12 SCC 51: AIR 2008 SC 982: (2008) 63 AIC 183 (SC): 2008 Cri LJ 1039.

Bench Strength **2**. Coram: *G.P. Mathur* and **G.S. Singhvi**, JJ. [Date of decision: 4-1-2008]

Ram Gulam Chaudhary v. State of Bihar, (2001) 8 SCC 311: 2001 SCC (Cri) 1546; Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254: (2007) 1 SCC (Cri) 688; Raj Kumar Prasad Tamarkar v. State of Bihar, (2007) 10 SCC 433: (2007) 3 SCC (Cri) 716, relied on

[7958] — Ss. 304-B, 302 and 498-A — Dowry death/Bride burning — Conviction of other family members — *Held, such offences, like the one involved herein (murder of deceased in the house of her in-laws), should not escape unpunished, but it is equally desirable in social interest that other members of the husband's family are not made to suffer punishment merely because of their relationship — Direct evidence is scarcely available in such cases — Hence, circumstantial evidence, which is to be relied upon for basing conviction in these cases, must be of required standard*

In a sound criminal justice system, such offences against women should not escape unpunished but it is equally desirable in social interest that the other members of the family are not made to suffer punishment merely because of their relation with the accused. It is the duty of the courts to see

(6)(viii) Husband or any relative of husband — Who are and their culpability *(contd.)*

that the penal provisions intended to curb such crimes by bringing the offenders to book do not cause injustice to innocent people. (Para 20). *Vithal Tukaram More* v. *State of Maharashtra*, (2002) 7 SCC 20: 2002 SCC (Cri) 1555: AIR 2002 SC 2715.

Bench Strength 2. Coram: *N. Santosh Hegde* and **D.M. Dharmadhikari**, JJ. [Date of decision: 23-7-2002]

[7959] — Ss. 304-B, 306 and 498-A r/w S. 34 — Dowry death — Where accusations of demand by dowry and cruelty are made against in-laws or other relatives, held, overt acts attributed to such persons are required to be proved beyond reasonable doubt — *Suicide by wife (G) due to her ill-treatment for non-payment of dowry — Conviction of appellants (father-in-law and mother-in-law of G) — Propriety of — Except the vague evidence of the father of G and the person settling the marriage of G, no evidence to show that the appellants demanded dowry or that they ill-treated their daughter-in-law — Held, their conviction not proper* (Para 4). *Sakharam* v. *State of Maharashtra*, (2003) 12 SCC 368.

Bench Strength 2. Coram: *M.B. Shah* and *B.P. Singh*, JJ. [Date of decision: 23-7-2002]

Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, relied on

[7960] — Ss. 304-B and 498-A — Dowry death — Close relations of husband cannot be roped in automatically — Definite overt acts to be shown

For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their overenthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case. (Para 5). *Kans Raj* v. *State of Punjab*, (2000) 5 SCC 207: 2000 SCC (Cri) 935: AIR 2000 SC 2324: 2000 Cri LJ 2993.

Bench Strength 3. Coram: *G.B. Pattanaik*, **R.P. Sethi** and *Shivaraj V. Patil*, JJ. [Date of decision: 26-4-2000]

[7961] — Ss. 304-B and 498-A — Dowry death — "Harassed" and "tortured" — Proof — Nature of — Need to describe exact conduct which amounted to harassment and torture — False implication of relatives of husband — *Held, PW who merely uses word "harassed" or "tortured" and does not describe exact conduct of accused which, according to him, amounted to harassment or torture may not be believed by court in cases under Ss. 498-A and 304-B — Evidence of PWs merely showing that accused **J** and **G** (brother and mother respectively of appellant) had a role in demand of dowry — But demand of dowry by itself is not an offence under S. 498-A or S. 304-B — It is the act of cruelty or harassment by husband or relative of husband on the woman that is punishable and which must be established for court to presume that accused has caused dowry death — PWs in instant case failed to describe exact conduct of mother-in-law and other in-laws on account of which deceased felt tortured and taunted — On the other hand they had clearly stated that appellant husband of deceased used to taunt her that she had come from a "hungry house", and thus, there was evidence as to exact conduct which caused harassment to deceased — Hence, finding of High Court that charges against **J** and **G** had not been established beyond reasonable doubt and that their case was distinguishable from that of appellant and that **J** and **G** appear to have been implicated because they were members of appellant's family, calls for no interference* (Paras 29 to 33). *Amar Singh* v. *State of Rajasthan*, (2010) 9 SCC 64: (2010) 3 SCC (Cri) 1130: AIR 2010 SC 3391: (2010) 94 AIC 137 (SC): (2010) 3 UPLJ 125 (SC).

Bench Strength 2. Coram: *R.M. Lodha* and **A.K. Patnaik**, JJ. [Date of decision: 3-8-2010]

Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, followed

[7962] — Ss. 304-B and 498-A — Dowry death — Suicide by wife within nine months of marriage — *Conviction of husband (A-3), brother-in-law (A-1) and mother-in-law (A-2) — Acquittal by High Court — Propriety — Evidence of PWs about demand made by A-1 and A-2, held, clear, cogent and credible — Evidence indicating that demand was made soon before the death — Thus acquittal of A-1, held, liable to be set aside — Since A-2 expired during appeal before High Court, her appeal abated — No evidence about demand of dowry by husband — Inference regarding his tacit approval for demand, held, could not be drawn — His acquittal upheld* (Paras 13 and 14). *State of A.P.* v. *Raj Gopal Asawa*, (2004) 4 SCC 470: 2004 SCC (Cri) 1306: AIR 2004 SC 1933: 2004 Cri LJ 1791.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

[7963] — Ss. 304-B/34 — Dowry death — On facts, husband, brother-in-law, *P* and sister-in-law, *S* of the deceased, convicted under — Sustainability — *As regards Criminal Appeal No. 514 of 2006 of* ***P*** *and* ***S****, held, there was no evidence to show that* ***P*** *and* ***S*** *had any hand in the incident which led to victim's death — Benefit of doubt has to be given to them, as they were living on the ground floor of the building in question, whereas, admittedly, deceased was found dead due to hanging on the first floor in the room of her husband — Hence, Criminal Appeal No. 514 of 2006, is allowed — However, regarding Criminal Appeal No. 513 of 2006 of the appellant husband, held, he used to live with the deceased wife on the first floor of the building in question, hence, it was for him to explain how she met with her death — She was found hanging by a sari with a ceiling fan in the very room where she used to live with her husband* ***R*** *who, however, did not enter into the witness box to depose in this connection — Therefore, Criminal Appeal No. 513 of 2006, is dismissed*

No doubt, some of the witnesses e.g. PW 5 and PW 3 (father and brother of the deceased, respectively), have stated that the deceased had told them that dowry was demanded by not only her husband, but also the appellants *P* and his wife *S*(brother-in-law and sister-in-law of the deceased, respectively), but it is possible that the names of *P*and *S* have been introduced only to spread the net wide, as often happens in cases like that under Sections 498-A and 394 IPC, as has been observed in several decisions of the Supreme Court. (Paras 12 to 15). *Raja Lal Singh* v. *State of Jharkhand*, (2007) 15 SCC 415.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 8-5-2007]

Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511, relied on

[7964] — Ss. 304-B/34 — Dowry death — Trial court holding that the deceased-wife met with suicidal death due to dowry demand by husband, father-in-law and mother-in-law, convicting them under Ss. 304-B/34, IPC and sentencing them to 7 years' RI each — High Court confirming order — *Held, every witness had said that the family members of the husband had been making demands of dowry — Evidence was also clear that there were frequent quarrels, but only between husband and wife — Thus the allegation against the parents (appellants herein) were general in nature — In the absence of clear and pointed evidence it would be unsafe to maintain the conviction of the appellants on the vague allegations that the demand of dowry was made by the husband's family members — In this view of the matter, the appellants were entitled to be acquitted — Conviction and sentence on husband, however, maintained but under S. 304-B, IPC, simpliciter without the aid of S. 34, IPC. Salamat Ali* v. *State of Bihar*, 1997 SCC (Cri) 842: AIR 1995 SC 1863.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 4-4-1995]

(7) Trial, Proof and Other issues

See generally under CRIMINAL TRIAL in Vols. 18, 19 and 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

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(i) Acquittal justified

[7965] — S. 304-B — Bride burning — Not proved on facts — *Prosecution case that the accused forcibly dragged the deceased inside the house, threatened her to kill, poured kerosene on her body and set her on fire — Large number of persons present in front of the house but nobody heard any scream or shout for help — Conduct of the deceased in silently coming out from the room and requesting the witness to bring curd for being applied on her body not conforming to the prosecution version — Medical opinion that such burning was possible if somebody would commit suicide — Absence of burn injury on palms of the deceased indicating that she had committed suicide — Presence of deceased's mother at the time of recording of dying declaration and her conduct in being a party to a fabricated dying declaration recorded by the police constable rendering the dying declaration unreliable — Held, in the circumstances of the case, reversal of acquittal by the High Court not justified — Evidence Act, 1872, S. 32* (Para 8). *Pavankumar Parasnath Trivari* v. *State of Gujarat*, 1999 SCC (Cri) 352.

Bench Strength **2**. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 25-4-1996]

(7)(i) **Acquittal justified** *(contd.)*

[7966] — S. 304-B — Dowry death — Appreciation of evidence — Acquittal upheld — *Dead body recovered from inside a well — Prosecution case that the same had been thrown therein after causing death by assaulting with lathi — Statement of two brothers of the deceased recorded in inquest report that the deceased had died by falling into the well due to loss of balance and there being no ill will between the parties — Statements of parents of the deceased about demand of dowry found unreliable — Defence version that the injuries found on the person of the deceased could be caused during fall in the well fitted with pegs to support the pipe for drawing the water admitted by the autopsy surgeon in his cross-examination — Acquittal upheld. State of Haryana* v. *Rajinder Singh*, (1996) 8 SCC 77: 1996 SCC (Cri) 534: AIR 1996 SC 2978.

Bench Strength **2**. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 27-2-1996]

[7967] — Ss. 304-B and 498-A — Conviction reversed — *In the present case, dying declaration of deceased recorded by the Executive Magistrate not inculpating accused not impeached by the prosecution — Prosecution placed great reliance on letters written by the deceased to her relatives — Handwriting expert's report clearly showing that the said letters were not in the handwriting of deceased — Held, prosecution failed to establish the accusations against the appellant — Hence, conviction of appellant set aside*

K who was the daughter of *O* (PW 2) and was married to the present appellant on 19-4-1988 had received severe burns in an accident which took place on 21-9-1991 in the matrimonial home at Ambala City. The deceased was taken to Civil Hospital, Ambala after the incident from where a ruqa was received by the police on the basis of which DDR was recorded. The police tried to record the statement of the deceased, but she was found to be not totally fit. As her condition was critical she was removed to PGI Hospital for treatment. On 22-2-1991 a dying declaration was recorded by the Executive Magistrate. The police on the basis of the dying declaration prepared a cancellation report. However, on the basis of the grievance made by *O* (PW 2) a first information report was registered on 17-10-1991. After completion of the investigation, charge-sheet was filed and since the accused persons pleaded innocence, trial was held. The appellants were convicted and sentenced to undergo rigorous imprisonment for various terms and fine for the alleged commission of offences punishable under Sections 304-B and 498-A of the Penal Code, 1860. While the appeal filed by the appellant was dismissed, the appeal filed by the co-accused persons was allowed by the High Court.

Allowing the appeal,

Held :

It is true as contended by the State that shoddy investigation cannot be a foundation for the accused persons to take advantage of the shoddiness. But in the instant case, there was no material brought on record by the prosecution to establish the accusations so far as the present appellant is concerned. It is to be noted that there was a dying declaration recorded by the Executive Magistrate who was present at PGI Hospital. The authenticity of the dying declaration has not been questioned. It is the stand of the prosecution that a police officer should have recorded it. But that cannot be a ground to discard the dying declaration recorded by the Executive Magistrate. Additionally, the prosecution laid great emphasis on the letters purported to have been written by the deceased to her relatives. Here again, the handwriting expert's report clearly shows that the letters were not in the handwriting of the deceased. Above being the position, there is no evidence brought on record by the prosecution to establish the accusations. That being so, the appeal deserves to be allowed and the conviction of the appellant is set aside. (Paras 13, 14 and 15). *Rakesh Kumar* v. *State of Haryana*, (2009) 11 SCC 81: (2009) 3 SCC (Cri) 1243: 2009 Cri LJ 1895: (2009) 76 AIC 99 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-3-2009]

[7968] — Ss. 304-B and 498-A — Dowry death — Acquittal justified — *Prosecution case of demand of dowry and harassment by deceased's father-in-law and husband based solely on the testimony of deceased's father since deceased's brother and uncle not supporting the same and being declared hostile — Trial court convicting the accused relying upon the sole testimony of deceased's father — But High Court on reappreciation of evidence taking the view that conviction could not be based on the sole testimony of deceased's father as the same stood contradicted in material particulars as deposed by him before investigating officer and thereafter in court and accordingly acquitting the accused — Held, High Court was not wrong taking that view — When two views are possible, one favourable to the accused was to be accepted. State of Haryana* v. *Inder Singh*, (2002) 9 SCC 537.

Bench Strength **2**. Coram: *R.P. Sethi* and *B.P. Singh*, JJ. [Date of decision: 29-1-2002]

[7969] — Ss. 304-B and 498-A — Dowry death — Bride burning — Acquittal justified — *Husband and mother-in-law alleged to have poured kerosene and set deceased on fire — Defence plea of accidental death — Letter of victim making no mention of dowry demand — Conviction of appellant (deceased victim's husband) based on unestablished accusations and unreasoned order, set aside — Further, High Court did not notice that there were lots of exaggerations and statements not made during investigation were made in court — Held, High Court's judgment was sketchy and devoid of reasons — Also, prosecution squarely failed to establish accusations against appellant — Hence, appellant's conviction set aside — Evidence Act, 1872, S. 113-B*

It is of some significance to note that in the history sheet of the hospital, where the deceased victim was treated, it was categorically stated that while the deceased tried to ignite a gas stove the deceased suddenly caught fire. The trial court was of the view that there was no evidence to show as to who recorded the statement. It discarded the evidence of Dr. *R* (PW 11) on the ground that the history sheet did not make it clear that in whose presence the history sheet was prepared as it did not bear the signature of any doctor and handwriting. It was observed that the evidence of PW 11 did not make it clear as to who wrote the history sheet. It was also observed that there was no reason indicated as to how PW 11 was conversant with the handwriting of Dr. *B* who purportedly recorded the statement. The High Court did not even refer to this aspect but in a cryptic manner upheld the conclusions of the trial court. (Para 12)

It is of significance that Dr. *Ba* (PW 1) in the cross-examination had categorically stated that the history sheet of the patient was written by Dr. *B*. He also stated that the treatment was prescribed by him. It was entered in the bed head ticket made by Dr. *B*, who was on duty on that day. He also stated that though the patient was in shock but she was not unconscious. He stated that he identified the signatures of Dr. *B* and handwriting in the bed head ticket. (Para 13)

In the FIR, reference was made to a letter purportedly written by the deceased. This letter was marked as an exhibit. A bare reading of the letter clearly showed that there was not even a whisper about the demand of dowry but the deceased had categorically stated that she had asked for the money and the articles on her own. The trial court erroneously held that in the letter there was reference to demand of dowry. Strangely, the High Court held that even though the letter was inconsequential but the evidence of the relatives about the harassment for dowry cannot be brushed aside. (Para 14)

As rightly submitted by the appellant, there were improvements in the statements recorded in court. The witnesses PWs 6 and 7 (father and mother of the deceased, respectively) introduced certain aspects for the first time. Significant statement in this regard is that of PW 6. In court he stated that the deceased told him in the hospital that kerosene oil was poured on her by the accused. He accepted during his examination that no such allegation was made in his statement recorded in terms of Section 161 CrPC. Similarly, PW 7, in court, stated that the deceased informed her about the demand of Rs 1,00,000 by her in-laws and about her giving Rs 20,000. This was not stated during investigation under Section 161 CrPC. In court, PW 7 stated that the deceased was beaten and mistreated and no such statement was made during investigation. Additionally, no such allegation was made by PW 8, the complainant, about this aspect in the FIR. (Para 15)

In the statement in court, PW 7 stated that the deceased had told her that A-1 and A-2 caught hold of her and A-1 poured oil over her body and set her on fire by throwing a matchstick. No such statement was made during investigation. Similarly, that is not also the version of PW 6. In court PW 7 stated that all the accused persons i.e. appellant and the acquitted accused persons maltreated the deceased. No such allegation was made while the witness was examined under Section 161 CrPC. (Para 16)

The High Court's judgment is not only sketchy but also devoid of reasons. Various factors highlighted above would go to show that the prosecution has squarely failed to establish the accusations so far as the appellant is concerned. Therefore, the appellant is to be set at liberty forthwith. (Paras 21 and 22). *Raman Kumar* v. *State of Punjab*, (2009) 16 SCC 35: (2010) 2 SCC (Cri) 131: 2009 Cri LJ 3034.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

Hazarilal v. State of M.P., (2009) 13 SCC 783: (2010) 1 SCC (Cri) 1247; Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417; Kaliyaperumal v. State of T.N., (2004) 9 SCC 157: 2004 SCC (Cri) 1417; Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016, relied on

[7970] — Ss. 304-B and 498-A — Dowry death — Case not proved beyond reasonable doubt — Benefit of doubt — Entitlement to — Conviction not justified — *Allegations on appellant-accused (husband of deceased) and his parents (since acquitted) for administering poison to the deceased,*

(7)(i) Acquittal justified *(contd.)*

leading to her death, on non-fulfilment of their dowry demand — Held, appellant's family more prosperous than that of deceased — No allegation of dowry demand at marriage time — Allegations regarding demand of articles (fridge and TV) and Rs 10,000, appear to be false — Appellant committing murder of deceased for such petty things, improbable — Also, no evidence to establish that such complaint ever made before occurrence, nor parents convening any Panchayat making such grievance — Evidence suggesting that appellant suspected deceased of having illicit relationship with her brother-in-law — Father of appellant twice convened Panchayats where this grievance was raised and considered by members of Panchayat, who advised deceased not to visit the house of her brother-in-law — Appellant's statement under S. 313 CrPC, that once while returning to his village, deceased insisted on going to village of her brother-in-law, which he opposed, but despite his opposition she went there and stayed for the night, which was protested by appellant after her return next morning, resulting in a quarrel between them — In all probability, deceased committed suicide in this factual background — Appellant's defence and evidence adduced, not considered by High Court — Non-consideration resulted in miscarriage of justice, particularly because conviction of appellant was sought to be sustained on the strength of presumption drawn against him by law — In such case, consideration of evidence in rebuttal becomes more significant — Defence of appellant appears probable and sufficient to rebut presumption against him — Also, a member of Panchayat deposed in appellant's favour — Such facts, cannot be ignored altogether — Moreover, no direct evidence to prove that appellant administered any poisonous substance to deceased — Hence, applying the principle that if on the basis of same evidence two views are reasonably possible, one in favour of accused should be preferred, held, appellant to be given benefit of doubt (Paras 19, 21, 22 and 24 to 26). *Sanjiv Kumar* v. *State of Punjab*, (2009) 16 SCC 487: (2010) 3 SCC (Cri) 330.

Bench Strength **2**. Coram: **B.P. Singh** and *Tarun Chatterjee*, JJ. [Date of decision: 7-11-2006]

[7971] — Ss. 304-B and 498-A — Suicide by wife — Allegation of dowry death — Guilt of appellant husband — *Whether established on facts — Complaint filed nearly 8 days after the incident after lots of deliberation and consultation — Statement of father of deceased **D** that he had no knowledge of death of **D** and her cremation was done without informing him and his family, held on facts, not true — Possibility that **D** committed suicide in a state of depression — One **B** who was stated to have given information to complainant party about the death of **D**, was an imaginary person — PW 6 speaking about harassment of **D** but failed to state so in his statement under S. 161 CrPC — Appellant was employed in some other town and most of the time he was away from his village (where **D** was living) — In view of the above and the fact that the prosecution failed to prove that the death of **D** occurred within seven years of her marriage, held, conviction liable to be set aside* (Paras 18 to 22). *Baljeet Singh* v. *State of Haryana*, (2004) 3 SCC 122: 2004 SCC (Cri) 692: AIR 2004 SC 1714.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 24-2-2004]

[7972] — Ss. 304-B, 498-A and 306 — Conviction reversed — Benefit of doubt given — *Except bald statements of victim's mother and brother alleging that victim had been subjected to cruelty and harassment prior to her death, no other evidence adduced to prove that she committed suicide on account of the same — Hence, acquitted* (Paras 16, 19 and 20). *Durga Prasad* v. *State of M.P.*, (2010) 9 SCC 73: (2010) 3 SCC (Cri) 1154: 2010 Cri LJ 3419: (2010) 91 AIC 5 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *H.L. Gokhale*, JJ. [Date of decision: 14-5-2010]

Biswajit Halder v. State of W.B., (2008) 1 SCC 202: (2008) 1 SCC (Cri) 172, followed

Anand Kumar v. State of M.P., (2009) 3 SCC 799: (2009) 2 SCC (Cri) 28, distinguished

[7973] — Ss. 304-B, 498-A and 306 — Dowry death — Conviction reversed — *A-1 (husband of deceased) along with his parents A-2 (dead) and A-3 alleged to have harassed and maltreated the deceased over dowry demand, consequent to which she allegedly committed suicide — Evidence of PWs 1, 2 and 3 (mother, brother and maternal aunt respectively of deceased) not establishing that deceased was ever harassed or ill-treated by accused for dowry or that the accused ever demanded dowry articles from her parents before she committed suicide — On the other hand, it was the categorical evidence of PWs 1 and 2 that the accused had borne the entire marriage expenses including the kalyanamandap, food and other items — Complaints also not revealing that accused had raised any demand for dowry, either in cash or in kind at the time of marriage — Other independent PWs (owner of deceased's matrimonial house and their neighbours) not supporting prosecution version —*

Moreover, High Court on the same set of evidence acquitting A-3 (mother of A-1) but convicting A-1 — Held, since evidence against A-3 was found insufficient and inconsistent to convict her, the same is the case against A-1, which is fatal to prosecution case — Further, mere evidence of cruelty and harassment is not sufficient to bring in application of S. 304-B IPC but it needs to be established that "soon before death", the deceased was subjected to cruelty or harassment by her husband for, or "in connection with demand for dowry" — In the aforementioned situation, provisions of S. 304-B IPC and S. 113-B of the Evidence Act would not be attracted to hold A-1 guilty of the offence of dowry death and/or cruelty in terms of S. 498-A IPC — Judgment of High Court setting aside acquittal of A-1 unsustainable — Dowry Prohibition Act, 1961, Ss. 3, 4 and 6 (Paras 2 and 25 to 36). *Narayanamurthy* v. *State of Karnataka*, (2008) 16 SCC 512: AIR 2008 SC 2377.

Bench Strength 2. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 13-5-2008]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Hira Lal v. State (Govt. of NCT of Delhi), (2003) 8 SCC 80: 2003 SCC (Cri) 2016, considered and relied on

Kaliyaperumal v. State of T.N., (2004) 9 SCC 157: 2004 SCC (Cri) 1417; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511; State of A.P. v. Raj Gopal Asawa, (2004) 4 SCC 470: 2004 SCC (Cri) 1306; Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417; Biswajit Halder v. State of W.B., (2008) 1 SCC 202: (2008) 1 SCC (Cri) 172, relied on

(ii) Appeal/Revision

[7974] — S. 304-B — Appeal against conviction — Improper disposal — *High Court disposing of the remitted matter, again without discussing evidence in detail, in spite of specific directions of Supreme Court that High Court could not sideline the defence version and the same had to be considered to see whether presumption under S. 113-B, Evidence Act, 1872 had been rebutted by appellant — Impugned judgment set aside and matter remitted for expeditious disposal, preferably within six months — CrPC, 1973, Ss. 374 and 386* (Paras 2 to 4). *Gurram Chakravarthy (2)* v. *State of A.P.*, (2008) 16 SCC 799: (2008) 72 AIC 106 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 28-11-2008]

[7975] — S. 304-B — High Court by impugned judgment confirming conviction of appellant under S. 304-B IPC and sentence of 7 years' imprisonment besides fine — While doing so it failing to consider evidence of four defence witnesses examined by appellant — *Held, High Court cannot sideline the defence evidence which needs to be considered to ascertain whether presumption under S. 113-B, Evidence Act had been rebutted by the appellant — Hence, matter remitted to High Court for disposal afresh — Evidence Act, 1872, S. 113-B* (Paras 1, 4 and 5). *Gurram Chakravarthy (1)* v. *State of A.P.*, (2008) 16 SCC 801.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 31-7-2000]

[7976] — S. 304-B and S. 304 Pt. II — Revision — Reasoned order/speaking order necessity — *High Court by impugned order dismissing appellant's revision petition without indicating any reasons therefor and without analysing his stands — It was not a case that no arguable point was involved — As a matter of fact, the relevance of the dying declaration and its effect on the prosecution case has not been considered by the High Court at all — Impugned order set aside and matter remitted to High Court for fresh expeditious disposal — In the meantime, appellant granted liberty to move High Court for bail — Dowry Prohibition Act, 1961, Ss. 3 and 4 — CrPC, 1973, S. 397 r/w S. 401* (Paras 1 and 7 to 11). *Mohd. Shakeel* v. *State Police*, (2008) 15 SCC 378: (2009) 3 SCC (Cri) 1006: AIR 2009 SC 680: (2009) 73 AIC 196 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-11-2008]

[7977] — Ss. 304-B and 306 — Revision — Natural justice — Complainant's right to be heard on the question of age of accused — *Respondent 2, accused for commission of offences under Ss. 304-B and 306 IPC, seeking protection by claiming to be a juvenile — High Court, while exercising its revisional jurisdiction under S. 53 could not pass an order prejudicial to any person without affording him opportunity of hearing — Hence, complainant (appellant herein) should have been heard — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 53 proviso and 2(k)*

The appellant (brother of the deceased) had lodged an FIR against Respondent 2 (accused) for commission of offences under Sections 304-B and 306 IPC, in relation to the death of the appellant's sister (accused's wife). Without any documentary or other evidence, the accused claimed himself to be a juvenile, having not attained the age of eighteen years and sought protection under Juvenile Justice (Care and Protection of Children) Act, 2000 (the Act). Since the claim of the accused was disputed, the Magistrate directed the accused to produce evidence/certificate in support of his claim, which he failed to do. Without recording any opinion whether the accused was a juvenile or not, the Magistrate referred him to the Juvenile Justice

(7)(ii) Appeal/Revision *(contd.)*

Board (the Board). The Board, after referring Respondent 2 (accused) to a Medical Board for examination and determination of age and taking into consideration, the documentary evidence adduced by the prosecution and observing his physical built-up, concluded that the accused was above eighteen years of age on the date of occurrence. Accordingly, the Child Rehabilitation Centre was directed to transfer the accused to the regular jail with a direction to its Superintendent to produce the accused before the Magistrate.

By the impugned order, the High Court allowed the revision petition preferred by the accused under Section 53 of the Act against the order passed by the Board. The Single Judge held that on the date of commission of the alleged offences, the accused was a "juvenile" within the meaning of the Act. For this the High Court relied on the finding of the Medical Board as guiding in terms of Rule 22(5)(*iv*) of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003.

Allowing the appeal of the appellant complainant,

Held :

The High Court was clearly in error in reversing the order passed by the Board by declaring the accused (Respondent 2 herein) to be a juvenile without giving an opportunity of hearing to the appellant complainant (brother of the deceased). When the statutory provisions mandate and principles of natural justice demand a pre-decisional hearing, the High Court was not justified in not granting an opportunity of hearing to the appellant complainant. As per Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (the Act), the High Court, in exercise of its revisional jurisdiction, cannot pass an order, prejudicial to any person without affording him a reasonable opportunity of being heard. (Paras 15, 12 and 14). *Babloo Pasi* v. *State of Jharkhand*, (2008) 13 SCC 133.

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 3-10-2008]

P. Sundarrajan v. R. Vidhya Sekar, (2004) 13 SCC 472: (2006) 1 SCC (Cri) 345, impliedly relied on

[7978] — Ss. 304-B and 489-A — Reversal of acquittal — Sustainability — Held, unless judgment of trial court is perverse, appellate court would not be justified in substituting its own view and reverse judgment of acquittal — *Death due to harassment for dowry — Accused acquitted since trial court did not find credibility in testimony of PW 1 (father of deceased) because for the first time before trial court, he stated about demand of dowry — PW 1 neither reported same in FIR, nor in investigation, nor before Revenue Divisional Officer's enquiry — Veracity of PW 1 disbelieved since it was not corroborated by evidence of other PWs — Suicide note not implicating any of the accused — High Court though agreed that prosecution story unbelievable, but holding demand of dowry proved and setting aside acquittal — Sustainability — To arrive at correct conclusion, held, comprehensive view of entire evidence in proper perspective is imperative — In present case, trial court minutely examined entire evidence, documents and exhibits on record — Judgment of trial court could not be said to be perverse — Conclusion arrived at by trial court is possible and plausible view — High Court ought to have considered suicide note and evidence in proper perspective — In the circumstances, held, approach of High Court not correct— CrPC, 1973, Ss. 378 and 386* (Paras 16 to 23 and 41). *Arulvelu* v. *State*, (2009) 10 SCC 206: (2009) 83 AIC 253 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 7-10-2009]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2), followed

Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432; Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10: 1999 SCC (L&S) 429; Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312, relied on

[7979] — Ss. 304-B, 498-A and 306 — Revision — Power to quash charges and substitute new charge — *Charges framed by trial court in relation to offences under Ss. 304-B and 498-A IPC — High Court in revision quashing the said charges and directing framing of charge under S. 306 IPC — Held, High Court was not justified in doing so — Crucial question was whether suicide of deceased was in any way connected with the demand for dowry — That matter required consideration by the Court by proper appreciation of evidence — At the stage of framing charges, the High Court should not have considered the whole evidence and then concluded that there were no materials to frame charges under Ss. 304-B and 498-A IPC — High Court's order set aside — Trial court directed to proceed on the basis of the charges framed under Ss. 304-B and 498-A IPC — CrPC, 1973, Ss. 401, 397 and 228* (Paras 3 and 4). *Nemichand Jain* v. *Roshanlal*, (2004) 13 SCC 461.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 21-9-2004]

[7980] — Ss. 304-B(1) and 498-A — Appeal against acquittal — Interference by High Court — If was justified — *Trial court erroneously considering a particular demand for dowry in isolation* *from the previous ones and concluding that demand of dowry and harassment had ceased during the intervening period — Moreover, the trial court failing to notice material evidence on record — In view of such patent infirmity in judgment of trial court, setting aside of acquittal and conviction of the accused under S. 304-B IPC by High Court, upheld — CrPC, 1973, S. 378. Rajayyan* v. *State of Kerala*, (1998) 4 SCC 85: 1998 SCC (Cri) 811: AIR 1998 SC 1211: 1998 Cri LJ 1633.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 3-3-1998]

(iii) Appreciation of evidence

[7981] — S. 304-B — Dowry death — Ingredients of S. 304-B, reiterated — Whether, on facts, satisfied — *Held, in present case, said ingredients were satisfied*

Essential components of Section 304-B IPC are: (*i*) Death of a woman occurring otherwise than under normal circumstances within 7 years of marriage. (*ii*) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. In the present case, *G* died after about 7 months of her marriage. Also, it has come in evidence that she had been harassed for dowry 10 or 15 days before her death. This has come in the evidence of her father, PW 5 and brother, PW 3 and there is no reason to disbelieve them. She had earlier also been subjected to harassment on account of demand for dowry when she had gone to her parents' house, as has come in the evidence of PW 5. Thus, the ingredients of Section 304-B IPC are satisfied in this case. (Para 17). *Raja Lal Singh* v. *State of Jharkhand*, (2007) 15 SCC 415.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 8-5-2007]

Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; T. Aruntperunjothi v. State, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528, relied on

[7982] — Ss. 304-B and 302 — Dowry death — Contradictory reports filed by father of deceased — *First report lodged by father of the deceased stating it to be a case of suicide — Second report by him, after the receipt of post-mortem report, that his daughter had been murdered by appellant (husband of deceased) for non-fulfilment of dowry demand — Conviction of appellant under S. 304-B — Propriety — Death occurred within 7 years of marriage — Medical opinion that injuries found on the body of the deceased were ante-mortem, homicidal in nature and were not self-inflicted or accidental — PWs 5 to 7 and 9 to 11 giving evidence in respect of dowry demand — Deceased last seen with appellant in bedroom occupied by them — Deceased found dead in bathroom which was attached to the said bedroom — Even though the deceased was in bathroom for an indefinitely long time, appellant showed no concern or anxiety — On facts, held, courts below rightly relied upon the evidence of PWs 5, 6, 7, 10 and 11 to come to conclusion that there had been demands for dowry — Appellant's conviction under S. 304-B upheld* (Paras 4 to 6, 8 and 14). *Alamgir Sani* v. *State of Assam*, (2002) 10 SCC 277: 2003 SCC (Cri) 1447: AIR 2003 SC 2108.

Bench Strength **2**. Coram: **S.N. Variava** and *B.N. Agrawal*, JJ. [Date of decision: 20-12-2002]

(iv) Bail

[7983] — S. 304-B — Anticipatory bail — Considerations for grant of — Dowry death — *Statement in FIR that appellants, the parents and brother of the husband, were living separately from the deceased and her husband — Factum of separate residence also supported by ration card — Held, these circumstances were relevant for grant of anticipatory bail — CrPC, 1973, S. 438. Dolat Ram* v. *State of Haryana*, (1995) 1 SCC 349: 1995 SCC (Cri) 237: (1994) 3 Crimes 1013: (1995) 32 ACC 149: (1995) 1 Andh LT (Cri) 37.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 24-11-1994]

[7984] — S. 304-B — Anticipatory bail — Grant of — Propriety — Dowry related allegations — *Respondents 1 to 3 filing application under S. 438 CrPC before High Court on apprehension of arrest in a complaint under investigation, on the allegation that because of the dowry demands, the victim committed suicide — Application disposed of with certain directions — Contention of the appellant informant that the parameters to be kept in view, while dealing with an application under S. 438 CrPC, were not kept in view — Further contention, that the respondents were granted bail without surrender, since the terms for release were stipulated in the order itself — On facts, held, some of the directions given by the High Court are not in accordance with what has been stated in* Adri Dharan Das case, *(2005) 4 SCC 303 — Accordingly, the directions need to be modified — As the respondents have already surrendered and have been granted bail in terms of the High Court's direction, they shall surrender before the court concerned and shall move for bail in terms of S. 439 CrPC which shall then be considered in its proper perspective uninfluenced by the disapproval of the Supreme Court of the*

(7)(iv) Bail *(contd.)*

stipulation of conditions by the High Court — Dowry Prohibition Act, 1961, S. 4 — CrPC, 1973, Ss. 438 and 439 (Paras 2 to 4 and 7). *D.K. Ganesh Babu* v. *P.T. Manokaran*, (2007) 4 SCC 434: (2007) 2 SCC (Cri) 345: AIR 2007 SC 1450: 2007 Cri LJ 1827: (2007) 53 AIC 266 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 23-2-2007]

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, followed

[7985] — S. 304-B — Bail — Grant of — Reasoned order — Necessity of — Unnatural death of the deceased within seven years of the marriage — *High Court granted bail by a practically non-reasoned order — Held, it is not understood as to how the High Court observed that the provisions of S. 113-B, Evidence Act, 1872 were not applicable and this was not a case punishable under S. 304-B IPC — High Court's order is a bundle of confusion — Said order set aside and the matter remitted back to High Court for fresh consideration and disposal by a reasoned order — Evidence Act, 1872, S. 113-B — CrPC, 1973, S. 439* (Para 6). *Subhash Chandra Singh* v. *Dheemant Singh*, (2009) 11 SCC 169: (2009) 3 SCC (Cri) 1284: (2009) 77 AIC 1 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 20-4-2009]

Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974; Anwari Begum v. Sher Mohammad, (2005) 7 SCC 326: 2005 SCC (Cri) 1669, followed

[7986] — S. 304-B — Refusal by High Court to grant bail pending disposal of appeal — Propriety — *Held, was not proper since appellant had already served a substantial period of the sentence (i.e. about 2 years and four months out of seven years) — CrPC, 1973, S. 389 — Constitution of India, Art. 136* (Para 2). *Kamal* v. *State of Haryana*, (2004) 13 SCC 526.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *Tarun Chatterjee*, JJ. [Date of decision: 15-10-2004]

[7987] — Ss. 304-B, 406 and 498-A r/w S. 34 — Anticipatory bail — Entitlement to — Question as to — Harassment for dowry — Suicide by wife — *Prosecution case that accused were demanding dowry because of which deceased was depressed and ultimately committed suicide — Accused submitting that deceased was a schizophrenic psychotic patient with cyclic depression and was under medical treatment — They producing documents to show that relationship between the wife and her husband and in-laws was cordial — One year before also an attempt to commit suicide was made by deceased — Considering the entire material available on record without expressing any opinion on the same, held, accused entitled to anticipatory bail — CrPC, 1973, S. 438* (Para 9). *M.P. Lohia* v. *State of W.B.*, (2005) 2 SCC 686: 2005 SCC (Cri) 556: AIR 2005 SC 790: 2005 Cri LJ 1416.

Bench Strength 2. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 4-2-2005]

[7988] — Ss. 304-B and 498-A — Bail pending appeal — When to be granted — *Appeal against conviction under Ss. 304-B and 498-A IPC — No chance of said appeal being heard in the near future — Accused already suffered sentence of 3 years and 6 months — In these circumstances, held, accused should be released on bail on his furnishing bail bond and surety to the satisfaction of the trial court — CrPC, 1973, S. 389* (Para 3). *Salim Javed* v. *State of Rajasthan*, (2006) 9 SCC 602: (2006) 3 SCC (Cri) 354.

Bench Strength 2. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 27-3-2006]

[7989] — Ss. 304-B and 498-A — Bail pending appeal against conviction — Considerations for grant of, stated — *In the present case, judgment of trial court convicting both appellants of offences punishable under Ss. 304-B and 498-A IPC upheld by High Court — Appellant 1 being the sole bread earner of family, held, no ground for releasing him on bail — Though convicted of serious offence, considering the old age of Appellant 2, that is, 80 years and that she had been in custody for more than a year, interim bail granted to her — CrPC, 1973, S. 389(1)*

Cases where a serious offence had been committed and the accused had been held guilty for the said offence, then his application for grant of bail should not be decided leniently during the pendency of the appeal. The seriousness and gravity of the offence must be looked into before granting the bail. In the instant case, accused were convicted by the trial court for harassing, torturing and compelling the deceased to end her life by committing suicide, and the said conviction had been confirmed by the High Court. (Para 10)

Insofar as the first appellant is concerned, the only reason assigned for grant of bail is that he is the only bread earner of the family. In the light of decisions of the Supreme Court, this contention of the appellant does not impress to release him on bail for the alleged offence for which he had been convicted by the courts. Therefore, for the present he is not entitled to the relief sought in the application. (Para 12)

Looking at the age of Appellant 2 it does not seem fair to hold her back in jail during the pendency of appeal even if she had been convicted for the alleged serious offence, against which she has come before the Supreme Court. That Appellant 2 is an old lady of 80 years of age and she had already been in jail for more than one year, she is entitled to the relief prayed for in the application. Accordingly, interim bail to the second appellant is granted. (Paras 13 and 14). *Bakshish Ram* v. *State of Punjab*, (2009) 6 SCC 561: (2009) 3 SCC (Cri) 64: (2009) 78 AIC 17 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and *H.L. Dattu*, JJ. [Date of decision: 8-5-2009]

Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC 376: 1958 SCR 1226; State of Maharashtra v. Anand Chintaman Dighe, (1990) 1 SCC 397: 1990 SCC (Cri) 142; Kashmira Singh v. State of Punjab, (1977) 4 SCC 291: 1977 SCC (Cri) 559, relied on

(v) Cause of death — Suicide or homicide

See also SECTIONS 299-304 — CULPABLE HOMICIDE AND MURDER — 'D.25.(q) Suicide or homicide/murder' in Vol. 2

[7990] — Ss. 304-B and 201 — Causing death of wife by throttling — Conviction justified — *Though in preliminary post-mortem report, doctor did not disclose the cause of death, but in final report made after receipt of FSL report, same doctor opined that cause of death was asphyxia due to throttling — Accused husband alone was in the company of his deceased wife in their house at the time of the incident — Deceased was found hanging to the ceiling fan — Attestors of inquest report expressed that deceased had not committed suicide but was throttled — Though there was no specific reference to dowry demand in the complaint made to police, but deceased's parents as also other PWs stated before court that accused harassed and threatened her on many occasions for not fulfilling his dowry demand and that accused also suspected her fidelity — Based on materials collected, investigating agency altered the offence from S. 302 to Ss. 304-B and 201 — Held, prosecution placed sufficient evidence to establish guilt of accused beyond reasonable doubt — Hence accused liable to be convicted under Ss. 304-B and 201 in view of the altered charge — However, incident having occurred more than 10 years ago and accused having undergone agony all these years, a sentence of 7 years' imprisonment would meet the ends of justice. Vanga Sriniwas* v. *Public Prosecutor, High Court of A.P.*, (2007) 10 SCC 219: (2007) 3 SCC (Cri) 627: (2007) 58 AIC 43 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **P. Sathasivam**, JJ. [Date of decision: 14-9-2007]

[7991] — Ss. 304-B and 302 — Bride burning — Burn injuries — Whether suffered accidentally or accused set the deceased on fire — State of consciousness at the time of occurrence — *Deceased, who was respondent's wife, dying of burn injuries — Complainant lodging complaint on the basis of hearsay of a boy, as according to complainant, he could not talk to deceased as she was unconscious — Deceased's mother who accompanied deceased to hospital also supporting complainant's version of unconsciousness — Both complainant and mother stating that deceased regained consciousness next day — However, attending doctor testifying that deceased was conscious when brought to hospital at night and that deceased herself mentioned to the doctor that she sustained burn injuries around 9 p.m. at her residence — She was also conscious and coherent at the time when admitted to hospital at 11.45 p.m. — Magistrate recording dying declaration next day early morning at 5.40 a.m., which again pointed that deceased was conscious at that time — Both these factors belying testimony of informant and deceased's mother that she was brought unconscious to the hospital — Further held, if accused had set deceased on fire, she would have stated so in the normal course to the attending doctor — High Court therefore rightly set aside respondent's conviction under S. 302 but sustained conviction under S. 498-A*

When the complainant was examined as PW 1, he accepted contents of the report and stated that the report was on the basis of the information heard, given by a boy but no enquiry was made from the deceased. He also could not talk to her. The boy who had given the information and what was the source of information was not known to him. He stated that the deceased was unconscious and regained consciousness only the next day around noon. The mother of the deceased, who accompanied the deceased to the hospital also claimed that the deceased was unconscious and regained consciousness only on the second day. As rightly noted by the High Court, this was contrary to the evidence on record. The Magistrate purportedly recorded the dying declaration of the deceased at 5.40 a.m. on 12-4-1994. That means the deceased was conscious at 5.40 a.m. and the doctor certified that she was conscious and coherent. To add to the vulnerability, Ext. P-12 was the record of the case maintained by the hospital. When the doctor examined the deceased she was conscious. The doctor noted that the deceased had stated to have sustained burns at around 9 p.m. at her residence. She was given some treatment and referred to the resident medical

(7)(v) Cause of death — Suicide or homicide *(contd.)*

officer. Here again the doctor noted that the deceased alleged to have sustained burns accidentally at her residence. It was further noted that she was conscious and coherent. It is, therefore, established that she was conscious when she was admitted to the hospital at 11.45 p.m. on 11-4-1994. If the accused had poured kerosene and set her on fire she would have stated the same in normal course to the doctor. Therefore, the factors highlighted by the High Court appear to be on sound footing. That being so, the order of the High Court does not suffer from any infirmity to warrant interference. (Paras 12 to 15). *State of A.P.* v. *Guvva Satyanarayana*, (2008) 12 SCC 692.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 24-9-2008]

[7992] — Ss. 304-B and 302 — Bride burning — Homicidal death — Statement made before doctor — Deceased sustaining 90 per cent burn injuries — *On inquiries made by doctors examining the deceased in hospital, deceased revealing that accused-appellant (deceased's husband's sister) had burnt her — Deceased had opportunity to see the appellant at the time of occurrence — Doctors deposing that deceased was in a fit state of mind and was able to speak albeit with difficulty when she spoke to them though soon thereafter her condition deteriorated and she was unable to speak — Note also made by doctor in this regard in police 'yadi' — Held, testimony of the doctors about fitness of the deceased as supported by the documentary evidence cannot be discarded merely because the deceased was severely burnt and her condition was poor at the time she spoke to the doctors — Further, in absence of strained relation of deceased with appellant, possibility of false involvement of the appellant cannot be accepted even assuming that her husband who was near her cot had prompted her to do so — Non recording of deceased's statement in question-answer form, in the circumstances of the case, would also not affect its probative value — Held, dying declaration acceptable and sufficient to found conviction of the appellant — Evidence Act, 1872, S. 32. Padmaben Shamalbhai Patel* v. *State of Gujarat*, (1991) 1 SCC 744: 1991 SCC (Cri) 275: (1991) 1 GLH 125: (1991) 1 Crimes 349.

Bench Strength **3**. Coram: *A.M. Ahmadi, V. Ramaswami* and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1991]

[7993] — Ss. 304-B and 306 — Dowry death by skull fracture/burning or suicide — Determination of — Skull bones of deceased found broken in addition to burns — Inference — Appreciation of evidence — Conviction upheld — *On facts, High Court reversing acquittal of appellant (mother-in-law of the deceased) by trial court, thereby convicting her in the alleged case of dowry death — Sustainability — Reiterating principles governing and regulating hearing of appeal against acquittal by High Court and ingredients necessary for attracting S. 304-B, held, from the post-mortem report and doctor's statement, fact that deceased died because of burns was very well established and at time of post-mortem of deceased, her skull bones were found broken — In case of burning, held, fracture of skull is not a necessary corollary, but herein, skull bones were broken — Therefore, fact remains that deceased was killed before death — Hence, High Court justified in holding that trial court erroneously concluded that it was a case of suicide — Further, evidence of independent witness PW 7, neighbour of the accused, rightly highlighted by High Court to show that appellant's role as alleged by the prosecution was established — Again, evidence of PWs 1 to 5 clearly showed greed of accused who persistently taunted and harassed the deceased for not bringing sufficient dowry — High Court was, therefore, justified in upsetting order of acquittal by trial court and directing appellant's conviction — Dowry Prohibition Act, 1961, Ss. 2 and 4 — CrPC, 1973, Ss. 378(1) and 386(a)* (Paras 14, 15 and 18). *Prem Kanwar* v. *State of Rajasthan*, (2009) 3 SCC 726: (2009) 2 SCC (Cri) 189: AIR 2009 SC 1242: (2009) 74 AIC 52 (SC): (2009) 1 ECrN 850 (SC): 2009 Cri LJ 1123.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-1-2009]

State of A.P. v. Raj Gopal Asawa, (2004) 4 SCC 470; Ajit Savant Majagvai v. State of Karnataka, (1997) 7 SCC 110: 1997 SCC (Cri) 992; Balbir Singh v. State of Punjab, AIR 1957 SC 216; Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248: 1995 SCC (Cri) 355; Bharwad Jakshibhai Nagjibhai v. State of Gujarat, (1995) 5 SCC 602: 1995 SCC (Cri) 993; Hari Chand v. State of Delhi, (1996) 9 SCC 112: 1996 SCC (Cri) 950; Raghbir Singh v. State of Haryana, (2000) 9 SCC 88: 2000 SCC (Cri) 1169; Hari Ram v. State of Rajasthan, (2000) 9 SCC 136: 2000 SCC (Cri) 1178; Ashok Kumar v. State of Rajasthan, (1991) 1 SCC 166: 1991 SCC (Cri) 126, relied on

[7994] — Ss. 304-B and 498-A — Bride burning — Doctor to whom deceased was taken for treatment deposing that soon after the deceased was admitted in hospital, she had told him that her husband had poured kerosene on her clothes and set her ablaze — *Doctor making note of it in the case papers — Evidence of the doctor thus receiving support from contemporaneous documents — Held, doctor had no reason to falsely depose against the accused or to prepare false case papers — Evidence Act, 1872, S. 32* (Para 2). *Shripatrao* v. *State of Maharashtra*, (2000) 10 SCC 320: 2000 SCC (Cri) 83.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 4-8-1999]

[7995] — Ss. 304-B and 498-A — Dowry death — Death by throttling — Two injuries found on neck of deceased, and her windpipe and sound box fractured — *Held, judgment of trial court acquitting appellant-accused holding that death of deceased was possibly due to epileptic fit was based on surmises and conjectures — Reliance on Modi's Medical Jurisprudence was misplaced since nowhere such a contingency (i.e. fracture of windpipe and sound box due to epileptic fit) was stated — Judgment of High Court convicting appellants calls for no interference* (Paras 7 to 9). *Madan Lal* v. *State of U.P.*, (2009) 11 SCC 527: (2009) 3 SCC (Cri) 1478: AIR 2009 SC 2175: (2009) 3 All LJ 806.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 5-3-2009]

Modi's Medical Jurisprudence, considered

[7996] — Ss. 304-B, 498-A and 302 — Homicide or suicide — Circumstantial evidence — Homicidal dowry death proved — *Deceased woman, aged 24 years, found dead in her in-laws' house three years after her marriage — Prosecution case of strangulating and setting her afire by her husband and mother-in-law — Defence case of suicide — On body of deceased large ligature mark found and body found to be badly burnt due to ante-mortem burns with smell of kerosene — Half burnt piece of cloth with a knot around neck found — Dead body found lying inside bedroom — Under left arm a telephone receiver was stuck — Burnt telephone wire recovered from the room and blood and blood-stained bindia recovered from balcony outside the room suggesting struggle and application of violence on deceased on balcony and in bedroom — Version of sister-in-law of deceased that deceased was suffering from mental tension due to her not being able to give birth to any child not acceptable as her child bearing age had not passed and there was no evidence showing that she was suffering from any gynaecological problem — Only the two accused were present in the house and had opportunity to commit the crime — Manner in which deceased was done to death shows that it needed at least two persons — Conduct of deceased's mother-in-law of lodging a false information at police station — Testimony of deceased's sister-in-law not trustworthy — Both the accused absconding and later surrendering before court — FIR lodged belatedly indicating deliberation and consultation with legal experts who had already gathered at the scene of occurrence along with accused husband's uncle who was also an advocate — Held, culpability of the two accused in causing homicidal death of deceased established to the hilt by facts and circumstances proved by prosecution* (Paras 32 to 54)

In this case, the accused interfered with the breathing process of the deceased woman with compression of the windpipe of her neck by tightening a piece of cloth around her neck. Respiration had not completely stopped. In other words, the air passage was not completely blocked by the ligature pressed by the accused around the neck of the deceased. She was strangulated, but not to death. Strangulating her half way to overpower her and to render her incapable of offering any meaningful resistance, the accused then poured kerosene over her and burnt her. (Para 38)

If a cloth is suddenly tightened around the neck, it is likely to cause loss of consciousness, rendering it impossible for the victim to perform any action because of the interference with her breathing process. Owing to constricting of neck by a ligature, it could not at all be possible for the victim to catch hold of the container of the kerosene and pour it upon herself with the lighting of matchstick setting her self ablaze. Her mental faculty would not have been in such a position to have undertaken such an activity. (Para 41). *Satya Narayan Tiwari* v. *State of U.P.*, (2010) 13 SCC 689.

Bench Strength 2. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 28-10-2010]

(vi) Circumstantial evidence

See also SECTIONS 299-304 — CULPABLE HOMICIDE AND MURDER — 'D.7. Circumstantial Evidence' in Vol. 2

[7997] — S. 304-B — Dowry death — Circumstantial evidence — Prosecution case that father-in-law of deceased alone could have caused the burn injuries based on circumstantial evidence — *Accused was last seen in the house wherefrom the dead body was recovered — Body found in locked room where both the front door and the window were locked/bolted from inside — According to prosecution there was a window in the house which had a barrel bolt which could have been closed from inside after a person came out of the window and shook the window in such a manner as to put the bolt in proper position — Sessions Judge who conducted a spot inspection and tried to examine this aspect of the case, clearly stating that it was extremely difficult to do so — Moreover, prosecution case that accused-appellant might have come out of the window and then locked it from inside afterwards was only a hypothesis as no witness stated to have seen him coming out of the*

(7)(vi) Circumstantial evidence *(contd.)*

window or at what point of time he came out of the house — Held, it was not safe to draw any inference against the innocence of the accused-appellant based on the facts which were not proved at all — There was no motive whatsoever why appellant should have caused death or abetted suicide of the deceased — Prosecution failed to establish the case against appellant beyond all reasonable doubt — Conviction and sentence imposed on appellant by High Court as well as trial court set aside (Paras 5 and 6). *Babu Ram* v. *State of M.P.*, (2002) 2 SCC 502: 2002 SCC (Cri) 744: AIR 2002 SC 758: 2002 Cri LJ 1018.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *Doraiswamy Raju*, JJ. [Date of decision: 29-1-2002]

(1998) 1 Hindu LR 312 (MP), reversed

[7998] — S. 304-B — Dowry death — Prosecution of the husband for — *Where prosecution succeeds in leading evidence to show that (i) either the husband and wife were last seen together, or (ii) the offence was committed in the dwelling house, where the husband also normally resided, and if the accused husband offers no explanation as to the injuries received by his wife or if the explanation is false, held, there is strong circumstance which indicates that he committed the crime*

Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. (Para 22)

The appellant was plying a tempo in order to earn his livelihood. The deceased was being ill-treated and harassed on account of non-fulfilment of demand of Rs 25,000 which the appellant wanted for purchasing a tempo. The deceased was often beaten and was sometimes not given food. After the deceased had been murdered, information was sent to her parents that she had died on account of snakebite, which was reiterated when they reached the house of the appellant. Everyone in the village had been told that the deceased had died on account of snakebite and the Police Patil, believing the said information to be true, had lodged an accidental death report at the police station. The medical evidence, however, showed that she had died on account of asphyxia due to strangulation. The body of the deceased was purposely placed in a sitting posture with her back taking support of the wall so that no one may suspect that she had actually been killed as a result of strangulation and may believe the version of snakebite given by the appellant and his parents. The appellant in his statement under Section 313 CrPC did not offer any explanation as to how she received the injuries which were found on her body. Recovery of some articles of the deceased was made at the pointing out of the appellant. The circumstances unerringly point to the guilt of the accused and they are inconsistent with his innocence. (Para 23)

The High Court was, therefore, perfectly right in allowing the appeal filed by the State and in convicting the appellant under Section 302 IPC and sentencing him to life imprisonment thereunder. (Para 24). *Trimukh Maroti Kirkan* v. *State of Maharashtra*, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80: (2006) 4 KLT 638.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 11-10-2006]

Nika Ram v. State of H.P., (1972) 2 SCC 80: 1972 SCC (Cri) 635; Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106: 1993 SCC (Cri) 435; State of U.P. v. Dr. Ravindra Prakash Mittal, (1992) 3 SCC 300: 1992 SCC (Cri) 642; State of T.N. v. Rajendran, (1999) 8 SCC 679: 2000 SCC (Cri) 40, relied on

[7999] — S. 304-B [S. 302] — Circumstantial evidence — Burden of proof — *No explanation or false explanation against incriminating circumstance(s) — If accused fails to offer any cogent explanation or offers an explanation which is untrue, then it can be treated as an additional link in the chain of circumstances against the accused to make it complete — Evidence Act, 1872, S. 106 and Ill. 114 (b). Trimukh Maroti Kirkan* v. *State of Maharashtra*, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80: (2006) 4 KLT 638.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 11-10-2006]

[8000] — S. 304-B [S. 302] — Dowry death — Circumstantial evidence — Burden of proof — Nature of — *Held, is of a lighter character where the offence is committed in secrecy inside a house — In view of S. 106, Evidence Act there is also a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed — They cannot get away by keeping quiet and on the premise that the prosecution must discharge its burden of proving the case — Evidence Act, 1872, S. 106*

The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (*b*) appended to this section throws some light on the content and scope of this provision. (Paras 13 and 14)

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. (Para 15)

The High Court was, therefore, perfectly right in allowing the appeal filed by the State and in convicting the appellant under Section 302 IPC and sentencing him to life imprisonment thereunder. (Para 24). *Trimukh Maroti Kirkan* v. *State of Maharashtra*, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80: (2006) 4 KLT 638.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 11-10-2006]

Stirland v. Director of Public Prosecutions, 1944 AC 315: (1944) 2 All ER 13 (HL); State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135, relied on

Collector of Customs v. D. Bhoormall, (1974) 2 SCC 544: 1974 SCC (Cri) 784; Balram Prasad Agrawal v. State of Bihar, (1997) 9 SCC 338: 1997 SCC (Cri) 612; State of W.B. v. Mir Mohd. Omar, (2000) 8 SCC 382: 2000 SCC (Cri) 1516; Ram Gulam Chaudhary v. State of Bihar, (2001) 8 SCC 311: 2001 SCC (Cri) 1546, relied on

[8001] — Ss. 304-B and 498-A — Circumstantial evidence — Death of a housewife by drowning in a well in the courtyard of her in-laws' house — *Ill-treatment of the deceased by her in-laws for not bringing sufficient dowry and also for not giving birth to children established — Despite giving birth to two children such ill-treatment continued — Husband also contemplating to remarry — Deceased earlier trying to commit suicide by jumping in the same well but saved by the neighbours — At the time of incident only deceased and the accused were in the house — Sound of quarrelling and shouting of a woman heard by the neighbours — Held, in the circumstances of the case, circumstances clinchingly establish the culpability of the accused — Death by accidentally falling in the well ruled out*

The prosecution evidence clearly indicates beyond shadow of reasonable doubt that because of the mistreatment by the accused and the consistent course of cruelty perpetrated on her, she had on the fateful night suffered from the last straw that broke the camel's back. Earlier she had jumped in the same well to put an end to her miserable existence but was saved by the neighbours. Yet the life for her in the household of the accused did not improve subsequently. She was, therefore, driven to once again try to commit suicide by jumping in the very same well in which she had earlier jumped. But on the second occasion on that fateful night when she jumped in the well there was no neighbour to save her and her life got extinguished. Under these circumstances it cannot be said that the accused were not responsible for bringing to a tragic end the life of this young housewife aged 28 years, mother of two children, who having suffered in such a drastic manner at the hands of the accused was driven to take the extreme step of committing suicide. This is neither the case of murder nor the case of accident. On the facts of the present case the prosecution has been able to bring home to the accused beyond shadow of reasonable doubt offence under Section 498-A IPC read with Explanation (*a*). When she was driven to take such a drastic step all the accused including acquitted accused mother-in-law were in the house and along with them resided the victim and her two minor children. Hence the accused

(7)(vi) Circumstantial evidence *(contd.)*

alone must be held responsible for driving her to commit suicide by their misconduct which had led to a quarrel and shouting revealing the voice of a woman as admitted even by the hostile witness who actually heard the same being the next door neighbour. All the circumstances proved by the prosecution clinchingly establish the culpability of the accused themselves and no one else. These established circumstances wholly rule out any reasonable possibility of innocence of the accused from any viewpoint. In other words the chain in the circumstantial evidence is so complete against the accused as to rule out any other hypothesis about their innocence. *Balram Prasad Agrawal* v. *State of Bihar*, (1997) 9 SCC 338: 1997 SCC (Cri) 612: AIR 1997 SC 1830: 1997 Cri LJ 1640.

Bench Strength **2**. Coram: *G.N. Ray* and **S.B. Majmudar**, JJ. [Date of decision: 10-12-1996]

[8002] — Ss. 304-B and 498-A — Dowry death — Circumstantial evidence — Conviction upheld — *Circumstances found to be forming a complete chain which conclusively pointing to the guilt of the accused persons — Hence conviction upheld*

The relevant circumstances which were stated by the witnesses were as follows: (*1*) The deceased had been complaining of taunting and insulting behaviour and torture and harassment by her father-in-law, brothers-in-law and sister-in-law shortly after she went to their house after her marriage. (*2*) The deceased had also communicated her complaint against the accused-appellants (in-laws) to PW 2 (a neighbour of the appellant) who was treating her as his daughter. (*3*) On the night of the occurrence the deceased had come to the house of PW 2 and was there till 11 p.m. She was hale and hearty by the time she left the house of PW 2 and went back to the house of the appellants. (*4*) The deceased and the appellants were the only inmates of the house on the fateful night when the incident took place. (*5*) The appellants were present in the house when the body of the deceased was lying in the kitchen. (*6*) None of the appellants was seen taking any step to give relief to the deceased nor any of them gave any explanation about the incident to the queries made by PWs 2 and 3 who had gone to the house during the night. (*7*) The dead body of the deceased was cremated early in the morning by 6.00 a.m. before sending any information of the tragic incident to her parents. (*8*) No step was taken by any of the appellants for registration of the death of the deceased or report the unnatural death suffered by her. (*9*) The appellants were initially not sure of the defence to be taken in the case; whether the death was suicidal or accidental; subsequently they decided to stick to the plea of accident which plea was held by the High Court to be a false one.

Held :

The aforementioned circumstances provide a complete chain of events clearly pointing towards the guilt of the appellants. Therefore, the High Court committed no error or illegality in coming to the conclusion that the charges under Section 302 read with Section 34 IPC and Section 201 read with Section 34 IPC stood established against the appellants. (Para 15). *Tapubha Bhagvanji* v. *State of Gujarat*, (2002) 6 SCC 530: 2002 SCC (Cri) 1411: AIR 2002 SC 2794.

Bench Strength **2**. Coram: **D.P. Mohapatra** and *Ruma Pal*, JJ. [Date of decision: 30-7-2002]

(vii) Conviction justified

See also '(6) Ingredients of dowry death and presumption under S. 113-B, Evidence Act', above

[8003] — S. 304-B — Dowry death — Bride burning — Additional demand of dowry after marriage — *Harassment of deceased in respect thereof — Strained relationship between both parties (complainant and accused) as well as harassment of deceased, held, stood sufficiently substantiated on the basis of an earlier police complaint lodged in relation thereto and the compromise signed by the parties thereafter — Dying declaration involving the appellants, also found reliable — Held, concurrent findings of courts below not suffering from any infirmity — Conviction upheld*

According to the prosecution, the deceased *S* was married to A-5 about six years prior to the date of occurrence. After the marriage, all the accused started harassing and torturing *S* for want of more dowry and the manner of torture included even physical beating. About four months before the death of *S*, a demand was made for a sum of Rs 20,000 as further dowry and for not complying with the said demand, *S* was not only tortured by physical beating but was said to have been locked in a room for four days from where she managed to escape and reach the house of her sister *K*. Thereafter, a written complaint was lodged with the police and on the said complaint the husband and father-in-law of *S* were arrested and taken to the police station. Both of them were said to have apologized to the complainant party and then a compromise was said to have been effected and reduced into writing, which was also attested by a police officer. Thereafter *S* was brought back to the house of her in-laws. About four months thereafter on 16-11-1993 at about 10.30 a.m. when the husband (A-5) and father-in-law (A-4) were away, the mother-in-law (A-1) caught hold of *S* by her hands from her back and the sister-in-law (*MD*) sprinkled kerosene on *S* and then A-2 (son of A-1 and A-4) set her ablaze. The said incident was said to be witnessed by one *W*, a front door neighbour. *S* was admitted in a hospital. When the Medical Officer declared *S* to be fit for making the statement, the police officer recorded her statement in the course of investigation to the effect that all the five accused had been harassing her for want of more dowry and that she was set ablaze by A-1, A-2 and *MD*. The victim ultimately died at 11.30 a.m. on 20-11-1993.

All the five accused were charged under Sections 498-A, 304-B and 302 read with Section 34 IPC. The trial court convicted the appellants for offence punishable under Section 304-B IPC, on the view that there was direct and substantial evidence against them though in respect of the other offences these accused and the remaining three accused in respect of all offences were found not guilty. In appeal, the High Court affirmed the conviction and sentence recorded by the learned trial Judge.

Before the Supreme Court, the two appellants including the mother-in-law contended (*i*) that *W* could not be believed to be present on the spot at the time of occurrence, (*ii*) that in the light of the acquittal of the other accused, the same norms and standards of appreciation should have been extended while considering the case of the appellants as well and they should have been also acquitted, (*iii*) that the dying declaration was not reliable, and (*iv*) that the requirements of Section 304-B IPC had not been properly substantiated to warrant conviction of the appellants under the said provision.

Dismissing the appeal, the Supreme Court held as above. *Vidhya Devi* v. *State of Haryana*, (2004) 9 SCC 476: 2004 SCC (Cri) 1473: AIR 2004 SC 1757.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *S.B. Sinha*, JJ. [Date of decision: 20-1-2004]

[8004] — S. 304-B — Dowry death — Bride burning — Appreciation of evidence — Conviction of appellant-accused (husband of deceased victim) confirmed — *Held, prosecution story stands fully proved by evidence of PWs 2 to 4 (uncle, father and another uncle of deceased, respectively) — Although, four (father, mother and two sisters of appellant-accused) of five accused were acquitted, but primary evidence is against appellant — Evidence shows that it was appellant who had, just a few days before the incident, visited house of his father-in-law and threatened victim with dire consequences if his demands for a scooter and two gold rings were not fulfilled — A few days later, PW 2 visited victim's in-laws' home and informed her father thereafter, that appellant was found beating his wife at that time and had once again threatened that if demands were not satisfied, victim would pay dearly for it — Victim's dead body found in bathroom of her matrimonial house — Medical evidence shows that deceased suffered 95% burn injuries — Her death occurred just four months after marriage — It is true that in a case where peculiar evidence was discarded with respect to four of five accused, presumption under S. 113-B, Evidence Act, could, to some extent, be said to be dispelled, but on overview, primary role and weight of evidence was against appellant — Hence, appellant's conviction, confirmed — Evidence Act, 1872, S. 113-B* (Paras 8, 9, 11 and 12). *Sudhir Kumar* v. *State of Punjab*, (2010) 3 SCC 239.

Bench Strength **2**. Coram : *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision : 14-1-2010]

[8005] — S. 304-B — Dowry death — Bride burning — Unnatural death of appellant's wife by burning within seven years of marriage — Non-fulfilment of dowry demand — *Victim cruelly treated and ultimately murdered by appellant-accused and her in-laws — PWs 1 and 18 (maternal uncle and mother of deceased, respectively) specifically speaking about dowry demand by accused at the time of marriage, which could not be met — However, PW 1 speaking about making part-payment later on — Contradiction between evidence of PWs 1 and 18 on issue of payment, minor in nature — Claims of PW 1 about dowry demand, harassment of victim by accused persons for not bringing dowry, not sending her to his house on festivals and other assertions, remaining unshaken in his cross-examination — Defence case of victim having a love affair and committing suicide out of frustration, having no basis — Victim suffering mental torture proved from the fact that she did not take food for two days prior to her death — Circumstances bringing about death of victim in her own bedroom of burn injuries in the wee hours, not explained — Hence, held, instant case completely covered by presumption under S. 113-B, Evidence Act, since all aspects, such as cruelty meted out to the deceased, her unnatural death within time span of seven years and constant demands of dowry, were proved to the hilt — Conviction, therefore, proper — Evidence Act, 1872, S. 113-B*

(7)(vii) Conviction justified *(contd.)*

Dismissing the appeal,

Held :

The finding reached by the trial court in its judgment that there was no payment of dowry appears to be a totally incorrect finding tending to be perverse. The main reason for this appears to be contradiction in the evidence of PWs 1 and 18 (maternal uncle and mother of the deceased, respectively), completely ignoring the fact that PW 18 was an illiterate woman and could not be expected to remember the details regarding the date on which the amount of Rs 2000 was paid to the appellant-accused. (Para 28)

In returning the finding that there was no dowry harassment to the deceased by the accused, the trial court had completely ignored the evidence of PW 3 (elderly relative of the deceased), which remained absolutely unshaken on that issue. In fact, even PW 5 had supported the case of the dowry harassment and so did PW 6, who is the immediate neighbour of appellant. Although PW 6 was declared hostile in his cross-examination, however, even he had admitted that there used to be quarrels in the house of the accused. The fantastic theory invented by the defence of love affair of the deceased with *S* was also denied by this witness in his cross-examination by the accused. (Para 29)

PWs 3 and 5 had specifically referred about the ill-treatment on account of dowry and there was absolutely no cross-examination on the payment of dowry, as also the complaints made by the deceased against the accused that she was ill-treated on account of non-payment of Rs 5000. The finding recorded that there was no continuous onslaught, cruelty or harassment was clearly an incorrect finding, without even bothering to realise that there was no cross-examination of the witnesses like PWs 1, 3 and 5 on that issue, though they had very specifically asserted that the deceased was being ill-treated on account of dowry. (Para 30)

The High Court has not only considered the whole prosecution evidence closely but has also considered the defence evidence. From the way the evidence has been appreciated by the High Court, it is clear that the High Court has disapproved of the findings given by the trial court and has done the whole exercise of appreciation of evidence independently. The High Court has given a clear finding in its judgment that the trial court was palpably wrong in holding that the prosecution had failed to prove the guilt of the accused, more particularly, under Section 304-B IPC. Here was a case which was completely covered by the presumption under Section 113-B, Evidence Act, 1872, since all the aspects such as the cruelty meted out to the deceased, her unnatural death within the time span of seven years and constant demands of dowry were proved to the hilt. (Paras 31 and 34)

There were many things than what meets the eye in the death of the victim who died in her own bedroom of burn injuries. It was clear that she died in the wee hours and yet there was nothing, even suggestive, of any explanation. (Para 35)

Hence, the judgment convicting the appellant-accused of the offence under Section 304-B IPC is correct and the appeal has no merits. (Para 36). *Govindaraju* v. *State of Karnataka*, (2009) 14 SCC 236: (2009) 79 AIC 113 (SC): 2009 Cri LJ 3457: (2009) 2 APLJ 203 (SC).

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 29-5-2009]

[8006] — S. 304-B — Dowry death — Wife committing suicide by jumping into a well because her husband was harassing her due to non-fulfilment of his demand of 25 cents of land by her father — *Quarrel occurred between husband and wife on the date of the incident — PW 8, a neighbour, spoke about frequent quarrels between them — Evidence of PWs proving harassment — Held, it was satisfactorily proved that the husband committed offence under S. 304-B — But, on facts, his sentence reduced to 7 years* (Paras 3 and 4). *Nazar* v. *State of Kerala*, (2005) 12 SCC 476.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *P.P. Naolekar*, JJ. [Date of decision: 18-8-2005]

[8007] — Ss. 304-B and 201 — Dowry death/ Bride burning — Ingredients reiterated — Conviction confirmed — *Accused cremated deceased and cleaned up place of occurrence and did not bother to inform police of unnatural death — Cremation of body without even intimating relatives of deceased — Hurriedly conducted funeral caused destruction of evidence — Court taking a serious note of manner in which body was disposed of — Circumstances establish that accused had done so to conceal real cause of death — Circumstances most suspicious pointing towards guilt of accused — Torture of deceased in regard to dowry demands, also proved — Both courts below have fully considered all aspects and convicted appellant — No interference warranted — Evidence Act, 1872, S. 113-B* (Paras 12 and 16 to 20). *Dasrath* v. *State of M.P.*, (2010) 12 SCC 198: AIR 2010 SC 2592: 2010 Cri LJ 4382.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision: 29-7-2010]

State of Rajasthan v. Jaggu Ram, (2008) 12 SCC 51: (2009) 1 SCC (Cri) 317, relied on

[8008] — Ss. 304-B and 302 — Bride burning — *Dying declaration recorded by doctor within 1½ hours of the occurrence bearing specific mention of deceased's husband as the person who had set the deceased on fire — Independent and disinterested witnesses consistently deposed that the deceased throughout had maintained that her husband had sprinkled kerosene on her body and set her on fire — In view of oral and documentary evidence coupled with impelling circumstances, held, plea that the deceased had bolted her room from inside and set herself on fire not acceptable — It was the deceased's husband alone who was responsible for causing the death of the deceased — Hence conviction and sentence of life imprisonment under S. 302 sustained. Ved Prakash* v. *State (Delhi Admn.)*, 1991 Supp (1) SCC 296.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 7-11-1990]

[8009] — Ss. 304-B and 498 — Bride burning — Husband charged with committing murder of his wife by pouring kerosene and setting her on fire — Conviction confirmed — *No material discrepancies found in four statements given by the deceased which were treated as dying declarations — Entry in bedhead ticket that the deceased sustained burn injuries during cooking is of no consequence — Location of burn injuries found on the person of the accused not consistent with his claim that he tried to extinguish the fire — Non-examination of sole eyewitness, sister of the accused, aged 17 years, in the circumstances of the case not material — Guilt established. Rajendra Kumar* v. *State of U.P.*, (1998) 9 SCC 343: 1998 SCC (Cri) 1026: AIR 1998 SC 2896.

Bench Strength **2**. Coram: *M.M. Punchhi* and **M. Srinivasan**, JJ. [Date of decision: 21-11-1997]

[8010] — Ss. 304-B and 498-A — Applicability — Deceased alleged to have been strangulated by accused and her dead body found hanging from a ceiling fan — *Deceased dying within one year and 3 months of her marriage, while residing in her matrimonial home — High Court in appeal against acquittal, by impugned judgment, while confirming acquittal of co-accused (in-laws of deceased) doubting their participation in commission of offence since they were residing separately, but convicting appellant (husband of deceased) under S. 304-B and sentencing him to 7 years' RI — Sustainability — PWs 3 and 4 (father and brother of deceased) stating that deceased had visited them on 17-3-1995 i.e. a day before the occurrence and told them that accused had purchased a new house, were demanding Rs 1 lakh from her, and were torturing her — Documents pertaining to agreement to purchase the house dated 8-2-1995, while the sale deed was to be executed on 8-5-1995, produced in evidence — High Court noting that said document amply established the need for money — Conclusion of trial court that accused being rich persons there was no need for demanding any dowry also found erroneous — Held, High Court has analysed the evidence of the witnesses clearly keeping in view the parameters relating to the scope of interference with the judgment of acquittal — Said analysis does not suffer from any infirmity to warrant interference — Since the minimum sentence has been awarded, no interference called for — Dowry Prohibition Act, 1961, S. 2* (Paras 12 to 16). *Jagjit Singh* v. *State of Punjab*, (2009) 4 SCC 759: (2009) 2 SCC (Cri) 588: AIR 2009 SC 2133: 2009 Cri LJ 2440: (2009) 76 AIC 33 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-3-2009]

Appasaheb v. State of Maharashtra, (2007) 9 SCC 721: (2007) 3 SCC (Cri) 468, considered and relied on

[8011] — Ss. 304-B and 498-A — Dowry death — Conviction justified — Appreciation of evidence — Cruelty and harassment and dowry demand — Held proved — *PW 5 (father of deceased) deposing that he gave 20 tolas of gold and other dowry articles to A-1 (deceased's husband), A-3 (brother of A-1) and other in-laws of his daughter at the time of marriage about three years prior to incident — After one year of happy marriage, daughter repeatedly complaining to PW 5 regarding maltreatment, harassment and torture by her in-laws on account of inadequate dowry — A-1 and A-3 demanding and taking Rs 50,000 as loan during pregnancy of deceased, when deceased had come for some months to PW 5's house — Thereafter, A-1 and A-3 frequently demanding to adjust the loan amount as dowry and PW 5 not agreeing — Harassment of deceased continuing on account of PW 5 not agreeing to adjust loan as dowry amount — PW 5 also deposing about quarrels regarding said adjustment in his house and also in accused persons' house (during PW 5's visit to meet his daughter) — PW 6 (mother of deceased), PW 8 (deceased's mother's brother) and PWs 3, 5 and 10 corroborating the evidence of PW 5 — PW 8 deposing/corroborating about accused persons' threatening about dire consequences if said adjustment was not made — In spite of being subject to searching cross-examination, defence failing to extract anything tangible to create any shadow of doubt regarding the reliability and truthfulness of the evidence of PWs 5, 6 and 8 — PW 7, though*

(7)(vii) Conviction justified *(contd.)*

turning hostile, corroborating the fact of quarrel in PW 5's house regarding money matters — On facts, held, it is proved beyond reasonable doubt that the deceased was being constantly harassed and tortured by A-1 and A-3 for inadequate dowry and for adjusting a loan amount of Rs 50,000 as dowry amount — Therefore, conviction under Ss. 304-B and 498-A upheld

On the day of incident i.e. on 7-8-1992, an FIR was lodged by PW 5 that the deceased (PW 5's daughter) was married to the appellant-accused (A-1) about three years prior to the incident. The complainant gave his daughter twenty tolas of gold and other valuable articles during the time of marriage. However, after one year of the marriage, the in-laws started illtreating and harassing the deceased for not bringing sufficient dowry about which, the deceased made repeated complaints to the complainant during her and complainant's visits to each other's place.

During the pregnancy of the deceased, which took place after about two years of marriage during which, the deceased stayed in the complainant's house, A-3 (elder brother of A-1) demanded and took a loan of Rs 50,000 from PW 5 for starting some business. Thereafter, on several occasions, the accused persons demanded that the loan amount be treated as dowry amount but PW 5 did not agree to it. And therefore, the deceased was illtreated and harassed, which she revealed to her father (PW 5) on several occasions.

On 7-8-1992, PW 5 and his wife rushed to the hospital on being informed about their daughter's burn injuries. The deceased died the same day. The FIR was lodged by PW 5 at about 8:00 or 9:00 p.m. on the same day.

PW 11, Medical Officer, on the request of police, examined the deceased at about 5:45 a.m. on 7-8-1992 and noticed about 90% burn wounds on her entire body starting from the top of the head right up to her feet. He prepared injury report (Ext. P-11). According to the doctor's report, the wounds noticed on the deceased appeared to be four hours old. He took thumb impression of the deceased on the injury report.

On examination of the oral and documentary evidence produced on record, the Sessions Judge found the accused guilty of the offences under Sections 304-B and 498-A IPC and sentenced them to suffer 10 years' rigorous imprisonment for the offence under Section 304-B IPC and 3 years' rigorous imprisonment for an offence under Section 498-A IPC with a fine of Rs 500 each and in default of the payment of fine, each accused has to undergo simple imprisonment for one month. All the sentences were ordered to run concurrently. Appeals preferred thereagainst by A-1 and A-3 were dismissed by the impugned order of the High Court.

Dismissing the appeals,

Held :

Having regard to the entire evidence and having carefully and closely considered the judgments of the trial court and the High Court, it appears that the view taken by both the courts was reasonable and plausible. There is no infirmity or perversity in the findings recorded by the Judges of the High Court to interfere with the well-reasoned judgment. There is no merit in these appeals. Both the appellants are stated to be on bail. The bail bonds of both the appellants are cancelled and they are directed to surrender forthwith to serve out the remaining sentence. (Paras 61 to 63)

Relying upon the evidence of PW 5 and PW 8, the courts below correctly concluded that the prosecution has proved beyond reasonable doubt that the deceased was being constantly harassed and tortured by A-1 and A-3 for the demand of dowry and a sum of Rs 50,000 paid to them as loan amount was also adjusted by them as dowry money. PW 5 (deceased's father), PW 6 (deceased's mother) and PW 8 (deceased's mother's brother) have been subjected to searching cross-examination by the defence, but nothing tangible material has been extracted from their evidence to create any shadow of doubt that they are not reliable and truthful witnesses. The prosecution in support of the charge of dowry death has produced and relied upon the testimony of PW 5, PW 6 and PW 8. (Paras 59, 60 and 47)

The evidence of PW 5 proved that at the time of marriage of the deceased with A-1 (about three year prior to the alleged dowry death), he gave 20 tolas of gold and other dowry articles to A-1, A-3 and other family members. For about one year after marriage, his daughter lived happy married life in her parents-in-law's house. Thereafter, whenever the deceased used to go to the house of her parents or whenever PW 5 had visited her in-law's house for inviting her to parent's house, the deceased used to complain that A-1, A-3 and other family members had maltreated and harassed her for not bringing adequate dowry. When the deceased stayed in the house of PW 5 for some months during the her pregnancy and birth of a son A-1 and A-3 demanded and took Rs 50,000 from PW 5 as loan for running their business. (Paras 53 and 54)

It is the evidence of PW 5 that after about 10 days prior to the fateful incident, he went to his daughter's house but A-1, A-3 and other family members (the acquitted accused) had refused to send her unless their demand of dowry was fulfilled by him. The evidence of this witness finds complete corroboration from the evidence of PW 6 and PW 8 on this count. PW 5 also deposed about a quarrel in his house two months prior to the incident regarding the adjustment Rs 50,000 as dowry money. It was corroborated by PWs 3 and 6 and though PW 7 turned hostile he admitted that A-3, A-4 and A-7 had a quarrel with PW 5 on some money matter. (Paras 55 to 57)

PW 8, deposed that on that day he along with PW 5 and PW 10, visited the house of the accused persons, they threatened PW 5 that if he would make demand of returning a sum of Rs 50,000 paid by him as loan to A-1 and A-3, he would face dire consequences. All the accused said that an amount of Rs 50,000 shall be adjusted against the demand of dowry money. (Para 58). *Kanti Lal* v. *State of Rajasthan*, (2009) 12 SCC 498: AIR 2009 SC 2703: (2009) 2 APLJ 95 (SC).

Bench Strength **2**. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 17-4-2009]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740; Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511; Ram Badan Sharma v. State of Bihar, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166; Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80; Kailash v. State of M.P., (2006) 12 SCC 667: (2007) 2 SCC (Cri) 359; Appasaheb v. State of Maharashtra, (2007) 9 SCC 721: (2007) 3 SCC (Cri) 468, relied on

Arvind Kumar v. State of Rajasthan, Criminal Appeal No. 125 of 1997 decided on 26-4-2001 (Raj); Arvind Kumar v. State of Rajasthan, Criminal Misc. Petition No. 202 of 1997 decided on 26-4-2001 (Raj), approved

[8012] — Ss. 304-B and 498-A — S. 113-B, Evidence Act, 1872 — Dowry death — Conviction justified — *Deceased alleged to have consumed poison because of persistent dowry demands and consequent harassment meted out to her by her husband and in-laws for non-fulfilment of demands — Appellant-accused married to deceased on 8-6-1991, while the deceased dying on 3-9-1992 other than in normal circumstances i.e. within 7 years of marriage — Evidence of PWs 4 and 5 proving dowry demand just before the deceased committed suicide — Though demand of share in ancestral property does not amount to dowry demand but evidence of PWs proving additional demands too — Held, under such circumstances conviction of appellant under S. 304-B calls for no interference — However, custodial sentence of 10 years imposed appears to be on higher side and hence, reduced to 7 years* (Paras 2 and 17 to 19). *Baldev Singh* v. *State of Punjab*, (2008) 13 SCC 233.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 4-8-2008]

Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: 1998 SCC (Cri) 740, relied on

[8013] — Ss. 304-B, 498-A and 302 — Dowry death — Death of a married woman caused by burns within 2 years of her marriage — *Demand of dowry and harassment by her husband established — Evidence establishing that soon before her death she was ill-treated by her husband — High Court accepting the defence version of suicide, acquitting the appellant under S. 302 and convicting him under Ss. 304-B and 498-A — No interference by the Supreme Court called for — Evidence Act, 1872, S. 113-B. Venugopal* v. *State of Karnataka*, (1999) 1 SCC 216: 1998 SCC (Cri) 1592: AIR 1999 SC 146.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 29-7-1998]

[8014] — Ss. 304-B, 498-A and 306 — Dowry death — Conviction confirmed — *Dowry demand and harassment meted out to deceased consequent thereto proved by PWs 1 to 12 — Moreover, dying declarations, Exts. P-2 to P-4 inculpating appellant husband corroborating testimonies of PWs 1 to 12, which were proved to be in handwriting of deceased — Discrepancies inter se in statements of PWs inconsequential since discrepancies bound to occur where large number of witnesses are examined — Moreover, some of the witnesses were totally independent and there was no reason to disbelieve their testimonies — Hence, conviction of appellant sustainable* (Paras 5 to 7). *Nandyala Venkataramana* v. *State of A.P.*, (2010) 13 SCC 653.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 26-10-2010]

(viii) Dying declaration

See also SECTIONS 299-304 — CULPABLE HOMICIDE AND MURDER — 'D.15. Dying declaration' in Vol. 2

See also EVIDENCE ACT, 1872, S. 32(1)

[8015] — S. 304-B — Bride burning — Death of married woman caused by burn injuries — Dying declaration recorded by Naib Tehsildar — *Evidence of doctor that she was fully conscious to make statement despite 70% burns on her person — Opinion of autopsy surgeon that burns were up to 80% and that she must have been capable of speaking only for about 1-2 hours after the incident*

(7)(viii) Dying declaration *(contd.)*

cannot override evidence of doctors who deposed about the factual condition of the deceased as found by them — Evidence of witnesses that the deceased told them that her husband her put her on fire found reliable — Conviction upheld — Evidence Act, 1872, S. 32 (Paras 6 and 7). *Rammoo* v. *State of M.P.*, 1999 SCC (Cri) 345.

Bench Strength **2**. Coram: *B.L. Hansaria* and *K. Venkataswami*, JJ. [Date of decision: 10-4-1996]

[8016] — S. 304-B — Bride burning — Dying declaration — Conviction, on the sole basis of — Sustainability — *Held, if a dying declaration is found to be reliable then there is no need for corroboration by any witness, and conviction can be sustained on its basis alone — Consistent multiple dying declarations given by the deceased wherein she stating that the appellant (her husband) had poured kerosene on her and set her on fire — Evidence of Executive Magistrate, doctor and other witnesses found unequivocal that the deceased was conscious and was able to answer the questions — Held, there is no reason to disbelieve the dying declaration of the deceased — If some persons other than the accused had poured kerosene on the deceased and burnt her, there was no reason why the deceased should have thought of implicating the accused instead of the real culprits — Evidence Act, 1872, S. 32* (Paras 9, 10, 11, 16 and 17). *Bapu* v. *State of Maharashtra*, (2006) 12 SCC 73: (2007) 2 SCC (Cri) 545: (2006) 48 AIC 118 (SC): 2007 Cri LJ 310.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 16-11-2006]

Narain Singh v. State of Haryana, (2004) 13 SCC 264: 2005 SCC (Cri) 185; Babulal v. State of M.P., (2003) 12 SCC 490: 2005 SCC (Cri) 620; Ravi v. State of T.N., (2004) 10 SCC 776: 2005 SCC (Cri) 576; Muthu Kutty v. State, (2005) 9 SCC 113: 2005 SCC (Cri) 1202, relied on

[8017] — S. 304-B — Bride burning — Dying declaration of deceased implicating all members of husband's brother's family — *Death taking place in nuptial home — Trial court not inclined to convict on this solitary evidence but High Court reversing the decision — Supreme Court taking note of the fact that deceased's husband, daughter and even her relations from parental side had deposed that she committed suicide — Prosecution treating them as hostile — Dying declaration disbelieved by the Supreme Court — Further held, conclusion reached by trial court was not perverse or unreasonable and therefore High Court ought not to have reversed appellants' acquittal merely on the basis of dying declaration — CrPC, 1973, Ss. 378 & 386 — Evidence Act, 1872, Ss. 32 and 145* (Paras 4 to 8). *Muneer Khan* v. *State of M.P.*, (2002) 9 SCC 523.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Phukan*, JJ. [Date of decision: 15-1-2002]

[8018] — S. 304-B — Bride burning/Dowry death — Dying declaration recorded by SDM — Mere fact that there was an agitation by relatives of the deceased for recording her statement cannot lead to an inference that an officer holding the post of SDM had recorded it under pressure — *Dying declaration recorded after satisfying about mental fitness of the deceased and obtaining endorsement to that effect — Plea that the skin over the two thumbs of the deceased was burnt and, therefore, SDM could not have obtained her thumb impression on the dying declaration found not acceptable — SDM being an independent witness holding high position had no reason to do anything which was not proper — Held, in the circumstances, the dying declaration was voluntarily made and correctly recorded by the SDM — Evidence Act, 1872, S. 32* (Paras 5 and 6). *Harjit Kaur* v. *State of Punjab*, (1999) 6 SCC 545: 1999 SCC (Cri) 1130: AIR 1999 SC 2571.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 22-7-1999]

[8019] — S. 304-B — Dying declaration — Belated and not when expecting imminent death — If a dying declaration — Effect on veracity of such dying declaration — Bride burning — *Incident taking place in the intervening night between Sept. 11 and 12 — In hospital deceased giving birth to a dead child and skin grafting also done on her person — Oral dying declaration alleged to have been made to her relatives on Nov. 6 and another dying declaration recorded by Magistrate on Nov. 11 i.e. about two months after the incident — Death taking place in hospital on Nov. 15 — Post-mortem conducted on Nov. 16 i.e. more than two months after the incident — Post-mortem report recording only the superficial burns which had been cured but not recording about the deep burns — Cause of death, according to post-mortem report, was syncope, attributable to heart — Medical evidence thus not definitely showing that death was due to burns — Two dying declarations, which were after two months of the incident, not only giving two conflicting versions but there were also inter se discrepancies in the depositions of the witnesses given in support of the earlier oral dying declaration and in the second dying declaration recorded by Magistrate deceased not naming any of the* *accused — In the circumstances, held, conviction cannot be based on such dying declarations — Dying declarations having been made long after the incident, deceased cannot be said to be expecting imminent death at that time — Evidence Act, 1872, S. 32*

In the present case the dying declaration was after two months of the alleged incident. It was not at a time when the deceased was expecting imminent death. Neither the post-mortem nor the deposition of the doctor carry any definite inference that the cause of death was on account of burning. There is a conflict between two dying declarations, in one there is inter se inconsistency as revealed in the depositions of the witnesses, in the other there is no naming of any accused, when made before a Magistrate. On such an evidence the trial court rightly declined to base a conviction. The High Court committed a manifest error in placing reliance on it. (Para 22). *Kishan Lal* v. *State of Rajasthan*, (2000) 1 SCC 310: 2000 SCC (Cri) 182: AIR 1999 SC 3062: 1999 Cri LJ 4070.

Bench Strength **2**. Coram: *K.T. Thomas* and **A.P. Misra**, JJ. [Date of decision: 17-8-1999]

State of Rajasthan v. Kishanlal, 1998 Cri LJ 452 (Raj), reversed

[8020] — S. 304-B — Dying declaration — Bride burning — Material contradiction between two dying declarations pertaining to the context in which the deceased caught fire — *Evidence of neighbours that two cousins of the deceased were brainwashing her at the hospital — Evidence of the parents of the deceased that the deceased told them that she caught fire while cooking milk — Mental soundness of the deceased found doubtful — Held, in the circumstances of the case, dying declaration not reliable — Evidence Act, 1872, S. 32*

In the present case there was one material contradiction between the two dying declarations regarding the context in which the deceased caught fire. Dying declaration record by the police officer showed that she was set to fire by her husband and mother-in-law when she was lighting a stove for preparing coffee. But in her dying declaration recorded by the Judicial Magistrate she stated that when she was sweeping her mother-in-law and husband both poured kerosene on her, lit the matchstick and set her to fire. The High Court has sidelined such a noticeable discrepancy looming large as between the two different statements made by the same person. When the sphere of scrutiny of the dying declaration is a restricted area, the court cannot afford to sideline such a material divergence relating to this very occasion of the crime. Either the context spoken to in one was wrong or that in the other was wrong. Both could be reconciled with each other only with much strain as it relates to the opportunity for the culprit to commit the offence. Adopting such a strain to the detriment of the accused in a criminal case is not a feasible course. (Para 16)

As the dying declaration is tested thus on the touchstones available in evidence and permitted by law, it does not stand scrutiny. It will be unsafe to convict any person on the strength of such a fragile and rickety dying declaration. (Para 23). *Dandu Lakshmi Reddy* v. *State of A.P.*, (1999) 7 SCC 69: 1999 SCC (Cri) 1176: AIR 1999 SC 3255.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 17-8-1999]

Tapinder Singh v. State of Punjab, (1970) 2 SCC 113: 1970 SCC (Cri) 328; Khushal Rao v. State of Bombay, AIR 1958 SC 22: 1958 SCR 552, relied on

[8021] — S. 304-B — Dying declaration — Multiple dying declarations — Reliability — Death due to burns — *In the instant case, the first dying declaration was recorded by the doctor, while the second was recorded by the Sub-Inspector after obtaining opinion of the doctor that the deceased was fit to make her statement — Appellant 2 not named in the first dying declaration but culpability of Appellant 1 categorically stated by the deceased in both the declarations — Doctor, who had recorded the first dying declaration, in his deposition stating that he feared that the deceased would succumb to her extensive burn injuries (although she was in her senses) and hence recorded the declaration but could not thumb mark or obtain her signature because of injuries on her hand — Signature of the deceased on the second declaration appeared to have been put with great difficulty and was undisputed — Held, in such circumstances it is difficult to hold that her first statement was not voluntary or was tutored — However, keeping in view the inconsistencies between the two dying declarations, benefit of doubt given to Appellant 2 mother-in-law — Evidence Act, 1872, S. 32* (Paras 17 to 19, 24 to 30 and 34). *Balbir Singh* v. *State of Punjab*, (2006) 12 SCC 283: (2007) 1 SCC (Cri) 715: AIR 2006 SC 3221: 2006 Cri LJ 4646: (2006) 47 AIC 600 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 26-9-2006]

Jai Karan v. State of Delhi (NCT), (1999) 8 SCC 161: 1999 SCC (Cri) 1385; State of Maharashtra v. Sanjay, (2004) 13 SCC 314: 2005 SCC (Cri) 231; Muthu Kutty v. State, (2005) 9 SCC 113: 2005 SCC (Cri) 1202, considered and relied on

(7)(viii) Dying declaration *(contd.)*

[8022] — S. 304-B — Dying declaration — Reliability — Charge of committing murder of wife — *Wife burnt at parents' house at dead of night — Brought to dispensary and dying declaration recorded by the doctor, who though certifying her to be conscious not certifying her to be in full senses and medically fit to make a statement — Dying within 15 minutes because of extensive burn injuries — No eyewitness to the occurrence — In such circumstances, held, exclusive reliance could not be placed on the said dying declaration to hold her husband guilty of committing her murder — Evidence Act, 1872, S. 32(1). State of Orissa* v. *Parasuram Naik,* (1997) 11 SCC 15: 1997 SCC (Cri) 1177: AIR 1997 SC 3569.

Bench Strength **2**. Coram: *M.M. Punchhi* and **S.P. Kurdukar**, JJ. [Date of decision: 21-8-1997]

[8023] — S. 304-B — Dying declaration recorded by Judicial Magistrate — Discrepancy regarding exact place of murder — Value of such dying declaration to be estimated from the preceding utterances of the deceased — *Oral dying declaration made by deceased to her own brother soon after the incident that it was the appellant, her paramour, who set fire to her — Same version told to her father and sister — At police station also she stated the same thing which was recorded by the police and got signed by her — She repeated the same version to the doctor in the hospital — Held, in the circumstances, the trial court erred in rejecting the sturdy dying declaration given by the deceased to the Judicial Magistrate and also in rejecting other dying declarations — Discrepancy regarding exact place of murder in the dying declaration made to the Judicial Magistrate did not affect credibility of her dying declaration — Evidence Act, 1872, S. 32*

In the instant case the deceased told the Magistrate that the incident had happened "outside the house". The word "house" used by her need not necessarily be interpreted as the entire building. It could be an interior area of the building or it could be the defect of selecting the equivalent English word for what she used in her own dialect. Even if it is so, it does not matter and on that account, the identity of the assailant is not blurred. The exact spot where she was set ablaze, whether just outside the building or inside, does not in the present case affect the credibility of her dying declaration. *Vajrala Paripurnachary* v. *State of A.P.*, (1998) 6 SCC 463: 1998 SCC (Cri) 1468: AIR 1998 SC 2680.

Bench Strength **2**. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas**, J. [Date of decision: 28-7-1998]

[8024] — Ss. 304-B and 302 — Bride burning — Dying declaration — Homicidal death — Statement made before doctor — Deceased sustaining 90 per cent burn injuries — *On inquiries made by doctors examining the deceased in hospital, deceased revealing that accused-appellant (deceased's husband's sister) had burnt her — Deceased had opportunity to see the appellant at the time of occurrence — Doctors deposing that deceased was in a fit state of mind and was able to speak albeit with difficulty when she spoke to them though soon thereafter her condition deteriorated and she was unable to speak — Note also made by doctor in this regard in police 'yadi' — Held, testimony of the doctors about fitness of the deceased as supported by the documentary evidence cannot be discarded merely because the deceased was severely burnt and her condition was poor at the time she spoke to the doctors — Further, in absence of strained relation of deceased with appellant, possibility of false involvement of the appellant cannot be accepted even assuming that her husband who was near her cot had prompted her to do so — Non recording of deceased's statement in question-answer form, in the circumstances of the case, would also not affect its probative value — Held, dying declaration acceptable and sufficient to found conviction of the appellant — Evidence Act, 1872, S. 32*

As regards involvement of the appellant besides the oral evidence of the two medical men there are contemporaneous documents which go to show that the deceased made the statements that the appellant had burnt her. The mere fact that she had suffered 90 per cent burns and her general condition was poor is no reason to discard the testimony of the medical men when they say that she was in a fit state of mind and was able to make the dying declaration in question. (Paras 7 and 10)

As no relative from the side of her parents was present, the possibility of tutoring by them must be ruled out. The theory that her husband prompted her to name the appellant because his relations with the appellant were strained must be brushed aside as devoid of merit. Except the appellant's statement in this behalf, there is no other evidence — no such foundation was laid in the cross-examination of the investigating officers. Since it is conceded that the appellant's relations with the deceased were not bad, it is difficult to understand why the latter should falsely involve her, assuming her husband did prompt her, and allow her real tormentor to escape. (Para 8)

The failure on the part of the medical men to record her statements in question and answer form cannot in any manner affect the probative value to be attached to their evidence. The doctors merely questioned her for the limited purpose of stating the history of the case. Even otherwise having regard to her condition they could not have questioned her in detail. In such circumstances the fact of the statements being cryptic is understandable. (Para 11). *Padmaben Shamalbhai Patel* v. *State of Gujarat*, (1991) 1 SCC 744: 1991 SCC (Cri) 275: (1991) 1 GLH 125: (1991) 1 Crimes 349.

Bench Strength **3**. Coram: *A.M. Ahmadi, V. Ramaswami* and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1991]

Bankey Lal v. State of U.P., (1971) 3 SCC 184: 1971 SCC (Cri) 253, relied on

Rabi Chandra Padhan v. State of Orissa, (1980) 1 SCC 240: 1980 SCC (Cri) 211, distinguished

[8025] — Ss. 304-B and 498-A — Bride burning — Dying declaration — Alleged statement made under precarious condition, on facts, was not worthy of credence — *Cause of death stated to have been revealed by dying daughter only to her mother — Husband and in-laws implicated — Condition of deceased precarious — No medical certification of her fitness to make the statement — Also there was no independent corroboration — Mother's evidence disbelieved — Evidence Act, 1872, S. 32*

The appellant, his parents and brother were tried for the offence that they burnt the appellant's wife. The deceased's mother stated that her daughter, before passing away, had told her that all the accused burnt her by sprinkling kerosene on her. There was also an interpolated allegation in the FIR regarding demand for dowry. All the accused were tried under Sections 304-B (dowry death) and 498-A (cruelty) read with Sections 34 and 120-B of the Indian Penal Code. The High Court set aside the conviction of the parents and the brother under Sections 304-B but maintained their conviction under Section 498-A. The appellant's conviction under Section 304-B was enhanced and he was held guilty under Section 302 (murder). In addition, he was also convicted under Section 498-A. The appellant challenged his conviction under Sections 302 and 498-A.

The question was whether dying declaration stated to have been made by the deceased daughter to her mother was worthy of credence.

Held :

Dying declaration ought to be treated with care and caution since the maker of the statement cannot be subjected to any cross-examination. The dying declaration in the present case has not been made to any doctor or any independent witness, but to the mother who is said to have arrived at the place only in the morning. The mother admittedly is an interested witness, though that by itself would not discredit the evidence tendered in court but the fact remains that the doctor's evidence, considering the nature of burns, creates a considerable doubt as to whether such a statement could be made half-an-hour before the death. Reliance of the High Court on such a dying declaration has to be scrutinized with a certain degree of caution. The victim is stated to have quietly told her mother the reason of her death, a few minutes before passing away. This is not acceptable, more so, having regard to declaration being made to the mother only. It is also not conceivable that the husband along with other members of his family would start pouring kerosene on the girl, as if each was prepared with a can of kerosene to pour simultaneously. This would not only lead to absurdity but reliance on such a vague statement would be opposed to basic tenets of law. Further, it is in evidence that the deceased was extensively burnt, including her mouth, nose and lips. If this is so, evidence of the mother stands belied. The doctor's evidence shows that the victim could not have survived more than 10 minutes, in view of the extensive burns on her. This is another reason for not accepting her mother's evidence. (Paras 17 and 18)

Another fact to be noted is that the police had already arrived when mother and brother of victim reached. It was unlikely that the police would not make any attempt to have deceased's statement on arrival, instead to wait for mother's arrival. There is also no medical certification that the deceased was in a fit condition to make the declaration. (Paras 18 and 19)

Dying declarations shall have to be dealt with care and caution. Corroboration is not essential but it is expedient to have the same, in order to strengthen the evidentiary value of declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of such a statement as trustworthy evidence. Dying declaration to mother, in the present case, is not worth acceptance. High Court fell into error in accepting the mother's statement in this case. (Para 20). *Arvind Singh* v. *State of Bihar*, (2001) 6 SCC 407: 2001 SCC (Cri) 1148: AIR 2001 SC 2124: 2001 Cri LJ 2556.

Bench Strength **2**. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 26-4-2001]

(7)(viii) Dying declaration *(contd.)*

Tarachand Damu Sutar v. State of Maharashtra, AIR 1962 SC 130: (1962) 1 Cri LJ 196; Munnu Raja v. State of M.P., (1976) 3 SCC 104: 1976 SCC (Cri) 376: AIR 1976 SC 2199; K. Ramachandra Reddy v. Public Prosecutor, (1976) 3 SCC 618: 1976 SCC (Cri) 473: AIR 1976 SC 1994; Khushal Rao v. State of Bombay, AIR 1958 SC 22: 1958 Cri LJ 106; Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562: 2000 SCC (Cri) 432; Maniram v. State of M.P., 1994 Supp (2) SCC 539: 1994 SCC (Cri) 1487; Paparambaka Rosamma v. State of A.P., (1999) 7 SCC 695: 1999 SCC (Cri) 1361, relied on

But see the five-judge Bench decision in Laxman v. State of Maharashtra, (2002) 6 SCC 710 and also Sohan Lal v. State of Punjab, (2003) 11 SCC 534: 2004 SCC (Cri) 226 and Ravi v. State of T.N., (2004) 10 SCC 776

[8026] — Ss. 304-B and 498-A — Dowry death — Accidental homicide or death — Dying declaration declaring burn injuries to be accidental — Admissibility/genuineness of — Factors for admissibility and presuming genuineness, stated — *Such admissibility would depend upon proximate factual concurrence of the dying declaration, maker's voluntariness and fitness/capacity to narrate such facts and court's satisfaction in this regard — Evidence Act, 1872, S. 32(1)*

The admissibility of dying declaration as to any of the circumstances which resulted in his death must have some close and proximate relation with the actual occurrence and such proximity would depend upon the circumstances of each case. The dying declaration should be voluntary and should not be prompted and physical as well as mental fitness of the maker is to be proved by the prosecution. For placing implicit reliance on dying declaration, the court must be satisfied that the deceased was in a fit state of mind to narrate the correct facts of the occurrence. If the capacity of the maker of the statement to narrate the facts is found to be impaired, such dying declaration should be rejected, as it is highly unsafe to place reliance on it. (Paras 42 and 32)

In the present case, both the trial court as well as the High Court rightly rejected the genuineness and credibility of the alleged dying declaration to prove the defence version that the deceased made the said statement to DW 2 and she died because of accidental death. The alleged dying declaration (Ext. D-4) suffers from a number of basic infirmities and such dying declaration cannot be found admissible and accepted as a genuine document. (Paras 37 and 36). *Kanti Lal* v. *State of Rajasthan*, (2009) 12 SCC 498: AIR 2009 SC 2703: (2009) 2 APLJ 95 (SC).

Bench Strength **2**. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 17-4-2009]

Ghurphekan v. State of U.P., (1972) 3 SCC 361: 1972 SCC (Cri) 531; Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, relied on

Gaffar Badshaha Pathan v. State of Maharashtra, (2004) 10 SCC 589: 2004 SCC (Cri) 2037, clarified

[8027] — Ss. 304-B and 498-A — Dowry death — Two dying declarations — *First declaration indicating that the deceased died of accidental burns while the second one indicating that the deceased on being unable to bear the dowry demand and harassment meted out by the appellants, committed suicide by setting herself ablaze — Conviction by courts below relying on second declaration and rejecting the first one — Propriety — First declaration recorded by Magistrate after following proper procedure and taking necessary precautions, held, reliable — No reason to discard the same — Second declaration recorded by a police constable about 10 minutes after the first one — Doubt as to the need for recording of — That apart, no proper procedure followed and necessary precautions taken while recording it — Held, it was more appropriate to place reliance on the first declaration — Thus, presumption under S. 113-B, Evidence Act, stood rebutted by contents of the first declaration — Even a harassed wife can get burnt accidentally, and so her death would not attract S. 304-B — Conviction under S. 304-B set aside — However, charge under S. 498-A, held, established — Conviction thereunder upheld — Evidence Act, 1872, Ss. 113-B and 32(1) — CrPC, 1973, S. 428*

The second dying declaration (Ext. P-25) recorded by PW 11, the Head Constable came into existence about 10 minutes after the first dying declaration (Ext. P-28) was recorded by the Munsif Magistrate. There is doubt as to the need for recording the statement when the Munsif Magistrate on a request made by the doctor had already recorded a dying declaration as per Ext. P-28. Further, when PW 11 recorded the statement, he did not take the precautions which the Munsif Magistrate took in sending the relatives of the victim out of the room. He also did not put preliminary questions to find out whether the patient was in a fit state of mind to make the said statement. The doctor in Ext. P-25 only states that the patient is conscious. In the said statement, the victim had stated that she set fire to herself being unable to bear the harassment meted out to her by her husband and in-laws. This part of the statement in Ext. P-25 directly contradicts her earlier statement made to the Munsif Magistrate as per Ext. P-28. Ext. P-28 is a document which exculpates the accused person of an offence under Section 304-B IPC. The Magistrate by the preliminary questions had satisfied himself that the victim was in a fit condition to make the statement. From the questions put by the Munsif Magistrate, and from the answers given by the victim to the said questions as recorded by the Munsif Magistrate, there is no reason to come to any conclusion other than that this statement is made voluntarily and must be reflecting the true state of facts. The courts below have fallen in error in rejecting Ext. P-28 and preferring to place reliance on Ext. P-25; more so in the background of the fact that no suggestion whatsoever has been made either to the Munsif Magistrate or to the doctor as to the correctness of Ext. P-28. On facts, it is more appropriate to place reliance on Ext. P-28 rather than on Ext. P-25. If that be so, the death of the deceased will have to be related to her having suffered burn injuries accidentally and succumbed to the same. Since the death of the deceased occurred within 3 years of her marriage, a presumption under Section 113-B of the Evidence Act is available to the prosecution, but as the contents of Ext. P-28 have been accepted as true, that presumption stands rebutted. In such a case unless the prosecution is able to establish that the cause of death was not accidental, by evidence other than the dying declarations, the prosecution case under Section 304-B IPC as against the appellants must fail. (Paras 6 and 8)

However, the prosecution has established frequent demands for dowry as also harassment of the victim because of the non-payment of dowry. Hence, the material produced by the prosecution is sufficient to base a conviction under Section 498-A IPC. (Para 9). *Nallam Veera Stayanandam* v. *Public Prosecutor, High Court of A.P.*, (2004) 10 SCC 769: AIR 2004 SC 1708.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 24-2-2004]

(ix) Other issues relating to proof

[8028] — **Ss. 304-B and 201 — Bride burning — Appreciation of evidence — Dead body not found — Effect** — *No dispute about death of P — It was not defence of accused that P was still living — Death by burning proved — Accused persons admittedly had cremated her body — Absence of dead body is of no consequence — Conviction justified* (Para 12). *Dasrath* v. *State of M.P.*, (2010) 12 SCC 198: AIR 2010 SC 2592: 2010 Cri LJ 4382.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision: 29-7-2010]

[8029] — **Ss. 304-B, 498-A, 306 and 324 — Dowry death — Cause of death — Relevance** — *Deceased allegedly subjected to cruelty and harassment by her husband, mother-in-law and sister-in-law in connection with dowry demand soon after marriage — Mother-in-law giving her a drati blow causing incised wound on forehead of the deceased — Deceased committing suicide on the same day by consuming naphthalene balls — Death resulting due to poisoning and not due to injury caused by her mother-in-law — Held, injuries found on the deceased not being cause of her death, despite there being demand of dowry, the offence would not attract mischief of S. 304-B — Mother-in-law is liable to be convicted under S. 324 — On facts, there being no evidence of harassment within the meaning of Expln. (b) of S. 498-A none of the accused can be held liable for offences under S. 306 — In view of old age of the mother-in-law instead of imposing substantive imprisonment a fine of Rs 3000 imposed — Fine, if realised, directed to be paid to the parents of the deceased — Evidence Act, 1872, Ss. 113-A and 113-B. State of H.P.* v. *Nikku Ram*, (1995) 6 SCC 219: 1995 SCC (Cri) 1090: AIR 1996 SC 67.

Bench Strength 2. Coram: *K. Ramaswamy* and **B.L. Hansaria**, JJ. [Date of decision: 30-8-1995]

[**Ed.**: In the present case the Court has acquitted the accused mother-in-law under Section 304-B on the ground that the injuries inflicted by her could not have caused the death of the deceased (para 7). In para 14 it has been laid down that "having held the injuries as found on the person of the deceased could not have caused her death, despite the demand being dowry, the offence would not attract the mischief of Section 304-B".

It is submitted that causing of fatal injury is not an essential ingredient of Section 304-B. The following essentials of Section 304-B have been laid by the Supreme Court in *Shanti* v. *State of Haryana*, (1991) 1 SCC 371: 1991 SCC (Cri) 191:

(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances; (The expression "otherwise than under normal circumstances" covers suicide);

(2) Such death should have occurred within 7 years of her marriage;

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(4) Such cruelty or harassment should be for or in connection with demand for dowry. (emphasis added)

In effect the observations in the present case would, it is submitted, render Section 304-B otiose and superfluous. The situation of fatal injury being the cause of the death was already covered by IPC in Section 302 and Section 304. The new Section 304-B was designedly inserted to cover dowry deaths, which have been held to include cases of suicide (provided other ingredients are satisfied). It is another matter that the Court in the present case recorded as a finding of fact (para 16) that there was no reliable evidence to hold that the deceased was being harassed within the meaning of Expln. (*b*) of Section 498-A and so on this ground alone the Court acquitted all the accused persons under Sections 304-B and 306 IPC.]

(x) Witnesses

[8030] — S. 304-B — Dowry death — Essential ingredients — "Dowry" — Meaning — Restated — *Dowry Prohibition Act, 1961, S. 2* (Paras 12 and 13). *Tarsem Singh* v. *State of Punjab*, (2008) 16 SCC 155: AIR 2009 SC 1454: (2009) 73 AIC 50 (SC): (2009) 2 ECrN 520 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 12-12-2008]

[8031] — S. 304-B — Evidence of ordinary, not much educated and poor witness — How to be appreciated — *Held, it is a basic principle that when evidence is of an ordinary witness, who is not much educated and comes from a poor strata of society not having advantage of education, then evidence of such witness has to be appreciated as a whole — Court has to keep in mind all these aspects — Witness is not expected to remember every small thing, more particularly when he faces the shock of the untimely death of his near relative — In the instant case, trial court gravely erred in not accepting evidence of PW 1 (maternal uncle of the deceased) without any justifiable reason* (Para 27). *Govindaraju* v. *State of Karnataka*, (2009) 14 SCC 236: (2009) 79 AIC 113 (SC): 2009 Cri LJ 3457: (2009) 2 APLJ 203 (SC).

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 29-5-2009]

[8032] — S. 304-B — Testimony of a witness — Conviction on the basis of — Held, not necessary for a witness to make a statement in consonance with the wording of the section of the statute — *Indisputably before an accused is found guilty for commission of an offence, the court must arrive at a finding that the ingredients thereof have been established — Statement of a witness for the said purpose must be read in its entirety — In the instant case, evidence brought on record by the prosecution clearly suggest that deceased had all along been subjected to harassment or cruelty only on the ground that her father had not given enough dowry at the time of marriage — For proving the said fact it was not necessary that demand of any particular item should have been made* (Paras 24 to 26). *Devi Lal* v. *State of Rajasthan*, (2007) 14 SCC 176: AIR 2008 SC 332: (2007) 59 AIC 115 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417; Ram Badan Sharma v. State of Bihar, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166; T. Aruntperunjothi v. State, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528, relied on

[8033] — Ss. 304-B and 315 — Dowry death — Dowry demands — Credibility of — Held, demand of dowry was clearly proved and conclusively established by the prosecution — *Defence version that since the accused already possessed scooter as well as a motorcycle, there was no necessity of making demand for scooter, rightly rejected by courts below — Matter of common knowledge that even if in-laws have several things in their house, they still demand dowry — Material contradiction in deposition of PWs as to the occasion of making dowry demand, found inconsequential* (Paras 1, 8 to 14, 28, 29 and 30). *Kishan Singh* v. *State of Punjab*, (2007) 14 SCC 204: AIR 2008 SC 233: (2007) 60 AIC 206 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *P. Sathasivam*, JJ. [Date of decision: 12-10-2007]

[8034] — Ss. 304-B and 498-A — Dowry demand — Evidence to establish — Evidence of inimical relatives of deceased wife — Manner of scrutiny of — Material contradictions and inconsistencies — *Dowry Prohibition Act, 1961, S. 4* (Paras 48 to 52)

While dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanour of the witnesses is the best judge of the credibility of the witnesses. (Para 38)

In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Para 40)

The High Court did not dislodge the reasons given by the trial court for acquittal and dealt with the case very casually, adopting a very superficial approach to the whole matter. The High Court did not make any attempt to appreciate the evidence with accuracy and erroneously reversed the findings of the trial court which were based on the evidence on record and for which detailed reasons had been assigned. (Para 59). *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of Maharashtra*, (2010) 13 SCC 657.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 11-11-2010]

Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837; Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432; Budh Singh v. State of U.P., (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377; S. Rama Krishna v. S. Rami Reddy, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645; Arulvelu v. State, (2009) 10 SCC 206: (2010) 1 SCC (Cri) 288; Ram Singh v. State of H.P., (2010) 2 SCC 445: (2010) 1 SCC (Cri) 1496; Babu v. State of Kerala, (2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179, relied on

[8035] — Ss. 304-B(1) and 498 — Independent witness — Testimony of — Evidentiary value — *In absence of reason to disbelieve them, testimony of such witnesses accepted. Rajayyan* v. *State of Kerala*, (1998) 4 SCC 85: 1998 SCC (Cri) 811: AIR 1998 SC 1211: 1998 Cri LJ 1633.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 3-3-1998]

(8) Sentence/Fine/Compensation/ Other punishment

[8036] — S. 304-B — Award of minimum statutory sentence of seven years under — Interference with, by Supreme Court by grant of special leave under Art. 136 — Impermissibility. *Sham Singh* v. *State of Punjab*, (2006) 5 SCC 512: (2006) 2 SCC (Cri) 488.

Bench Strength **3**. Coram: *B.N. Agrawal, A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 23-2-2006]

[8037] — S. 304-B — Commutation of sentence — When warranted — *Appellant convicted under S. 304-B and sentenced to undergo life imprisonment — Appeal dismissed by High Court — Propriety — Held, High Court was justified in upholding the conviction after considering all the pros and cons of the matter — However, on the alternative submission of the appellant, that in any view of the matter, the trial court was not justified in awarding extreme penalty of life imprisonment, the sentence is reduced to seven years' RI* (Paras 2 to 4). *Ashok Kumar* v. *State of Haryana*, (2007) 9 SCC 433.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.P. Naolekar*, JJ. [Date of decision: 28-3-2007]

[8038] — S. 304-B — Compensation — Whether could be awarded where no fine for the offence was statutorily prescribed — *Trial court imposing a sentence of ten years' RI and a fine of Rs 2000 for an offence under S. 304-B IPC — High Court confirming the conviction of the accused-appellant but instead of setting aside the fine not warranted by law, enhancing it to Rs 2 lakhs with a direction that the same to be paid to the complainant when recovered — Contention by the respondent that the same be treated as compensation under S. 357(3) — Held, unsustainable — Enhancement of the amount by the High Court without any discussion, can only be treated as enhancement of fine already imposed — Moreover, in absence of any finding or observation by the High Court that the complainant had suffered any loss or injury, direction to pay Rs 2 lakhs on assumption that the amount was paid as dowry to the accused, without any evidence, unwarranted — Dowry Prohibition Act, 1961 — CrPC, 1973, S. 357(3)*

Section 357 CrPC is an enabling provision by which the court can give direction to the effect that when passing judgment, sentence imposed for payment of fine can be recovered and applied either for defraying the expenses properly incurred in the prosecution or in payment to any person as compensation for any loss or injury caused by the offence, when compensation can be recoverable by such person in a civil court. Section 357(1) is applicable in cases where fine forms the part of the sentence whereas under Section 357(3), the court can direct the convicted person to pay compensation even in cases where the fine does not form part of the sentence. It is not possible to accept the contention that even if the court is not competent to impose fine as a punishment, the court can still order compensation under Section 357(3) CrPC and the direction of the High Court to pay Rs 2 lakhs to the complainant is to be treated as a direction given under Section 357(3). Here the trial court had imposed a sentence of fine of Rs 2000 and the High Court enhanced the quantum of fine without there being any further discussion on the matter. Therefore, the direction to the appellant to pay a fine of Rs 2 lakhs could only be treated as enhancement of fine already imposed by the Sessions Judge. Moreover, Section 357(3) contemplates a situation where the complainant has suffered any loss or injury and for which the accused person has been found prima facie responsible. There is no such finding or observation by the High Court. Of course, the daughter of the complainant passed away but the direction of the High Court to pay Rs 2 lakhs was on the assumption that the complainant had paid Rs 2 lakhs as part of the dowry to the appellant. There is no evidence to show that such an amount was given to the appellant. On the other hand, the appellant's counsel contended that it was a love marriage between the appellant and the deceased and no dowry passed between the parties. The direction to pay compensation under Section 357(3) is on the assumption of basic civil liability on the part of the person who committed the offence to redress the victim or his dependants by payment of compensation. The complainant could not have filed a civil suit for recovery of the dowry amount, if any, as the payment itself was illegal and prohibited under law. In any view of the matter, the direction of the High Court to pay a sum of Rs 2 lakhs as fine and the default sentence was not warranted by law and is set aside. (Para 33). *Arun Garg* v. *State of Punjab*, (2004) 8 SCC 251: (2004) 3 KLT 435.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 29-9-2004]

[8039] — S. 304-B — Compounding of offence — Factors to be considered — Non-compoundable offence — *Submission that 21 years had elapsed since the date of occurrence, a settlement had been arrived at by and between the parties and in fact the cousin of the deceased was married to appellant whereafter an application for compromise had also been filed, hence conviction under S. 304-B, Penal Code, may be condoned — Held, an offence under S. 304-B of the Penal Code is not compoundable — Why and under what circumstances the cousin of the deceased, if any, had been married to appellant not known — Only because such a marriage had allegedly taken place, the same by itself cannot be a ground for rejecting the prosecution story — Said grounds also do not entail imposition of lesser sentence than the minimum statutory sentence of 7 years' RI — CrPC, 1973, Ss. 320 and 321* (Paras 30 and 31). *Rameshwar Dass* v. *State of Punjab*, (2007) 14 SCC 696: AIR 2008 SC 890: 2008 Cri LJ 1400: (2008) 62 AIC 242 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 13-12-2007]

[8040] — S. 304-B — Dowry death — Conviction for — Reduction of sentence — When warranted — *Unnatural death of the victim within three years of her marriage with Appellant 1 — Demand for dowry, on account of which the deceased was constantly harassed by her husband and in-laws, established — Hence held, their conviction under S. 304-B as recorded by courts below, justified — However, considering the old age of the in-laws, sentence of imprisonment for 10 years reduced to 7 years* (Paras 2, 3 and 4). *Taiyab Khan* v. *State of Bihar (Now Jharkhand)*, (2005) 13 SCC 455: (2006) 2 SCC (Cri) 263: AIR 2006 SC 673: 2006 Cri LJ 544.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Arun Kumar**, JJ. [Date of decision: 23-11-2005]

[8041] — S. 304-B — Dowry death — Quantum of punishment — *Deterrent punishment — Held, ought to be prescribed by court, keeping in view background to the problem and the intention of legislature of eradicating the evil practice of giving and taking dowry — Being a crime against society no leniency is warranted — Dowry Prohibition Act, 1961 — Statement of Objects and Reasons (as amended by Act 43 of 1986)*

While considering the quantum of punishment, the court must keep in view the background and intendment of the legislature so as to eradicate the evil practice of giving and taking dowry by prescribing deterrent punishment. This was clear from the Objects and Reasons of the amending Act of 1986 (Act 43 of 1986). Consequent upon this amendment Section 304-B IPC was introduced in which the punishment is imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. Despite stringent law, the evil practice of giving and taking of dowry remains unabated. On the contrary, it is menacingly on the increase. In the instant case, the conduct of the accused is of vital importance while considering the quantum of punishment. (Para 25)

The practice of giving and demanding dowry is a social evil having deleterious effect on the entire civilized society and has to be condemned by the strong hands of the judiciary. Despite various amendments providing deterrent punishment with a view to curb the increasing menace of dowry deaths, the evil practice of dowry remains unabated. The court cannot be oblivious to the intendment of the legislature and the purpose for which the enactment of the law and amendment has been effected. Every court must be sensitized to the enactment of the law and the purpose for which it is made by the legislature. It must be given a meaningful interpretation so as to advance the cause of interest of the society as a whole. No leniency is warranted to the perpetrator of a crime against the society. Keeping these overall accounts and circumstances in the background, a deterrent punishment is called for. (Para 25)

Respondent-Accused 1 is accordingly convicted under Section 304-B IPC and sentenced to rigorous imprisonment for ten years. The impugned order of the High Court is set aside and the appeals filed by the State are allowed to the extent indicated. (Para 25). *State of Karnataka* v. *M.V. Manjunathegowda*, (2003) 2 SCC 188: 2003 SCC (Cri) 467: AIR 2003 SC 809: 2003 Cri LJ 900.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 7-1-2003]

[8042] — S. 304-B — Dowry death — Sentence — *Both accused women (mother-in-law of deceased and wife of brother of deceased's husband) — Second accused a young lady of 20 years — Though cruelty on the part of both the accused established but no evidence as to cause of death and actual part played by the second accused found — In the circumstances, held, a minimum sentence of seven years RI would serve the ends of justice — Hence sentence of life imprisonment altered to seven years RI for both appellants. Shanti* v. *State of Haryana*, (1991) 1 SCC 371: 1991 SCC (Cri) 191: AIR 1991 SC 1226.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 13-11-1990]

[8043] — S. 304-B — Dowry death — Sentence — *Extreme punishment of life imprisonment should be awarded in rare cases and not in every case — Absence of direct connection of the accused with the death of the deceased is a mitigating factor but since accused was a police employee meant to check bride killing cases, High Court awarding life imprisonment — Supreme Court, however, reducing it to 10 years' RI*

Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case. *Hem Chand* v. *State of Haryana*, (1994) 6 SCC 727: 1995 SCC (Cri) 36: AIR 1995 SC 120.

Bench Strength **3**. Coram: *P.B. Sawant*, *G.N. Ray* and **K. Jayachandra Reddy**, JJ. [Date of decision: 6-10-1994]

[8044] — S. 304-B — Dowry death — Sentence — Mitigating circumstance — Age — *Sentence of life imprisonment imposed by courts below modified to 10 years' RI considering that appellant husband was young at time of alleged occurrence* (Paras 30 and 31). *G.V. Siddaramesh* v. *State of Karnataka*, (2010) 3 SCC 152.

Bench Strength **2**. Coram : *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision : 5-2-2010]

Hem Chand v. State of Haryana, (1994) 6 SCC 727: 1995 SCC (Cri) 36, followed

[8045] — S. 304-B — Dowry death — Sentence — Remission — Entitlement to — *Government Order dt. 14-8-2002 Pt. A related to "remission of balance of sentence of imprisonment for life as on 15-8-2002" — Benefit under Pt. A excluded in respect of "offences under S. 304-B IPC" — Pt. A of G.O., held, is wholly inapplicable in this case, where sentence was seven years' RI and not life imprisonment — Pt. B of G.O. relates to special remission of one year to prisoners who have been convicted by courts of criminal jurisdiction in State of Punjab and confined in jail as on 15-8-2002 — Exclusion list did not refer to offences under S. 304-B IPC — Hence, special remission of one year was available to convict sentenced to seven years' RI under S. 304-B IPC — Supreme Court, while disposing of the criminal appeal [*Dharam Chand case, *(2008) 15 SCC 513], overlooked the fact that benefit of remission under Pt. B of G.O. was in fact available to Accused 1 and 2 — Judgment modified accordingly — CrPC, 1973, S. 433-A — Punjab Government G.O. dt. 14-8-2002* (Paras 8 to 10). *Reshma Devi* v. *State of Punjab*, (2010) 12 SCC 121.

Bench Strength **2**. Coram: **R.V. Raveendran** and *D.K. Jain*, JJ. [Date of decision: 25-8-2010]

Dharam Chand v. State of Punjab, (2008) 15 SCC 513: (2009) 3 SCC (Cri) 1107, modified

[8046] — S. 304-B — Dowry death — Sentence — Remission — Permissibility — *Accused convicted under S. 304-B and sentenced to 7 years' RI and to pay fine of Rs 5000 each with default stipulation — High Court, while confirming conviction of Accused 1 and 2, observing that Accused 1 (Respondent 2) was stated to have already undergone imprisonment and directing his release — Government Order dated 14-8-2002 under S. 432 CrPC r/w Art. 161 of the Constitution expressly stipulating that remission would not apply to offences under S. 304-B IPC, among some other offences — Held, High Court erred in doing so — Incident occurred on 14-3-2000 and the High Court decided the matter on 31-10-2006 — Hence seven years were not over — Seven years from the date of incident would be over only on 13-3-2007 — Accused also not entitled to benefit of Government Order — Respondent 2 therefore directed to surrender to custody and remain in jail for a period of seven years — If such benefit was granted to Accused 2, she also directed to surrender to custody till the period of seven years was over — CrPC, 1973, S. 432 — Punjab Government G.O. dated 14-8-2002 — Constitution of India, Art. 161* (Paras 1 and 17 to 23). *Dharam Chand* v. *State of Punjab*, (2008) 15 SCC 513: (2009) 3 SCC (Cri) 1107: AIR 2009 SC 1304.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 5-11-2008]

[8047] — S. 304-B — Sentence — Bride burning — Mitigating factors — Exercise of power under Art. 142 by Supreme Court — *Presence of husband at home at the time of occurrence and his failure to save his wife from burning not alleged by prosecution — Marriage survived for a short period — Co-accused mother-in-law and brother-in-law of deceased acquitted — Appellant husband a young person of 48 years — Having regard to facts and circumstances of the case and in exercise of power under Art. 142, held, ends of justice would be met by awarding minimum sentence of seven years to appellant*

As regards the quantum of punishment, a few factors must be taken note of. It is not even the case of the prosecution that at the time of occurrence, the appellant-accused was present at home and he failed to protect or save the deceased from burning which caused her death. Secondly, the marriage itself has survived for a short period of nearly one-and-a-half year. The cruelty and harassment to the deceased was stated to be caused by the mother-in-law and brother-in-law of the deceased. These two accused have been acquitted by the High Court for total lack of evidence. Neither the State nor the complainant has preferred an appeal against judgment of acquittal. The accused is a young person of 48 years. Keeping in view the facts and circumstances of the case and in exercise of powers under Article 142 of the Constitution of India to do complete justice, ends of justice would be met by awarding him the minimum sentence provided in law i.e. seven years of rigorous imprisonment for an offence under Section 304-B IPC. (Paras 48 and 49). *Ashok Kumar* v. *State of Haryana*, (2010) 12 SCC 350: AIR 2010 SC 2839: 2010 Cri LJ 4402: (2010) 93 AIC 129 (SC).

Bench Strength **2**. Coram: *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision: 8-7-2010]

[8048] — S. 304-B — Sentence — Held, court not empowered to impose fine as a punishment under — *High Court erred in enhancing the fine imposed by the trial court to Rs 2 lakhs, instead of setting aside the same*

For the offence under Section 304-B, the court is not empowered to impose fine as a punishment. Section 304-B is one of the few sections in the Indian Penal Code where imposition of fine is not prescribed as a punishment. The High Court which confirmed the conviction of the appellant under Section 304-B instead of setting aside the fine, which is not warranted by law, enhanced the sum to Rs 2 lakhs and also directed that the fine, if recovered, shall be paid to the complainant. The appellant could have been sentenced only to a punishment which is prescribed under the law. As no fine could be imposed as punishment for offence under Section 304-B, the direction to the appellant to pay a fine of Rs 2 lakhs was wholly illegal. (Paras 30 and 31). *Arun Garg* v. *State of Punjab*, (2004) 8 SCC 251: (2004) 3 KLT 435.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 29-9-2004]

[8049] — S. 304-B — Sentence under — Reduced by High Court to three years — *Held, it was unfortunate that High Court failed to notice that the minimum sentence under S. 304-B(2) is seven years* (Para 18). *Hira Lal* v. *State (Govt. of NCT), Delhi*, (2003) 8 SCC 80: 2003 SCC (Cri) 2016: AIR 2003 SC 2865: (2003) 105 DLT 705: 2003 Cri LJ 3711.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-7-2003]

[8050] — Ss. 304-B and 201 — Dowry death — Unnatural death of deceased within seven years of her marriage established — Conviction and sentence — Propriety — *Demand of dowry which is the sine qua non for applying S. 304-B not established so far as Appellants 1 and 3 were concerned — Hence, their conviction could not be maintained — But, so far as Appellant 2 was concerned, the evidence was clear and cogent and therefore his conviction by courts below upheld — However, his sentence under S. 304-B altered from 10 years to 7 years — Sentence of three years imposed in respect of S. 201 not interfered with* (Para 9). *Thakkan Jha* v. *State of Bihar*, (2004) 13 SCC 348.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-9-2004]

[8051] — Ss. 304-B and 302 — Dowry death — Sentence — Sentence of life imprisonment — Sustainability — Appellant not charged under S. 302 — *No evidence as to actual role played by appellant husband in death of deceased — Hence held, punishment of 10 years would serve ends of justice* (Paras 25 and 26). *Amar Singh* v. *State of Rajasthan*, (2010) 9 SCC 64: (2010) 3 SCC (Cri) 1130: AIR 2010 SC 3391: (2010) 94 AIC 137 (SC): (2010) 3 UPLJ 125 (SC).

Bench Strength **2**. Coram: *R.M. Lodha* and **A.K. Patnaik**, JJ. [Date of decision: 3-8-2010]

Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191, followed

[8052] — Ss. 304-B and 498-A — Dowry death — Quantum of sentence — *Courts below categorically finding that victim died of burns and that it was not suicide — Demand of dowry and consequent harassment meted out to deceased* *established — Held, conviction under Ss. 304-B & 498-A, and Ss. 3 & 4 of Dowry Prohibition Act, 1961 cannot be faulted — However, sentence reduced to eight years — Further held, though notice issued was limited to quantum of sentence only, but considering the fact that High Court had failed to independently analyse the evidence and had only reiterated the analysis made by trial court, evidence analysed by Supreme Court — Accusations found to be established by cogent evidence — Minor variations cannot affect credibility of prosecution version — Dowry Prohibition Act, 1961, Ss. 3 and 4* (Paras 15 to 18). *Rajesh Pandey* v. *State of U.P.*, (2009) 5 SCC 132: (2009) 2 SCC (Cri) 616.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 25-3-2009]

[8053] — Ss. 304-B/498-A — Dowry death — Bride burning — Conviction upheld and 7 years' RI awarded — Prayer for reduction of sentence on basis of sentence already undergone — Sustainability — *Held, minimum sentence provided under S. 304-B is seven years' RI and that was the sentence awarded by High Court — Thus, prayer rejected* (Para 18). *Uday Chakraborty* v. *State of W.B.*, (2010) 7 SCC 518.

Bench Strength 2. Coram : *Dr. B.S. Chauhan* and **Swatanter Kumar**, JJ. [Date of decision : 8-7-2010]

(9) Death sentence — When warranted

See also SECTIONS 299-304 — CULPABLE HOMICIDE AND MURDER — 'D.35.(f)(ii)8. Dowry death/Bride burning', in Vol. 2

[8054] — Ss. 304-B and 302 — Death sentence whether proper — Bride burning not relating to dowry death — *Though accused-husband poured kerosene and lighted matchstick resulting in injuries to his wife but immediately thereafter he made attempts to save her, took her to his relations and to a doctor and also informed her parents indicating that he tried to save her — Deceased's daughter though sleeping along with the deceased remained unhurt — Circumstances thus show that accused had lost his balance due to certain happening — In the circumstances held, High Court erred in enhancing sentence of life imprisonment awarded by trial court to sentence of death — CrPC, 1973, S. 368. Jagdish* v. *State of Rajasthan*, 1989 Supp (1) SCC 20: 1989 SCC (Cri) 126.

Bench Strength 3. Coram: *G.L. Oza, B.C. Ray* and *K. Jagannatha Shetty*, JJ. [Date of decision: 13-1-1988]

[8055] — Ss. 304-B, 498-A and 302 — Dowry death/Bride burning — Sentence — Incapacitating deceased woman by strangulation and setting her afire by her husband and mother-in-law on failure to meet dowry demand — *Held, it really falls in category of rarest of rare cases and deserves death sentence under S. 302 — But since no charge under S. 302 was levelled and High Court convicted accused under Ss. 304-B, 498-A IPC and S. 4 of Dowry Prohibition Act and awarded life sentence under S. 304-B, 3 years' RI under S. 498-A IPC and 6 months' RI under S. 4 of Dowry Prohibition Act, no interference therewith called for — Dowry Prohibition Act, 1961, S. 4*

Indian society has become a sick society. This is evident from the large number of cases coming up in the Supreme Court (and also in almost all courts in the country) in which young women are being killed by their husbands or by their in-laws by pouring kerosene on them and setting them on fire or by hanging/strangulating them. What is the level of civilisation of a society in which a large number of women are treated in this horrendous and barbaric manner? What has our society become-this is illustrated by this case. (Para 3)

Although bride burning or bride hanging cases have become common in our country the expression "rarest of rare" as referred to in *Bachan Singh case*, (1980) 2 SCC 684 does not mean that the act is uncommon, it means that the act is brutal and barbaric. Bride killing is certainly barbaric. Such cases of bride burning fall in the category of the rarest of rare cases, and hence deserve death sentence. (Para 8)

Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they call for harsh punishment. Unfortunately, what is happening in our society is that out of lust for money people are often demanding dowry and after extracting as much money as they can they kill the wife and marry again and then again they commit the murder of their wife for the same purpose. This is because of total commercialisation of our society, and lust for money which induces people to commit murder of the wife. The time has come when we have to stamp out this evil from our society, with an iron hand. (Para 9). *Satya Narayan Tiwari* v. *State of U.P.*, (2010) 13 SCC 689.

Bench Strength 2. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 28-10-2010]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, explained

[8056] — Ss. 304-B/34, 302/120-B, 201/34, 498-A/34 and 316 — Dowry death — Sentence — Held, dowry death does not fall within the category of "rarest of rare" cases — *Case of a murder most foul — Head of the deceased severed and her body cut into nine pieces for causing disappear-*

ance of the evidence relating to her murder — Sentence of death commuted to RI for life imprisonment — But in view of loathsome, revolting and dreaded device to cause disappearance of dead body maximum sentence of 7 years' RI for offence under Ss. 201/34 maintained and directed to run consecutively, and not concurrently, after the sentence of life imprisonment had run its course — CrPC, 1973, S. 354(3)

The present case cannot be placed in that category which could be regarded as the "rarest of the rare" type. This is so because dowry death has ceased to belong to *that* species of killing. The increasing number of dowry deaths would bear this.

But it is a fit case where, for the offence under Sections 201/34, the sentence awarded, which is RI for seven years being the maximum for a case of the present type, should be sustained, in view of what had been done to cause disappearance of the evidence relating to the commission of murder — the atrocious way in which the head was severed and the body was cut into nine pieces. These cry for maximum sentence under Sections 201/34. Not only this, the sentence has to run consecutively, and not concurrently. To show the courts strong disapproval of the loathsome, revolting and dreaded device adopted to cause disappearance of the dead body. *Ravindra Trimbak Chouthmal* v. *State of Maharashtra*, (1996) 4 SCC 148.

Bench Strength **2**. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 23-2-1996]

(10) Other issues

[8057] — Ss. 304-B, 201 and 498-A — Dowry death — Intimation of death to bride's family not a mitigating factor if cruelty proved — Death due to electrocution within seven years of marriage — *Six accused persons including husband and in-laws of the deceased charged under Ss. 304-B and 201 IPC — Acquittal of three accused by Sessions Court becoming final as not appealed in High Court — Remaining three accused, in appeal before High Court, acquitted of the charge under Ss. 304-B and 201 but convicted under S. 498-A — Once the High Court comes to the conclusion on the basis of evidence adduced that the deceased during her lifetime was subjected to harassment on account of insufficient dowry and demands were being made before her death occurred, held, intimation of death by the in-laws to the parents of deceased would not absolve the accused of their ill-motive when necessary ingredients of the offence under S. 304-B are established — Setting aside the acquittal, accused convicted under S. 304-B and sentenced to 7 years' imprisonment — However, acquittal in respect of offence under S. 201 upheld — CrPC, 1973, Ss. 374 and 386. Balwant Singh* v. *Partap Singh*, (2000) 9 SCC 352: 2001 SCC (Cri) 318.

Bench Strength **3**. Coram: *G.B. Pattanaik, R.P. Sethi* and *Shivaraj V. Patil*, JJ. [Date of decision: 29-3-2000]

[8058] — Ss. 304-B and 306 — Revision — Natural justice — Complainant's right to be heard on the question of age of accused — *Respondent 2, accused for commission of offences under Ss. 304-B and 306 IPC, seeking protection by claiming to be a juvenile — High Court, while exercising its revisional jurisdiction under S. 53 could not pass an order prejudicial to any person without affording him opportunity of hearing — Hence, complainant (appellant herein) should have been heard — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 53 proviso and 2(k)*

The appellant (brother of the deceased) had lodged an FIR against Respondent 2 (accused) for commission of offences under Sections 304-B and 306 IPC, in relation to the death of the appellant's sister (accused's wife). Without any documentary or other evidence, the accused claimed himself to be a juvenile, having not attained the age of eighteen years and sought protection under Juvenile Justice (Care and Protection of Children) Act, 2000 (the Act). Since the claim of the accused was disputed, the Magistrate directed the accused to produce evidence/certificate in support of his claim, which he failed to do. Without recording any opinion whether the accused was a juvenile or not, the Magistrate referred him to the Juvenile Justice Board (the Board). The Board, after referring Respondent 2 (accused) to a Medical Board for examination and determination of age and taking into consideration, the documentary evidence adduced by the prosecution and observing his physical built-up, concluded that the accused was above eighteen years of age on the date of occurrence. Accordingly, the Child Rehabilitation Centre was directed to transfer the accused to the regular jail with a direction to its Superintendent to produce the accused before the Magistrate.

By the impugned order, the High Court allowed the revision petition preferred by the accused under Section 53 of the Act against the order passed by the Board. The Single Judge held that on the date of commission of the alleged offences, the accused was a "juvenile" within the meaning of the Act. For this the High Court relied on the finding of the Medical Board as guiding in terms of Rule 22(5)(*iv*) of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003.

Allowing the appeal of the appellant complainant, *Held*:

The High Court was clearly in error in reversing the order passed by the Board by declaring the accused (Respondent 2 herein) to be a juvenile without giving an opportunity of hearing to the appellant complainant (brother of the deceased). When the statutory provisions mandate and principles of natural justice demand a pre-decisional hearing, the High Court was not justified in not granting an opportunity of hearing to the appellant complainant. As per Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (the Act), the High Court, in exercise of its revisional jurisdiction, cannot pass an order, prejudicial to any person without affording him a reasonable opportunity of being heard. (Paras 15, 12 and 14). *Babloo Pasi* v. *State of Jharkhand*, (2008) 13 SCC 133.

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 3-10-2008]

P. Sundarrajan v. R. Vidhya Sekar, (2004) 13 SCC 472: (2006) 1 SCC (Cri) 345, impliedly relied on

[8059] — Ss. 304-B and 498-A — Appeal against conviction — Plea of juvenility before Supreme Court — Reiterated, may be raised for first time before Supreme Court — *Appellant convicted by trial court — Conviction confirmed by High Court — Appellant claimed that he was minor on date of commission of offence — School leaving certificate and marksheet produced — Appellant's plea opposed on ground of delay in making a claim, school certificate obtained after conviction and that appellant had to establish a strong prima facie case in support of his claim to persuade Supreme Court to direct an enquiry — Appellant contended that issue was raised before High Court in support of bail application — Appellant was granted bail, as his age was found 17 years in medical examination — Held, ordinarily such a claim should be made at earliest opportunity before trial court or at least before High Court, but this omission, may not by itself disentitle accused to do so before Supreme Court — Burden of making out a prima facie case for directing an enquiry has been discharged in instant case — Material referred to above (school leaving certificate and marksheet) is yet to be verified and its genuineness and credibility determined — Trial court directed to hold an enquiry and submit a report expeditiously — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(k) and 7-A* (Paras 7 to 12). *Jitendra Singh* v. *State of U.P.*, (2010) 13 SCC 523.

Bench Strength **2**. Coram: *Markandey Katju* and **T.S. Thakur**, JJ. [Date of decision: 19-11-2010]

Jayendra v. State of U.P., (1981) 4 SCC 149: 1981 SCC (Cri) 809; Gopinath Ghosh v. State of W.B., 1984 Supp SCC 228: 1984 SCC (Cri) 478; Bhoop Ram v. State of U.P., (1989) 3 SCC 1: 1989 SCC (Cri) 486; Brij Lal v. Prem Chand, 1989 Supp (2) SCC 680: 1991 SCC (Cri) 394; Bhola Bhagat v. State of Bihar, (1997) 8 SCC 720: 1998 SCC (Cri) 125; Hari Ram v. State of Rajasthan, (2009) 13 SCC 211: (2010) 1 SCC (Cri) 987; Pawan v. State of Uttaranchal, (2009) 15 SCC 259: (2010) 2 SCC (Cri) 522, followed

[8060] — S. 304-B r/w S. 34 — Transfer of criminal proceedings — On facts, validity of — Deceased allegedly committed suicide at her matrimonial house — *Appellant 2, father-in-law of deceased, informed police of **C** about the unnatural death, pursuant whereto, case under S. 174 CrPC registered — However, father of deceased lodged a complaint with police of **K**, on the basis of which an FIR under S. 304-B r/w S. 34 IPC lodged, because of which, Appellant 1, husband of deceased, arrested — Appellants' application under S. 482 CrPC, inter alia, contending that police station of **K** had no jurisdiction to conduct an investigation in view of S. 177 CrPC and that FIR having already been lodged by Appellant 2, the second FIR not maintainable, dismissed by High Court — Sustainability — In view of the fact that police at **C** had already been informed, although stricto sensu, the same cannot be construed to be an FIR within the meaning of provisions of S. 154 CrPC, and thus, FIR lodged at police station of **K** was maintainable — Held, in the peculiarity of instant case, on specific defence of appellant-accused about mental illness of deceased, the interest of justice would be subserved if investigation and consequent trial is transferred to police officer-in-charge, police station of **C** — All materials collected by police station of **K**, shall be transferred to officer-in-charge, police station of **C** — Officer-in-charge, police station of **K**, to ensure that in the event a charge-sheet is filed and cognizance of offence under S. 304-B IPC is taken, witnesses available within his jurisdiction shall be produced — CrPC, 1973, S. 406* (Paras 1, 5 to 7, 20 and 21). *Premkumar* v. *State of Kerala*, (2008) 17 SCC 264: (2009) 75 AIC 12 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 19-12-2008]

Y. Abraham Ajith v. Inspector of Police, (2004) 8 SCC 100: 2004 SCC (Cri) 2134; Asit Bhattacharjee v. Hanuman Prasad Ojha, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31; Naresh Kavarchand Khatri v. State of Gujarat, (2008) 8 SCC 300: (2008) 3 SCC (Cri) 614, relied on

Vidhya Devi v. State of Haryana, (2004) 9 SCC 476: 2004 SCC (Cri) 1473, considered

SECTION 306 — ABETMENT OF SUICIDE

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C.1. Abetment of suicide (S. 306)' in Vol. 2

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— **Ss. 306/304-B** *See* Ss. 498-A, 306/304-B r/w S. 34

(1) Generally — Object, Nature, Scope and Applicability

[8061] — **S. 306 — Punishment for abetment of suicide — Held, valid — There being no right to die under Art. 21 and as such S. 309 being not violative of Art. 21, S. 306 cannot be declared unconstitutional on the ground that assisting in committing suicide amounts to assisting in enforcement of the right to die under Art. 21 —** *Abetment of suicide and attempt to commit suicide are two distinct and separate offences and S. 306 would be operative even in absence of S. 309*

Abetment of attempt to commit suicide is outside the purview of Section 306 and it is punishable only under Section 309 read with Section 107 IPC. Assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision. The abettor is viewed differently, inasmuch as he abets the extinguishment of life of another person, and punishment of abetment is considered necessary to prevent abuse of the absence of such a penal provision.

Assisted suicides outside the category of physician-assisted suicide or euthanasia have no rational basis to claim exclusion of the fundamental principles of sanctity of life. Abetment of suicide or attempted suicide is a distinct offence which is found enacted even in the law of the countries where attempted suicide is not made punishable. Section 306 IPC enacts a distinct offence which can survive independent of Section 309 in the IPC. The arguments which are advanced to support the plea for not punishing the person who attempts to commit suicide do not avail for the benefit of another person assisting in the commission of suicide or in its attempt. Therefore, the argument that "right to die" being included in Article 21 of the Constitution as held in *P. Rathinam* declaring Section 309 IPC to be unconstitutional, any person abetting the commission of suicide by another is merely assisting in the enforcement of the fundamental right under Article 21; and, therefore, Section 306 IPC penalising assisted suicide is equally violative of Article 21 has no substance and is not acceptable. *Gian Kaur* v. *State of Punjab*, (1996) 2 SCC 648: 1996 SCC (Cri) 374: AIR 1996 SC 946.

Bench Strength **5**. Coram: **J.S. Verma**, *G.N. Ray*, *N.P. Singh*, *Faizan Uddin* and *G.T. Nanavati*, JJ. [Date of decision: 21-3-1996]

[8062] — Ss. 306 and 309 — Living will — Concept of — Permissibility of, in State of Texas in USA — *Constitution of India, Art. 21*

In no other State in USA is euthanasia or physician-assisted death legal. Michigan banned euthanasia and assisted suicide in 1993, after Dr. Kevorkian (who became known as "Doctor Death") began encouraging and assisting in suicides. He was convicted in 1999 for an assisted suicide displayed on television, his medical licence was cancelled, and he spent 8 years in jail. (Para 61)

In 1999 the State of Texas enacted the Texas Futile Care Law which entitles Texas hospitals and doctors, in some situations, to withdraw life support measures, such as mechanical respiration, from terminally ill patient when such treatment is considered futile and inappropriate. However, Texas has not legalised euthanasia or physician-assisted death. In California, though 75% of people support physician-assisted death, the issue is highly controversial in the State Legislature. Forty States in USA have enacted laws which explicitly make it a crime to provide another with the means of taking his or her life. (Para 62)

In 1977 California legalised living wills, and other States soon followed suit. A living will (also known as advance directive or advance decision) is an instruction given by an individual while conscious specifying what action should be taken in the event he/she is unable to make a decision due to illness or incapacity, and appoints a person to take such decisions on his/her behalf. It may include a directive to withdraw life support on certain eventualities. (Para 62). *Aruna Ramachandra Shanbaug* v. *Union of India*, (2011) 4 SCC 454.

Bench Strength 2. Coram: **Markandey Katju** and *Gyan Sudha Misra*, JJ. [Date of decision: 7-3-2011]

(2) Ss. 306, 304-B and 498-A — Relative scope

See also under S. 304-B and S. 498-A

[8063] — Ss. 306 or 304-B — Scope of offence under S. 306 r/w S. 113-A Evidence Act and offence under S. 304-B r/w S. 113-B Evidence Act compared — *To constitute offence under S. 304-B r/w S. 113-B Evidence Act it is necessary that cruelty or harassment must have caused "soon before her death" or earlier but under S. 306 r/w S. 113-A Evidence Act there is no such requirement — Evidence Act, 1872, S. 113-A*

Section 306 IPC when read with Section 113-A of the Evidence Act has only enabled the court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in Section 498-A IPC) if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the cruelty or harassment was caused "soon before her death" or earlier. If it was caused "soon before her death" the special provision in Section 304-B IPC would be invocable, otherwise resort can be made to Section 306 IPC. (Para 16)

No doubt, Section 306 IPC read with Section 113-A of the Evidence Act is wide enough to take care of an offence under Section 304-B also. But the latter is made a more serious offence by providing a much higher sentence and also by imposing a minimum period of imprisonment as the sentence. In other words, if death occurs otherwise than under normal circumstances within 7 years of the marriage as a sequel to the cruelty or harassment inflicted on a woman with demand of dowry, soon before her death, Parliament intended such a case to be treated as a very serious offence punishable even up to imprisonment for life in appropriate cases. It is for the said purpose that such cases are separated from the general category provided under Section 306 IPC (read with Section 113-A of the Evidence Act) and made a separate offence. (Para 17). *Satvir Singh* v. *State of Punjab*, (2001) 8 SCC 633: 2002 SCC (Cri) 48: AIR 2001 SC 2828.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 27-9-2001]

Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191; Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935, relied on

Followed in Devi Lal v. State of Rajasthan, (2007) 14 SCC 176

[8064] — Ss. 306 and 498-A — Difference between these two provisions, held, is that of intention — *Under the latter, cruelty committed by the husband or his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended* (Para 11). *Sushil Kumar Sharma* v. *Union of India*, (2005) 6 SCC 281: 2005 SCC (Cri) 1473: AIR 2005 SC 3100: 2005 Cri LJ 3439.

Bench Strength 2. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 19-7-2005]

[8065] — Ss. 306 and 498-A — Merely because accused is found guilty under S. 498-A he should not necessarily be held to be guilty under S. 306 on the basis of the same evidence

Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. *Ramesh Kumar* v. *State of Chhattisgarh*, (2001) 9 SCC 618: AIR 2001 SC 3837.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *K.G. Balakrishnan*, JJ. [Date of decision: 17-10-2001]

[8066] — Ss. 306 and 498-A — Trial court convicting appellant under S. 306 for abetting commission of suicide by his wife but acquitting him from charge under S. 498-A — *In appellant's appeal High Court finding that though appellant had harassed the deceased for not begetting children and caused mental agony, there was no evidence that just before her death there was harassment by appellant of the deceased and accordingly setting aside conviction under S. 306 but on the basis of evidence regarding harassment convicting him under S. 498-A — Held, in absence of State appeal against trial court's order of acquittal under S. 498-A, High Court's order of conviction under S. 498-A cannot be sustained — Factually also such conviction not sustainable — High Court's order of acquittal of offence under S. 306 being not illegal or perverse, no interference called for — Hence appellant entitled to be acquitted. E. Balakrishnama Naidu* v. *State of A.P.*, 1992 Supp (3) SCC 70: 1992 SCC (Cri) 980: AIR 1992 SC 1581: 1992 Cri LJ 2328.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 19-11-1991]

(3) The charge and S. 306

See also '(2) Ss. 306, 304-B and 498-A — Relative scope', above

See also under S. 304-B, above

[8067] — Ss. 306 and 302 — Conviction under S. 306 on the basis of presumption under S. 113-A of the Evidence Act, 1872, while the charge was framed under S. 302 — Legality — *In absence of prejudice to the accused, held, legal*

The appellants contended that since the charge was for the offence punishable under S. 302 IPC, the accused were not put to notice to meet a charge also under S. 306 IPC and, were thereby prejudiced, presumption under S. 113-A of Evidence Act could not be drawn and consequently a conviction under S. 306 could not be awarded. Rejecting this contention

Held :

The facts and circumstances of the case have been put forward against the accused under S. 313 CrPC and when there was a demand for dowry it cannot be said that the accused are prejudiced because the cross-examination of the witnesses, as well as the answers given under S. 313 of the CrPC would show that they had enough of notice of the allegations which attract S. 306 Indian Penal Code also. That apart, what all S. 113-A of Evidence Act says is that the court, having regard to the other circumstances of the case can presume. Therefore, the circumstances in this case would show that the accused have been demanding dowry even within a short period after the marriage and the deceased also had to live in her parent's house and it is the husband who went and brought her back. The deceased followed him and unfortunately, the incident has taken place. *Lakhjit Singh* v. *State of Punjab*, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 31-3-1993]

Principle affirmed in *Dalbir Singh v. State of U.P., (2004) 5 SCC 334*

[8068] — Ss. 306 and 304-B — Accused not charged under S. 306 — If can be convicted under S. 306 — *Contention that even if accused cannot be convicted under S. 304-B, he can still be convicted under S. 306, cannot be accepted — This cannot be claimed in every case — Such plea cannot be allowed to be raised for the first time before the Court unless charge under S. 306 is made out from materials on record*

In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. Omission to frame charges under Section 306 in terms of Section 215 of the Code of Criminal Procedure may or may not result in failure of justice, or prejudice the accused. It cannot, therefore, be said that in all cases, an accused may be held guilty of commission of an offence under Section 306 of the Penal Code wherever the prosecution fails to establish the charge against him under Section 304-B thereof. Moreover, ordinarily such a plea should not be allowed to be raised for the first time before the court unless the materials on record are such which would establish the said charge against the accused. (Paras 19, 24 and 25). *Harjit Singh* v. *State of Punjab*, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417: AIR 2006 SC 680: (2006) 37 AIC 104 (SC): 2006 Cri LJ 554.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271; Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48, relied on

[8069] — Ss. 306, 304-B and 498-A — Omission or defect in framing of charge — *Held, accused may still be convicted for offence actually committed and proved on basis of evidence on record, so long as accused has not been misled by any error or omission in framing the charge and no failure of justice has been occasioned — Accused Respondent 1 being charged under S. 304-B IPC (dowry death) and alternatively under S. 498-A IPC — Statement of charges unambiguously stating that deceased had been subjected to such cruelty and harassment "as did drive her to commit suicide" — Trial court convicting Respondent 1 under S. 498-A IPC only — Held on facts, presumption under S. 113-A, Evidence Act could be raised and Respondent 1 could be convicted under S. 306 IPC as the case had all ingredients necessary for framing charge under that section — No need to remit the matter for retrial — Accused had had enough opportunity for defence — High Court ought to have allowed appeal of appellant parents of deceased — Respondent 1 sentenced to 5 years' RI and Rs 20,000 fine under S. 306 — Evidence Act, 1872, S. 113-A — CrPC, 1973, Ss. 221, 215 and 218*

The deceased, *K*, was married on 26-6-1988, to respondent-Accused 1, *S*, who worked as a Branch Postmaster in the village where the two lived. Dowry given at the marriage consisted of Rs 15,000 cash and jewellery worth Rs 15,000. Five acres of land and a house site were also given as a customary gift in the nature of stridhana, known as "*pasupukumkuma*", to the bride by her father for her maintenance. After *K* and Accused 1, *S*, had been married for about three or four months, *S* began demanding that *K* transfer the ownership of the land and house site to him. *K* refused and trouble between the two then began. *S* subjected *K* to harassment, including preventing delivery of letters from her father and sister to her, by taking advantage of his position in the village post office. At one point *K* got hold of the letters and gave them to her father. After this incident *K* was thrown out of the matrimonial home with a warning that she must return the letters. *K*, unable to bear her situation, consumed poison (an insecticide called *endo-sulphan*) on 22-10-1989, the day after she had been forced out of the house. PW 4 witnessed the scene when *K* was thrown out; *S* took her back when prevailed upon by PWs 3 and 4. PW 4 saw *S* taking *K* to hospital the next day. PW 4 informed the father of *K*, PW 1, who came immediately to the house and found that *K* was dead. PW 1 lodged an FIR within eight hours on the same day.

Accused 1 and his parents, Accused 2 and 3, were charged under Section 304-B IPC for causing the *dowry death* of *K* and in the alternative under Section 498-A IPC for cruelty and such harassment as to drive *K* to commit suicide.

The trial court convicted all the accused under Section 498-A IPC, acquitted them of the offence under Section 304-B, and sentenced them to 2 years' RI and fine of Rs 500 each.

A criminal revision petition was filed on behalf of the parents of the deceased against the acquittal of the accused under Section 304-B. The accused filed an appeal challenging their conviction. The revision petition was dismissed by the High Court and the judgment and order of the trial court confirmed in respect of Accused 1. The appeal of his parents was allowed and they were acquitted.

Before the Supreme Court, the State of A.P. filed a criminal appeal against the acquittal of the parents and the parents of the deceased filed criminal appeal praying for conviction of all three accused of the offence under Section 304-B.

Dismissing the State's appeal and allowing that of the parents of the deceased,

Held :

Mere omission or defect in framing the charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal Procedure has ample provisions to meet a situation like the present one. From the statement of charge framed under Section 304-B and *in the alternative* Section 498-A IPC it is clear that all facts and ingredients for framing charge for offence under Section 306 IPC existed in the case. The mere omission on the part of the trial Judge to mention Section 306 IPC with Section 498-A IPC does not preclude the court from convicting the accused for the said offence when found proved. In the alternate charge framed under Section 498-A IPC, it has been clearly mentioned that the accused subjected the deceased to such cruelty and harassment as to drive her to commit suicide. The provisions of Section 221 CrPC take care of such a situation and safeguard the powers of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such an offence. (Para 22)

The provision of sub-section (2) of Section 221 read with sub-section (1) of the said section can be taken aid of in convicting and sentencing Accused 1 of offence of abetment of suicide under Section 306 IPC *along with or instead of Section 498-A IPC*. (Para 23)

Section 215 CrPC allows the criminal court to ignore any error in stating either the offence or the particulars required to be stated in the charge, if the accused was not, in fact, misled by such error or omission in framing the charge and it has not occasioned a failure of justice. As provided in Section 215 CrPC omission to frame charge under Section 306 IPC has not resulted in any failure of justice. There is no necessity to remit the matter to the trial court for framing charge under Section 306 IPC and direct a retrial for that charge. The accused cannot legitimately complain of any want of opportunity to defend the charge under Section 306 IPC and a consequent failure of justice. The same facts found in evidence, which justify conviction of the appellant under Section 498-A for cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section 304-B which is punishable with minimum sentence of seven years' rigorous imprisonment and maximum for life. Presumption under Section 113-A of the Evidence Act could also be raised against him on the same facts constituting the offence of cruelty under Section 498-A IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge under Section 498-A IPC. (Paras 24 and 25)

It is significant that against confirmation of his conviction by the High Court under Section 498-A IPC, Accused 1 has not preferred any special leave to appeal to this Court. The facts found proved for his conviction and sentence under Section 498-A IPC, cannot now be questioned by him. It is therefore concluded that the same facts and evidence on which Accused 1 was charged under Section 498-A and Section 304-B, the accused can be convicted and sentenced under Section 306 IPC. There is no legal or procedural impediment in doing so. (Para 26)

The legislature has by amending the Penal Code and the Evidence Act made penal law more strident for dealing with and punishing offences against married women. Such strident laws would have a deterrent effect on the offenders only if they are so stringently implemented by the law courts to achieve the legislative intent. On the facts found and the offence proved to have been committed leading to suicidal death of the wife, imprisonment of two years with fine of Rs 500 is too light a sentence. For offence under Section 306 IPC the sentence may extend to ten years. In this case the husband is found to have harassed his wife to such an extent as to drive her to commit suicide. Sentence of five years would in our opinion, be a proper sentence for the crime with the amount of fine increased to Rs 20,000 to be paid as compensation to the parents of the deceased. On non-payment of fine Accused 1 shall suffer further sentence of one year. (Para 27)

Thus Criminal Appeal No. 1457 of 1995 preferred by the parents of the deceased is allowed and the conviction and sentence of Accused 1 under Section 498-A IPC is maintained. Respondent-Accused 1 is also convicted under Section 306 IPC and sentenced to five years' rigorous imprisonment with a fine of Rs 20,000 to be paid as compensation to the parents of the deceased. In the event of non-payment of fine, Accused 1 shall suffer imprisonment for a further period of one year. The sentences imposed under Section 498-A IPC and under Section 306 IPC shall run concurrently. (Para 28). *K. Prema S. Rao* v. *Yadla Srinivasa Rao*, (2003) 1 SCC 217: 2003 SCC (Cri) 271: AIR 2003 SC 11: 2003 Cri LJ 69.

Bench Strength **3**. Coram: *M.B. Shah, K.G. Balakrishnan* and **D.M. Dharmadhikari**, JJ. [Date of decision: 25-10-2002]

[8070] — Ss. 306, 304-B and 498-A — Suicide — Dowry death — Charges framed under Ss. 304-B and 498-A — Absence of charge under S. 306 — Effect of — *Held, inconsequential — On facts, father-in-law convicted under Ss. 498-A and 304-B, whereas mother-in-law convicted under S. 498-A but acquitted under S. 304-B — CrPC, 1973, Ss. 221, 218 and 215* (Paras 11, 9, 10 and 12). *Kaliyaperumal* v. *State of T.N.*, (2004) 9 SCC 157: 2004 SCC (Cri) 1417: AIR 2003 SC 3828: 2003 Cri LJ 4321.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-8-2003]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271, followed

[8071] — Ss. 306, 498-A, 302 and 304-B — Non-framing of charge under S. 306 — Conviction under S. 306 in appeal — In view of S. 464 CrPC, held on facts, permissible — Non-framing of charge in respect of an offence — *Power of appellate or revisional court to convict the accused for the said offence — Having regard to S. 464 CrPC, held, conviction possible if (i) the accused was aware of the basic ingredients of that offence, (ii) the main facts sought to be established against him were explained to him clearly, and (iii) he got a fair chance to defend himself — Hence, where charges were framed under Ss. 302, 498-A and 304-B IPC but not under S. 306 IPC, held on facts, accused could be convicted under S. 306 — CrPC, 1973, Ss. 464 & 215, 386, 399 and 401*

The accused-appellant faced trial in respect of charges under Sections 302, 498-A and 304-B IPC. He was convicted by the trial court under Sections 302 and 498-A, but acquitted of the charge under 304-B. In appeal, the High Court held that the charge under Section 302 IPC was not established and accordingly, acquitted the accused in respect of the said offence. The High Court further held that the accused was guilty under Section 306 IPC for having abetted commission of suicide by his wife. But in view of the fact that no charge under Section 306 IPC was framed against him, the High Court, relying upon *Sangaraboina Sreenu* v. *State of A.P.*, (1997) 5 SCC 348, held that the accused could not be convicted for the said offence. The High Court noticed that a contrary view had been taken in an earlier decision in *Lakhjit Singh* v. *State of Punjab*, 1994 Supp (1) SCC 173, but chose to rely upon the later decision having regard to the settled view that if there is conflict of opinion in two decisions of the Supreme Court rendered by Benches of equal strength, it is the later decision which has to prevail. Hence, in view of the said conflict of opinion in two decisions, the instant appeals were placed for hearing before the present three-Judge Bench.

The main question for consideration by the Supreme Court was whether the accused could be convicted under Section 306 IPC if a charge for the said offence had not been framed against him.

Partly allowing the appeal filed by the State but dismissing the one filed by the accused,

Held :

In view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. (Para 17)

In the present case, the accused had started making a demand of dowry soon after marriage. Even after his father-in-law had given him a colour TV, a scooter and money for purchasing the flat, he did not feel satisfied and continued to harass his wife. He used to frequently taunt her that some of the items given by way of gift at the time of marriage were of poor quality and were not of his standard. He had also assaulted his wife and even his seven-year-old daughter on several occasions. It was in such circumstances that his wife took the extreme step of not only setting herself on fire, but also her two daughters, one of whom was only one-year old. The letter written by the wife just before taking such an extreme step speaks volumes about the treatment meted out to her by the accused. Therefore, the basic ingredients of the offence under Section 306 IPC have been established by the prosecution. The next question to be seen is whether the accused was confronted with the aforesaid features of the prosecution case in his statement under Section 313 CrPC. His statement runs into six pages where every aspect of the prosecution case referred to above was put to him. He also gave a long written statement in accordance with Section 233(2) CrPC wherein he admitted that the wife committed suicide. He also admitted that the scooter and colour TV were subsequently given to him by his in-laws but came out with a plea that he had paid money and purchased the same from his in-laws. There is no aspect of the prosecution which may not have been put to him. Therefore, in view of the material on record, the conviction under Section 306 IPC can safely be recorded and the same would not result in failure of justice in any manner. (Para 18). *Dalbir Singh* v. *State of U.P.*, (2004) 5 SCC 334: 2004 SCC (Cri) 1592: AIR 2004 SC 1990: 2004 All LJ 1448: 2004 Cri LJ 2025.

Bench Strength **3**. Coram: *S. Rajendra Babu*, *Dr. Ar. Lakshmanan* and **G.P. Mathur**, JJ. [Date of decision: 8-4-2004]

Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235, affirmed

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690, overruled

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291; Gurbachan Singh v. State of Punjab, AIR 1957 SC 623: 1957 Cri LJ 1009, relied on

[8072] — Ss. 306, 498-A and 304-B — Absence of charge under S. 306 — Conviction thereunder — *Held on facts, permissible where sufficient material available on record to convict the accused — CrPC, 1973, Ss. 221, 218 and 215 — Evidence Act, 1872, S. 113-A*

Though no charge was framed under Section 306 IPC, that is inconsequential. On the facts of the case, even though it is difficult to sustain the conviction under Section 304-B IPC, there is sufficient material to convict the accused-appellants in terms of Section 306 IPC along with Section 498-A IPC. (Paras 15, 16 and 17). *Hira Lal* v. *State (Govt. of NCT of Delhi)*, (2003) 8 SCC 80: 2003 SCC (Cri) 2016: AIR 2003 SC 2865: (2003) 105 DLT 705: 2003 Cri LJ 3711.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-7-2003]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271, followed

[8073] — S. 306 r/w S. 34 and S. 107 — Abetment of suicide — Framing of charge — Essentials — *Held, a person is said to have abetted in doing a thing, when he "instigates" others to do it — Further held, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred — Appellant charged that he along with other two accused "in furtherance of common intention", mentally tortured JS (the deceased) and thereby abetted him to commit suicide — Apart from the suicide note, statements recorded by the police during investigation, showing that on account of business transactions with the accused, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do —* ***Prima facie****, the conduct of the appellant and his accomplices appeared such that the deceased was left with no other option except to end his life — Hence, impugned judgment upholding order of trial court framing charge for offence under S. 306 r/w S. 34, calls for no interference — CrPC, 1973, S. 228 & S. 397 r/w Ss. 401 & 482* (Paras 15, 19 and 21 to 24). *Chitresh Kumar Chopra* v. *State (NCT of Delhi)*, (2009) 16 SCC 605.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 10-8-2009]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088, followed

(4) Ingredients of abetment of suicide

Synopsis

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(i) Broadly

[8074] — S. 306 — Abetment of suicide — Applicability — Ingredients for — *Held, prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused i.e. there should be an "abetment" for the commission of the crime — Further held, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under S. 306 IPC* (Paras 11 and 13). *Chitresh Kumar Chopra* v. *State (NCT of Delhi)*, (2009) 16 SCC 605: (2010) 3 SCC (Cri) 367: AIR 2010 SC 1446: (2009) 162 DLT 257: (2009) 4 ECrN 640 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 10-8-2009]

Concise Oxford English Dictionary; Oxford Advanced Learner's Dictionary, 7th Edn., followed

[8075] — S. 306 — Death must be by suicide and not homicide or accident. *Brij Lal* v. *Prem Chand*, 1989 Supp (2) SCC 680: AIR 1989 SC 1661.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 20-4-1989]

[8076] — Ss. 306 and 107 — Abetment of suicide — Ingredients

It needs to be established that:

(*i*) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted, or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly; and

(*ii*) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation. (Para 19). *Chitresh Kumar Chopra* v. *State (NCT of Delhi)*, (2009) 16 SCC 605: (2010) 3 SCC (Cri) 367: AIR 2010 SC 1446: (2009) 162 DLT 257: (2009) 4 ECrN 640 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 10-8-2009]

[8077] — Ss. 306 and 107 — Abetment of suicide — Ingredients of, reiterated — Proof thereof — Requisites for — Susceptibility of person concerned to commit suicide — Relevance — Suicide by wife — *Held, abetment involves mental process of instigating or intentionally aiding a person in doing of a thing — There should be clear mens rea to commit offence under S. 306 — It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide — In instant case, neither were there any instances of instigation attributable to appellants nor even any allegations thereof — No proximate link between event when deceased (wife of A-1) was denied permission to use family car and she, her husband and child were made to use public transport instead to reach Theme Park where whole family was headed, allegedly being told "if you want to go by a car, you have to bring a car from your family", and factum of sui-*

cide — Deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences of everyday life — Appellants not being even remotely connected with occurrence, held, cannot be convicted under S. 306 (Paras 44 to 49). *M. Mohan* v. *State*, (2011) 3 SCC 626.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *S.S. Nijjar*, JJ. [Date of decision: 1-3-2011]

Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750: (2010) 1 SCC (Cri) 917; Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107; Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605: (2010) 3 SCC (Cri) 367; V.P. Shrivastava v. Indian Explosives Ltd., (2010) 10 SCC 361: (2010) 3 SCC (Cri) 1290; Madan Mohan Singh v. State of Gujarat, (2010) 8 SCC 628: (2010) 2 SCC (L&S) 682: (2010) 3 SCC (Cri) 1048, relied on

[8078] — Ss. 306 and 107 — Commission of suicide must be proved to bring the offence under S. 306 — Burn injuries sustained by housewife causing death — *Prosecution case that deceased committed suicide by setting herself on fire — Clear evidence such as suicide note or deceased's statement not available — Evidence regarding smell of kerosene from deceased's clothes, improbability of sustaining burn injuries accidentally from stove, deliberate delay in taking the deceased to hospital/nursing home, deliberately avoiding to take her to civil hospital and instead taking her to a nursing home where sufficient medical aid for burn injuries was not available and suppressing cries of the deceased by putting on loudly a radio or TV set found not reliable — Held on facts, commission of suicide not established with reasonable certainty — Hence conviction under S. 306 cannot be sustained*

Reading Ss. 306 and 107 together it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under S. 306 of the Indian Penal Code for abetting the commission of suicide. Before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide. In the present case there was no satisfactory evidence on the basis of which a conclusion could be reached with the degree of certainty required in criminal law that the deceased committed suicide. Therefore, conviction of the accused (deceased's father-in-law and her husband) under S. 306 must be set aside. *Wazir Chand* v. *State of Haryana*, (1989) 1 SCC 244: 1989 SCC (Cri) 105: AIR 1989 SC 378: 1989 Cri LJ 809.

Bench Strength 2. Coram: *B.C. Ray* and **M.H. Kania**, JJ. [Date of decision: 1-12-1988]

[8079] — Ss. 306 and 309 — Held, "sui" means self and "cide" means killing, implying self-killing — *Person committing suicide must commit it by himself irrespective of means employed by him in achieving his object* (Para 37). *M. Mohan* v. *State*, (2011) 3 SCC 626.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *S.S. Nijjar*, JJ. [Date of decision: 1-3-2011]

[8080] — Ss. 306 and 309 — "Suicide" — Meaning of, stated — *Held, word "suicide" in itself is nowhere defined in IPC — However, "sui" means "self" and "cide" means "killing", thus implying an act of self-killing — In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself* (Para 7). *Gangula Mohan Reddy* v. *State of A.P.*, (2010) 1 SCC 750.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 5-1-2010]

[8081] — Ss. 306, 309 and 116 — Commission of suicide and not mere attempt thereof is a condition precedent to hold a person, who abetted the same, guilty under S. 306 — *Such person cannot be held guilty for offence of abetting an attempt to commit suicide under S. 306 with the aid of S. 116 since there cannot be abetment of an abetment*

The person who attempts to commit suicide is guilty of the offence under Section 309 IPC whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. (Para 7)

It is also not possible to convict a person under Section 116 linked with Section 306 IPC. The former is "abetment of offence punishable with imprisonment — if offence be not committed". But the crux of the offence under Section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under Section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence there cannot be an offence under Section 116 read with Section 306 IPC. (Para 8)

It must, therefore, be held that the appellants cannot be convicted under Section 116 IPC either by linking it with Section 306 or with Section 304-B. Hence the conviction and sentence passed on them under Section 116 IPC is set aside. (Para 26). *Satvir Singh* v. *State of Punjab*, (2001) 8 SCC 633: 2002 SCC (Cri) 48: AIR 2001 SC 2828.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 27-9-2001]

(ii) Abetment or Instigation — What is and proof of

See also Ss. 107 et seq. in Vol. 1

[8082] — S. 306 — Abetment of suicide — Benefit of doubt — Demand of money by appellant husband from in-laws to raise some construction *— Held, had no direct nexus or immediate cause for commission of suicide by the wife and would not amount to abetment of commission of such suicide — Besides, appellant was not at home when incident occurred and co-accused (his brother) was acquitted by trial court — Hence, appellant entitled to benefit of doubt — Impugned judgment convicting appellant set aside* (Paras 3 and 6 to 8). *Devender Singh* v. *State of Haryana*, (2009) 16 SCC 396.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 29-11-2006]

[8083] — S. 306 — Abetment of suicide — Causation — Sexual jealousy between the appellant and the deceased *— During quarrel the appellant allegedly remarking to the deceased to go and die — Thereafter the deceased going home and committing suicide — Held, suicide not direct result of the words uttered by the appellant — Sessions Court erred in summoning the appellant to face the trial — Proceedings against the appellant quashed. Swamy Prahaladdas* v. *State of M.P.*, 1995 Supp (3) SCC 438: 1995 SCC (Cri) 943.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-4-1995]

[8084] — S. 306 — Abetment of suicide — Ingredients of offence, reiterated — Temperament of person committing suicide — Relevance *— Deceased was undoubtedly hypersensitive — Human sensitivity of each individual differs from the other — Different people behave differently in same situation*

An enquiry was conducted by the Security Officer of the University, the appellant herein, regarding the theft of a mobile phone. A dispute arose between deceased and *H*. Deceased committed suicide during enquiry, by jumping in front of a train, leaving a suicide note. In the suicide note it is stated that he did not commit the theft and he had committed suicide because he was falsely implicated in the theft case of a mobile phone. On the basis of the suicide note an FIR under Section 306 IPC was registered. In the said FIR, the appellant was not even named as an accused. A report under Section 173 CrPC was submitted only against *H*. Charges were framed against *H*. Complainant, being the father of the deceased filed a private complaint alleging that the appellant *S* and *M* were responsible for abetting the suicide of his son. The trial court, on the basis of the said complaint, summoned the appellant as well as *M* to face trial under Section 306 IPC. The appellant, aggrieved by the framing of the charge moved the High Court in the revision petition which was dismissed. The appellant submitted that whether it would be just and fair to compel the appellant to face the rigmarole of a criminal trial in the absence of any credible material against him? When the appellant was in no manner connected with this case and there was no credible material to connect the appellant with the crime, in this view of the matter, according to the appellant, it would be a futile exercise to compel him to undergo the rigmarole of a criminal trial.

Allowing the appeal,

Held :

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. (Para 25)

In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. (Para 26)

When the facts of this case are carefully scrutinised and critically examined in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under Section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under Section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside. (Para 27). *S.S. Chheena* v. *Vijay Kumar Mahajan*, (2010) 12 SCC 190: (2010) 3 UPLJ 223 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 12-8-2010]

Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750: (2010) 1 SCC (Cri) 917; Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107; Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605: (2010) 3 SCC (Cri) 367, relied on

[8085] — S. 306 — Abetment of suicide — Maintaining flagrant and defiant illicit relationship with deceased's wife — Both convicted under S. 306 by trial court — Regarding appellant, conviction maintained by High Court — Sustainability — *Clearly established that appellant had illicit relationship with wife of deceased — It was also not in dispute that appellant was visiting house of deceased to meet his wife — Appellant even went to house of deceased and loudly stated that he would continue to have relationship with her and would come to her house so long as she does not object to the same — He also took her away from house of her brother, despite his protest and keeping her with him for 4 days — Immediately after the said incident, deceased committed suicide — Deceased had stated that because of said insult and humiliation he does not like to live — Therefore, there was definitely a proximity and nexus between conduct and behaviour of appellant and wife of deceased with that of suicide committed by deceased — No interference called for with clear and unambiguous finding of fact by courts below that appellant was guilty under S. 306* (Paras 15 to 20). *Dammu Sreenu* v. *State of A.P.*, (2009) 14 SCC 249: AIR 2009 SC 2532:: (2009) 79 AIC 6 (2) (SC): 2009 Cri LJ 3728.

Bench Strength 2. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 28-5-2009]

[8086] — S. 306 — Abetment of suicide — Mens rea — Burden of proof — *Held, words uttered on spur of the moment or in a quarrel, without something more cannot be taken to have been uttered with mens rea — Onus is on the prosecution to show the circumstances which compelled the deceased to take the extreme step to bring an end to his life — Evidence Act, 1872, Ss. 101 and 102*

It needs to be established that:

(*i*) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted, or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly; and

(*ii*) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation. (Para 19). *Chitresh Kumar Chopra* v. *State (NCT of Delhi)*, (2009) 16 SCC 605.

Bench Strength 2. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 10-8-2009]

[8087] — S. 306 — Abetment of suicide — Nature and standard of proof — *Held on facts, the proof should have been much stronger than what was presented — Courts below should have weighed evidence with more care and a finding should have been arrived at that but for such ill-treatment by accused, deceased would not have committed suicide* (Para 16). *Mankamma* v. *State of Kerala*, (2009) 10 SCC 164.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 8-10-2009]

[8088] — S. 306 — Abetment to suicide — Necessity of proof of direct or indirect acts of incitement (in cases not attracting presumption under S. 113-A, Evidence Act, 1872) i.e. after first seven years of marriage — Marriage more than a decade old when the alleged occurrence took place — *Deceased, because of differences with her accused husband was residing with her parents — Only a month before occurrence she came to the accused's house on persuasion of her father-in-law and brother-in-law — No evidence led to show that the accused was in any manner responsible for suicide — So-called alleged torture done by the accused as spoken by the mother of the deceased related to the alleged incident about 4-5 years prior to the occurrence — No mark of violence revealed in post-mortem — Marks found were stated to be several days' old and there was no evidence to conclude that those injuries were inflicted by the accused — Held, in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide — Mere fact that the husband treated the deceased wife with cruelty is not enough — Merely on the allegation of harassment, conviction in terms of S. 306 IPC is not sustainable — Ample evidence on record that the deceased was disturbed because she had not given birth to any child — Held, in such circumstances accused cannot be held liable* (Paras 2, 4 and 7). *Kishori Lal* v. *State of M.P.*, (2007) 10 SCC 797: (2007) 3 SCC (Cri) 701: AIR 2007 SC 2457: (2007) 3 KLT 259: (2007) 56 AIC 251 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 19-6-2007]

Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157, followed

(4)(ii) Abetment or Instigation — What is and proof of *(contd.)*

[8089] — S. 306 — Instigation to commit suicide — What constitutes — Constant and persistent dowry demands

Per Mukharji, J.

Constant dowry demands from newly wedded wife and consequent taunts, ill-treatment, cruel behaviour, torture and insinuation that she was carrying an illegitimate child are grave and serious provocations enough for an ordinary woman in the Indian set-up, to commit suicide.

Per Ray, J. (concurring)

The persistent demands of the accused for more money, their tortures and taunts amounted to instigation and abetment that compelled her to do away with her life. The finding of the trial court that a respectable lady cannot bear the false allegation levelled against her and this must have mentally tortured her, which was arrived at on a proper appreciation of evidence being the only view, must be upheld. *Gurbachan Singh* v. *Satpal Singh*, (1990) 1 SCC 445: 1990 SCC (Cri) 151: AIR 1990 SC 209: 1990 Cri LJ 562.

Bench Strength **2**. Coram: **Sabyasachi Mukharji**[1] and **B.C. Ray**[2], JJ. [Date of decision: 26-9-1989]

[8090] — Ss. 306 and 107 — Abetment of suicide — Essential ingredient of, held, is abetment — *Employee of a company transferred but not joining and after remaining absent for 2 long years submitting resignation expressing grievance against stagnation in pay and unsatisfactory working conditions — Subsequently, his dead body found and on the basis of a suicide note recovered from the dead body, police registering a case against appellant — No allegation in the suicide note against the appellant, of causing any harm to the deceased or delaying his pay — Except referring to the name of the appellant at some places, the suicide note not making any allegation against the appellant to have committed any wilful act or omission or intentionally aiding or instigating the deceased in committing suicide — Even no allegation by the complainant of any harassment of the deceased by the appellant — In such circumstances, proceedings under S. 306 IPC against the appellant, held, were without any factual foundation and leading towards sheer harassment to the accused without any fruitful result — Hence, the case, held, was fit for the exercise of High Court's extraordinary power under S. 482 CrPC to quash the criminal proceedings — CrPC, 1973, S. 482*

One *P* was an employee of a company. On 11-9-1999 he was transferred to another worksite but did not join. Two years later, he sent a letter of resignation expressing his grievance against stagnancy of salary and unfortunate circumstances. The Company accepted his resignation. On 16-2-2001, his dead body was found near the railway lines. Subsequently, on the basis of a suicide note allegedly recovered from the dead body, the brother of the deceased lodged a complaint with the police and consequently, a case under Section 306 IPC was registered against the appellant and some others. The suicide note indicated that the appellant herein and one *PC* had engaged him in several wrongdoings and that he had reported certain incidents to them. He also expressed dissatisfaction at the working conditions in the office and at the worksites. The appellant filed a petition under Section 482 CrPC for quashment of the said criminal proceedings but the High Court rejected that petition. The appellant then filed the present appeal by special leave.

Allowing the appeal,

Held :

There is absolutely no averment in the alleged suicide note that the present appellant had caused any harm to him or was in any way responsible for delay in paying salary to the deceased. Although the deceased was very much dissatisfied with the working conditions at the workplace but he remained absent for two years and the suicide took place still later. It cannot be said that the present appellant had in any way instigated the deceased to commit suicide or he was responsible for the suicide of *P*. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime within the meaning of Section 107 thereof. (Para 5)

In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased in committing the act of suicide. (Para 6)

Moreover, the case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. Therefore, the present case is a fit one where the extraordinary power under Section 482. The criminal proceedings initiated against the appellant is therefore quashed. (Para 7). *Netai Dutta* v. *State of W.B.*, (2005) 2 SCC 659: 2005 SCC (Cri) 543: AIR 2005 SC 1775: 2005 Cri LJ 1737.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Tarun Chatterjee*, JJ. [Date of decision: 28-2-2005]

Distinguished in Didigam Bikshapathi v. State of A.P., (2008) 2 SCC 403

[8091] — Ss. 306 and 107 — Abetment of suicide — Instigation — What is — *Held, words uttered in a fit of anger or emotion without any intention cannot be termed as instigation*

On 29-5-2004, Respondent 1 (wife) married the deceased husband (son of the appellant complainant). On 3-6-2004 (the day after the nuptials), the wife abused the husband regarding his potency and ugliness (dark complexion). On 9-6-2004, the complainant father (the appellant) received a message from police station that the deceased had committed suicide. The appellant (father of the deceased husband), alleging that police did not register a case lodged a complaint on 26-8-2004 against the respondent wife for offence under Section 306 IPC. The High Court by the impugned order quashed the complaint under Sections 482 CrPC.

Dismissing the appeal,

Held :

It is fairly well settled that words uttered in a fit of anger or emotion without any intention cannot be termed as instigation. Additionally, there was no suicide note in the present case. Different versions of death were given. At the earlier stage, during investigation under Section 174 CrPC, the version was that the accused had accompanied the deceased to the native home, but subsequently stand was that the accused did not accompany the deceased because the latter was bad and ugly looking. Admittedly, marriage was an arranged one. If that is so, it is not believable that the deceased and the accused had not met. The alleged grievance of the accused that the deceased was an ugly man could not have been noticed after marriage, for the first time on 3-6-2004. The appellant (father) filed a complaint to the Superintendent of Police after about two-and-a-half months of the alleged incident. Allegation was that the police did not register a complaint. Ultimately, the complaint was filed on 26-8-2004. (Paras 12 and 13)

Though, normally threshold interference should not be made under Section 482 CrPC, in the aforesaid background, this is not a case where any interference is called for with the order of the High Court. (Para 14). *Sonti Rama Krishna* v. *Sonti Shanti Sree*, (2009) 1 SCC 554: (2009) 1 SCC (Cri) 578: AIR 2009 SC 923: (2008) 72 AIC 117 (SC): (2009) 1 ECrN 864 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 28-11-2008]

[8092] — Ss. 306 and 107 — Abetment of suicide — Requisites for — Alleged abetment of suicide of driver by his superior officer — Matters to be considered in such situation — *Held, intention of accused to aid or to instigate or to abet the suicide must be proved — Suicide note of deceased implicating appellant-accused was more in the nature of departmental complaint, suggesting some mental imbalance on part of deceased which he himself described as depression — Even in so-called suicide note, it could not be said that accused ever intended that the driver under him should commit suicide or should end his life, and accused did not do anything in that behalf — Merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing a charge under S. 306 IPC — Moreover, it is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence — Thus, ingredients for sustaining conviction under Ss. 306 and 107 not proved* (Paras 10 to 13). *Madan Mohan Singh* v. *State of Gujarat*, (2010) 8 SCC 628: (2010) 2 SCC (L&S) 682: (2010) 3 SCC (Cri) 1048.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 17-8-2010]

Netai Dutta v. State of W.B., (2005) 2 SCC 659: 2005 SCC (Cri) 543; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[8093] — Ss. 306 and 107 — Applicability of S. 306 — Sensitivity to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged — Relevance — Abetment of suicide — Conviction reversed — *Allegation against appellant-accused for harassing his deceased servant by accusing him of committing theft of gold ornaments, two days prior to servant's death — Appellant, allegedly, also demanded Rs 7000 from deceased, given in advance to him at the time he was kept in employment — Deceased, not able to bear harassment meted out to him, allegedly committed suicide — Appellant's conviction under S. 306, upheld by High Court — Sustainability — Held, abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing —*

(4)(ii) Abetment or Instigation — What is and proof of *(contd.)*

Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained — In order to convict a person under S. 306, there has to be a clear mens rea to commit offence — It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide — Also, reiterated, if it appears to court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, conscience of court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty — Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in day-to-day life — In facts and circumstances of case, none of the ingredients of offence under S. 306 made out — Hence, appellant's conviction, held, unsustainable (Paras 17, 13, 15 and 18). *Gangula Mohan Reddy* v. *State of A.P.*, (2010) 1 SCC 750.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 5-1-2010]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107; Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605, relied on

[8094] — Ss. 306 and 107 — Whether husband abetted suicide of wife by instigating her to do so — Appreciation of evidence — "Instigation" — Meaning — *There must be a reasonable certainty to incite the consequence — Having regard to the dying declaration and suicide note of the deceased along with all other circumstances of the case, held, offence under S. 306 not made out*

The deceased was married to the accused-appellant and within one year of the marriage the deceased committed suicide by pouring kerosene on herself and setting herself on fire. In his statement under Section 313 CrPC the appellant husband stated that he did not ask for any dowry nor harassed his wife and that on the day of the incident when he was preparing to go to his duty, the deceased was pressing him to leave her at her sister's house but the appellant had asked her to go there alone and that when he was ready to leave he heard a cry of the deceased from kitchen and saw her burning. On hearing the cry of the deceased, a neighbour PW 3 entered the appellant's house and found that the deceased was standing and the accused was putting a bedsheet around her body with which he wrapped her. The deceased was naked and her body was burnt. The deceased in her diary had written a letter to her husband (addressed as Raja) on the day of occurrence as follows: "Raja this is my last love. You have made me free that I may do whatever I wish and go wherever I like. Raja, after coming in this house now I have no other place to go leaving you. You know, you have now made me free of the words I had given that I would not commit suicide. Now I would die peacefully ... Raja, this is my last word I do love you and you only, not anyone else."

In her dying declaration, recorded by an Executive Magistrate, she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. The deceased died in the hospital. Partly allowing the appeal

Held :

The picture which emerges from a cumulative reading and assessment of the material available is this: presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcoming which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life partner. The accused may or must have told the deceased that she was free to go anywhere she liked. Maybe that was in a fit of anger as contrary to his wish and immediate convenience the deceased was emphatic on being dropped at her sister's residence to see her. Presumably the accused may have said some such thing — you are free to do whatever you wish and go wherever you like. The deceased being a pious Hindu wife felt that having being given in marriage by her parents to her husband, she had no other place to go excepting the house of her husband and if the husband had "freed" her she thought impulsively that the only thing which she could do was to kill herself, die peacefully and thus free herself according to her understanding of the husband's wish. (Para 19)

The suicide note written in the diary was corroborated by the dying declaration. The conduct of the accused trying to put off the fire and taking his wife to the hospital also improbabilises the theory of his having abetted suicide. There is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted the commission of suicide by his wife may necessarily be drawn. The totality of the circumstances especially the dying declaration and the suicide notes left by the deceased herself, which fall for consideration within the expression "all the other circumstances of the case" employed in Section 113-A of the Evidence Act, do not permit the presumption thereunder being raised against the accused. The accused-appellant, therefore, deserves to be acquitted of the charge under Section 306 IPC. (Paras 22 and 23)

Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. (Paras 20 and 21)

Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. Evidential value of the two writings contained in the diary is that of dying declarations. On the principle underlying admissibility of dying declaration in evidence that truth sits on the lips of a dying person and the court can convict an accused on the basis of such declaration where it inspires full confidence, there is no reason why the same principle should not be applied when such a dying declaration speaking of the cause of death exonerates the accused unless there is material available to form an opinion that the deceased while making such statement was trying to conceal the truth either having been persuaded to do so or because of sentiments for her husband. (Para 22). *Ramesh Kumar* v. *State of Chhattisgarh*, (2001) 9 SCC 618: AIR 2001 SC 3837.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *K.G. Balakrishnan*, JJ. [Date of decision: 17-10-2001]

[8095] — Ss. 306 and 107 Firstly — Abetment to commit suicide — "Instigates any person to do that thing" — *Mental cruelty and harassment meted out to deceased wife on her failure to meet the dowry demand — One day prior to commission of suicide, quarrel taking place between the deceased and her husband at her sister's house causing saturation of mental agony — Her mental state made clear when she told her sister that it would be difficult to see her face in future — Held all this would constitute an act which would be an abetment to the commission of suicide by the deceased — Hence sentence of 4 years' rigorous imprisonment and to pay a fine of Rs 200, in default of payment of fine further rigorous imprisonment for 3 months, under S. 306 upheld. Pawan Kumar* v. *State of Haryana*, (1998) 3 SCC 309: 1998 SCC (Cri) 740: AIR 1998 SC 958: 1998 Cri LJ 1144.

Bench Strength **2**. Coram: *M.M. Punchi, C.J.* and **A.P. Misra**, J. [Date of decision: 9-2-1998]

[8096] — Ss. 306 and 107 Firstly — Abetting commission of suicide — Suicidal death of wife by setting fire to herself — Whether she committed suicide of her own will and volition or abetted in any manner by the accused husband — Circumstances to be considered — *Husband constantly demanding her to get money from her parents and also beating her frequently — Wife committing suicide within a short time after accused said that money was more important to him than her life and that if she wanted to die she may do so the very same and give him relief forthwith — No evidence to show that accused assuaged her wounded feelings — Wife forsaking her 1½ years old son — On facts and in circumstances of case*

(4)(ii) Abetment or Instigation — What is and proof of *(contd.)*

held, accused instigated deceased to commit suicide and that it was not a case where deceased committed suicide for reasons of her own — Case falls under first clause of S. 107 — Explanation II to S. 107 not attracted. Brij Lal v. *Prem Chand*, 1989 Supp (2) SCC 680: AIR 1989 SC 1661.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 20-4-1989]

Shri Ram v. State of U.P., (1975) 3 SCC 495, distinguished

Prem Chand v. State of Punjab, 1978 Chand LR 224, reversed

Distinguished in Bhagwan Das v. Kartar Singh, (2007) 11 SCC 205

[8097] — Ss. 306, 107 Thirdly, 108, 304-B and 498-A — Abetment of suicide — Intentionally aiding the suicide — Dowry death after first seven years of marriage — *Even if S. 113-A, Evidence Act inapplicable in absence of proof as to the occurrence having taken place within seven years of marriage, legislative intent as evident from Ss. 304-B, 498-A IPC as also Ss. 113-A and 113-B Evidence Act, which is to curb dowry death menace with firm hand, has to be kept in mind in deciding conviction under S. 306 — Husband persistently making dowry demand from the wife, beating, harassing her and creating atmosphere of terror for her — Wife ultimately setting herself and her three children ablaze — Held on facts, husband by his wilful conduct created an atmosphere which forced the wife to commit suicide — Hence conviction under S. 306 and sentence of seven years' RI recorded by trial court upheld — High Court erred in reversing the conviction*

The legislative intent as appears from the introduction of Ss. 304-B and 498-A of IPC and Ss. 113-A and 113-B of Evidence Act is to curb the menace of dowry deaths etc. with a firm hand. Court must keep in mind this legislative intent even if there is no evidence as to whether suicide had been committed within a period of seven years from the date of marriage so as to attract S. 113-A of Evidence Act and the court has to decide whether the accused husband could be convicted under S. 306 IPC (the case pertaining to a period prior to coming into force of S. 304-B IPC). Where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of S. 306, IPC. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide. (Para 8)

The facts in the present case clearly reveal that the relations between the husband and the wife were strained since long. The wife was intending divorce and apprehending bloodshed and harm to her children had sought police protection also. Her husband had kept up the pressure for extra dowry since her marriage and had stepped it up after the demise of her father on learning that her mother had received the G.P. Fund, gratuity, etc., due to her father. Since she and her mother and brother were not able to meet this demand she was subjected to considerable torture. Added to that was the anxiety caused by her husband's conduct at trying to frustrate her efforts to seek a transfer from the school where she was serving. She was severely beaten on the day prior to the day of suicide. An atmosphere of terror was created. It was a carefully chalked out strategy to provoke her into taking the extreme step to kill herself and her children as she apprehended that they will be much more miserable after she is dead and gone. In this fact situation, therefore, the husband can be said to have been responsible in creating circumstances which would provoke or force her into taking the only alternative left open to her, namely suicide. It cannot be said that the husband did not realise where he was leading her by his wilful conduct. In the peculiar facts and circumstances of the case, the trial court had rightly convicted the husband under S. 306, IPC. The High Court committed an error in reversing the conviction. (Para 8). *State of Punjab* v. *Iqbal Singh*, (1991) 3 SCC 1: 1991 SCC (Cri) 513: AIR 1991 SC 1532: 1991 Cri LJ 1897.

Bench Strength **3**. Coram: **A.M. Ahmadi**, *V. Ramaswami* and *K. Ramaswamy*, JJ. [Date of decision: 10-5-1991]

[8098] — Ss. 306, 304-B and 107 — Abetment to commit suicide — Applicability — Need for instigation to commit suicide — *Mere harassment of wife by her husband or in-laws, due to disputes or differences, without anything more, pursuant to which if wife commits suicide, held, it will not attract S. 306 r/w S. 107*

The deceased was married to *M* in 1992. According to prosecution, the deceased was being taunted for bringing less dowry and was being harassed on account therefor. She was also ill-treated and harassed by the respondents as she was not able to give birth to a child and this harassment continued till 1999 when she gave birth to a girl child. Till 1999, the deceased was being subjected to mental cruelty by being told that her husband would be married elsewhere. Shortly after the birth of the girl child, *M* was paralysed on account of an accident. Thereupon the deceased was being taunted that she gave birth to a girl child which brought bad luck to the respondents. These circumstances, according to the prosecution, drove the deceased to commit suicide in her matrimonial home. The deceased did not leave any suicide note. The Addl. Sessions Judge came to a prima facie conclusion that the cumulative effect of the prolonged ill-treatment and harassment of the deceased compelled her to commit suicide. He, therefore, by an order framed charges under Sections 306/498-A/34 IPC against the deceased's father-in-law, mother-in-law and two devars (brothers of *M*). *M* had already died.

In criminal revision, the High Court held that no charge under Sections 306/34 IPC was made out and it set aside the charge. However, it remitted the matter regarding framing of charges under Sections 498-A/34 IPC to the Metropolitan Magistrate. The said charge has since been framed. The present appeal has been filed by the father of the deceased. It was submitted that the charge under Section 306 was made out and hence the same should not have been quashed. The only allegation against the respondents was that they harassed the deceased because she did not bring adequate dowry. Hence, it is submitted that this amounted to abetment to suicide and hence was covered under Section 306 IPC read with Section 107.

Dismissing the appeal,

Held :

It often happens that there are disputes and discords in the matrimonial home and a wife is harassed by the husband or her in-laws. This, however, would not by itself and without something more attract Section 306 IPC read with Section 107 IPC. Thus mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. (Paras 15 and 16)

However, if the suicide was due to demand of dowry soon before her death then Section 304-B IPC may be attracted, whether it is a case of homicide or suicide. In the present case, since no charge under Section 304-B has been framed, obviously the accused cannot be convicted under that provision. (Paras 16 and 17)

It is, however, made clear that the Court is not approving or justifying harassment of wives by their husbands or in-laws, but is only clarifying the law in the peculiar facts of this case as it stands today. (Para 18). *Bhagwan Das* v. *Kartar Singh*, (2007) 11 SCC 205: AIR 2007 SC 2045.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 14-5-2007]

Netai Dutta v. State of W.B., (2005) 2 SCC 659: 2005 SCC (Cri) 543; Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157; Randhir Singh v. State of Punjab, (2004) 13 SCC 129: 2005 SCC (Cri) 56; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107 ; Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935; Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Shanti v. State of Haryana, (1991) 1 SCC 371: 1991 SCC (Cri) 191, relied on

Brij Lal v. Prem Chand, 1989 Supp (2) SCC 680: 1991 SCC (Cri) 394, distinguished

[8099] — Ss. 306 and 498-A — Abetting wife to commit suicide — Subjecting her to cruelty — Intention to abet and instigate her to commit suicide — Inference drawn from facts — Sustainability — *Deceased wife harassed by appellant husband with demands of dowry — About six months prior to the occurrence, appellant visited house of maternal uncle of deceased where she had studied up to Class VIII and demanded money from him for purchase of tractor but the same having been refused, appellant started beating the deceased to such an extent that she became unable to walk — Ultimately appellant turned her out of the matrimonial home — She then went to her parents' house and stayed there for three months — At that time she was pregnant — She was thereafter taken back by appellant with the assurance that he will treat her well — But 10 days thereafter she committed suicide — Held on facts, offence under Ss. 306 and 498-A made out — A young pregnant woman would not ordinarily commit suicide unless she was compelled to do so — Deceased would not have felt depressed if she had not been harassed on account of dowry. Surender* v. *State of Haryana*, (2006) 12 SCC 375: (2007) 2 SCC (Cri) 210: 2007 Cri LJ 779: (2007) 49 AIC 632 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 22-11-2006]

[8100] — Ss. 306, 498-A and 107, 108 — Abetment of suicide — Proof of suicide a prerequisite — Normally direct evidence of abetment or suicide not available — Circumstances in which death took place, conduct of the accused persons and nature of the crime to be seen — *Deceased wife died in her in-laws' house sustaining second to third degree burn injuries within seven months of her marriage — Accidental death by catching fire while cooking food on stove ruled out by trial court in view of absence of burn injuries on the fingertips of any of the members of the in-laws' family — Maternal uncle of the accused husband informing deceased's parents that the deceased committed suicide by sprinkling kerosene oil and setting herself on fire — Instigation in the form of constant dowry demands, taunts, insinuations, threats,*

(4)(ii) Abetment or Instigation — What is and proof of *(contd.)*

ill-treatment and cruel behaviour by the husband and his parents found proved by the trial court — Other circumstances such as failure on the part of the in-laws to attempt to save the deceased from burn injuries, taking her to hospital late in dead condition, great delay in informing deceased's parents about the death even though parents' house was not far off also found — Despite minor contradictions in statements of prosecution witnesses, prosecution case not shaken — On a proper evidence accused persons convicted under S. 306 and sentenced to 5 years' RI and fine of Rs 2000 by trial court — Held, trial court's view unexceptionable and the only view that could be taken in the circumstances — High Court erred in taking a contrary view and acquitting accused on a wrong appreciation of evidence — Penal Code, 1860, S. 498-A — Evidence Act, 1872, S. 113-A

Abetment is a separate and distinct offence provided the thing abetted is an offence. Abetment does not involve the actual commission of the crime abetted; it is a crime apart.

There could not be any direct evidence of the act of suicide in the circumstances in which the deceased died. She was in the house of her in-laws. There is ample and sufficient evidence that she had complained that she was taunted for bringing meagre dowry and that even insinuated that she was carrying 'an illegitimate child'. The aforesaid facts stand established by cogent and reliable evidence. These are grave and serious provocations enough for an ordinary woman in the Indian set-up, to do what the deceased is alleged to have done. There is also evidence that the persons in the house of her in-laws including the mother-in-law — mother of the accused made no attempt to save her from the burn injuries. The absence of any burn injury in the hands of the people around, indicates and establishes that there was no attempt to save the deceased though she was seen being burnt. The evidence of attitude and conduct of the in-laws — the father-in-law, mother-in-law and the husband — after the deceased got burns in not informing the parents and not taking prompt steps to take her to hospital for giving medical assistance corroborate the inference that these accused connived and abetted the crime.

Having regard to the circumstances of the case, there is no direct evidence indicating the circumstances in which the death took place, the conduct of the accused and the nature of the crime with which the accused was charged, there cannot be any scope of doubt that the Sessions Judge was right and the conviction was properly made. This is not a case where there could be two views possible on the facts found and on the facts which could not possibly be found because of the nature of the offence. *Gurbachan Singh* v. *Satpal Singh*, (1990) 1 SCC 445: 1990 SCC (Cri) 151: AIR 1990 SC 209: 1990 Cri LJ 562.

Bench Strength **2**. Coram: **Sabyasachi Mukharji**[1] and **B.C. Ray**[2], JJ. [Date of decision: 26-9-1989]

[8101] — S. 306 r/w S. 34 — Abetment of suicide — Conviction for — Essential requirement — *Held, more active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under S. 306*

Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC. (Para 12). *Randhir Singh* v. *State of Punjab*, (2004) 13 SCC 129: 2005 SCC (Cri) 56: AIR 2004 SC 5097: 2004 Cri LJ 4985.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 12-10-2004]

[8102] — S. 306 r/w S. 34 and S. 107 — Abetment of suicide — Framing of charge — Essentials — *Held, a person is said to have abetted in doing a thing, when he "instigates" others to do it — Further held, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred — Appellant charged that he along with other two accused "in furtherance of common intention", mentally tortured* ***JS*** *(the deceased) and thereby abetted him to commit suicide — Apart from the suicide note, statements recorded by the police during investigation, showing that on account of business transactions with the accused, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do —* ***Prima facie****, the conduct of the appellant and his accomplices appeared such that the deceased was left with no other option except to end his life — Hence, impugned judgment upholding order of trial court framing charge for offence under S. 306 r/w*

S. 34, calls for no interference — CrPC Code, 1973, S. 228 & S. 397 r/w Ss. 401 & 482 (Paras 15, 19 and 21 to 24). *Chitresh Kumar Chopra* v. *State (NCT of Delhi)*, (2009) 16 SCC 605.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 10-8-2009]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088, followed

[8103] — S. 306 r/w S. 107 — Abetment of suicide — Quarrel taking place between appellant and deceased in which appellant was said to have told the deceased "to go and die" — *Deceased found dead two days later — Held, suicide was not proximate to the quarrel though the deceased was named in the suicide note — Hence suicide was not the direct result of the quarrel when the appellant used abusive language and told the deceased to go and die*

The appellant was charged with having abetted commission of suicide by his brother-in-law (sister's husband). The prosecution story was that there were strained relations between the deceased and his wife who at the material time was staying with the appellant. On 25-7-1998, the deceased went to the appellant to bring back his wife. There was a quarrel between the appellant and the deceased who came back alone. The deceased told his brothers and other acquaintances that the appellant had threatened and abused him by using filthy words. On 27-7-1998, the deceased was found dead. The autopsy which was conducted on that day itself, revealed that the death was due to asphyxia as a result of hanging, within 24 hours. The deceased also left a suicide note (reproduced in para 13 of the judgment) which showed his disturbed state of mind but otherwise he blamed the appellant for the suicide.

The appellant's petition for quashing of charge-sheet under Section 482 CrPC was dismissed by the High Court.

Allowing his appeal,

Held :

Both the courts below have erroneously accepted the prosecution story that the suicide by the deceased was the direct result of the quarrel that had taken place on 25-7-1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased "to go and die". For this, courts relied on a statement of *S*, brother of the deceased, made under Section 161 CrPC when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. In the statement of *S*, recorded under Section 161 CrPC, it has not been stated that the deceased had told him that the appellant had asked him "to go and die". Even if one accepts the prosecution story that the appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with *mens rea*. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25-7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased on 27-7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998. The fact that the deceased committed suicide on 27-7-1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25-7-1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below. (Para 12)

A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife. He was a frustrated man. Reading of the suicide note suggests that such a note is not the handiwork of a man with a sound mind and sense. The wife had stated that on 26-7-1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25-7-1998. Viewed from the aforesaid circumstances independently, the ingredients of "abetment" are totally absent in the instant case for an offence under Section 306 IPC. It is in the statement of the wife that the deceased always remained in a drunken condition.

(4)(ii) Abetment or Instigation — What is and proof of *(contd.)*

It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25-7-1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, who was responsible for his death. (Para 14). *Sanju* v. *State of M.P.*, (2002) 5 SCC 371: 2002 SCC (Cri) 1141: AIR 2002 SC 1998: 2002 Cri LJ 2796.

Bench Strength **2**. Coram: *M.B. Shah* and **H.K. Sema**, JJ. [Date of decision: 1-5-2002]

Swamy Prahaladdas v. State of M.P., 1995 Supp (3) SCC 438: 1995 SCC (Cri) 943; Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, relied on

[8104] — Ss. 306/34 and 498-A/34 — Suicide — Cause of — Manic depression or maltreatment by in-laws (including husband) — *Inference of manic depression drawn from medicines which deceased was taking during her lifetime — Theory that deceased was driven to commit suicide due to demand for dowry, ruled out — Hence acquittal of appellants restored — Appellants 1 and 2 who respectively were husband and father-in-law of deceased, charged to have abetted suicide by maltreating deceased on account of their demand for dowry — There was however evidence on record that deceased was taking medicine, geroin, which is prescribed in case of major epileptic disorder (grand mal) — Possibility of giving electro- convulsive therapy (ECT) to deceased also considered though ECT actually not given to her — Held, cumulative effect of medical evidence given by three doctors was that deceased woman had some mental/epileptic/psychotic problem and this was the probable cause of her death — One of the attending doctors deposing that deceased appeared to have been maltreated by her in-laws when he attended the deceased — His evidence on this count not found reliable because he himself had prescribed medicine for grand mal epilepsy — Moreover, couple had been staying in separate town away from in-laws for quite some time — Evidence Act, 1872, S. 45*

Appellants 1 and 2 were husband and father-in-law of the deceased woman who committed suicide. Brother of the deceased lodged a complaint that she committed suicide because she was maltreated by her in-laws and dowry was demanded. However defence of Appellants 1 and 2 was that the deceased committed suicide because she was suffering from a mental problem. Three doctors were examined during the course of trial (relevant portions of their evidence are reproduced in paras 23, 27 and 28 of the judgment).

The trial court acquitted the appellants but the High Court, in appeal, reversed the decision of the trial court.

Allowing the appeal,

Held :

There is ample evidence on record to suggest that the deceased had been suffering from psychosis/mental disorder. According to Dr. Daulatram Nekumal Gurubani (PW 10) the ailment was not of a very serious nature. However, the prescriptions given by Dr. Gurubani (PW 10) reveal that the deceased had been suffering from serious mental disorder, otherwise such medicines could not have been prescribed by him. He has prescribed the deceased the medicine geroin because he was convinced that the deceased was suffering from major epilepsy, in spite of the fact that he was fully aware that the said drug has side effects. He also deposed that mere clinical examination alone is not sufficient to decide whether the patient is suffering from epilepsy. He further deposed that such medicine can be given to a person suffering from grand mal epilepsy. More so, had it not been the case of serious ailment of mental disorder, the question of prescribing and giving ECT to the deceased could not arise. (Para 43)

The deposition of Dr. Mohan Kulkarni (PW 1) reveals that ECT treatment is given only to mental patients, who have mental depression and tend to commit suicide; the ailment of epileptic fits is a neurological problem. His statement also suggests that in-laws of the deceased had not been living with her after 1983, as Appellant 2 stood transferred to Kurudwadi and had shifted to the said transferred place and her in-laws had been visiting Kalyan occasionally. This view stands fully corroborated by the deposition of Dr. Ramesh Kumar Mahendru (PW 12), Reader in Psychiatric Medicine, Mental Hospital, Kanpur. He had examined the deceased and prescribed medicines for manic depressive psychosis. The prescription of this witness substantially remained the same as of Dr. Daulatram Nekumal Gurubani (PW 10). (Para 46)

The cumulative effect of the medical evidence given by the three doctors leads to the conclusion that the deceased had been suffering from manic depression and certainly had some mental/epileptic/psychotic problem. (Para 47). *Sunil Kumar Sambhudayal Gupt (Dr.)* v. *State of Maharashtra*, (2010) 13 SCC 657.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 11-11-2010]

[8105] — Ss. 306/34 and 498-A/34 — Suicide by wife — Cause of — Maltreatment by in-laws — What amounts to — *Protest by in-laws that deceased daughter-in-law who was suspected to have developed intimacy with a family friend, should keep distance from him — Whether such protest amounts to maltreatment — Held, even suspicion of intimacy with an outsider affects reputation of family — Protest cannot therefore be considered as ill-treatment given to deceased — High Court was wrong in overlooking plea of illicit relationship — Acquittal restored on overall appreciation of facts, principally that deceased suffered from manic depression* (Paras 42, 59 and 60)

The record reveals that at an initial stage the relationship between the husband and wife had been very cordial and they had love and affection for each other. At a later stage, when the family suspected an illicit relationship between the deceased and a family friend, the appellants were very much disturbed. Families from husband and wife's side made serious attempts to reconcile and patch up the matter and the appellants agreed that the deceased may be given an opportunity to improve her behaviour. Thus, admittedly there was a doubt that the deceased had developed serious intimacy with a family friend, which was much more than what happens in normal course with a family friend. Therefore, the finding recorded by the High Court that the intimacy between them to the extent of having an illicit relationship was not there, loses its significance, for the reason that even the suspicion of such a matter becomes the talk of the town and the reputation of the family remains at stake. The protests on the part of the appellants even on a mere suspicion and asking the deceased to keep distance from the family friend or improve her behaviour is not something which can be termed to be unwarranted or uncalled for. (Para 42). *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of Maharashtra*, (2010) 13 SCC 657.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 11-11-2010]

(iii) Presumption of abetment of suicide (S. 113-A, Evidence Act)

See also under S. 304-B — Dowry Death '(6)(ii) Presumption/Deeming fiction under S. 304-B r/w S. 113-B, Evidence Act when arises', and

'(6)(iii) Nature of death — Death "otherwise than under normal circumstances" due to dowry demand — Death if homicide or suicide — Relevance', above

[8106] — S. 306 — Abetment of suicide, of a married woman — Conviction based on a purported letter by accused — Sustainabilty — *Appellant, his mother, father and brother tried for offence of abetment of suicide of wife of appellant — Trial court acquitting all the accused except appellant, who was convicted placing reliance on a letter allegedly written by him to father of deceased demanding certain items — Father of deceased stating that he had received the letter but did not state whether he had recognised handwriting or signature of appellant — Held, such evidence is not proof of the document — The letter was not produced before police during course of the initial investigation but was handed over after several months — As no person would write a letter meeting all legal requirements for implicating himself and his near relatives in a claim for dowry, held, the letter was a concocted piece of evidence and the work of a legal mind — Evidence Act, 1872, S. 62* (Para 9). *Anand Kumar* v. *State of M.P.*, (2009) 3 SCC 799: (2009) 2 SCC (Cri) 28: AIR 2009 SC 2155.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 20-2-2009]

[8107] — S. 306 — Ingredients — Presumption under S. 113-A, Evidence Act, when arises — *Held, on facts, offence under S. 306 not made out from the material on record — Evidence Act, 1872, S. 113-A*

Before invoking the provisions of Section 306 IPC, it is necessary to establish that: (*i*) the deceased committed suicide, and (*ii*) she had been subjected to cruelty within the meaning of Section 498-A IPC. Only in the event those facts are established, a presumption in terms of Section 113-A of the Evidence Act could be raised. In the instant case, the prosecution has not been able to prove that the deceased was subjected to cruelty within the meaning of Section 498-A IPC. No case that the deceased committed suicide was also made out. The ingredients of Sections 306 and 304-B IPC are different and distinct. In any event, no evidence has been brought on record to show that there has been any act of omission or commission on the part of the accused, before the death of the deceased to demonstrate that the appellant was responsible for the same. There is no evidence to sustain the observation of the High Court that when her father came to see her, he must have been insulted or felt hurt as she might have been subjected to harassment. (Paras 26, 27 and 30). *Harjit Singh* v. *State of Punjab*, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417: AIR 2006 SC 680: (2006) 37 AIC 104 (SC): 2006 Cri LJ 554.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271; Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48, relied on

(4)(iii) Presumption of abetment of suicide (S. 113-A, Evidence Act) *(contd.)*

[8108] — S. 306 — Presumption under S. 113-A, Evidence Act — Invocation of — Facts, held, cannot be ignored while invoking presumptions — *The proposition that onus shifts exclusively and heavily on the accused is not entirely correct — On facts, the sketchy ocular evidence and dying declaration recorded by the Naib Tahsildar completely exonerated all accused of any misconduct and clearly dispelled any suspicion with regard to their involvement in the incident — Appellant acquitted of offence of abetment of suicide — Evidence Act, 1872, S. 113-A* (Para 14). *Anand Kumar* v. *State of M.P.*, (2009) 3 SCC 799: (2009) 2 SCC (Cri) 28: AIR 2009 SC 2155.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 20-2-2009]

[8109] — S. 306 — S. 113-A, Evidence Act, 1872 — Conviction for abetment of suicide restored — *Deceased subjected to constant harassment and torture by the husband and in-laws, whereupon she leaving her in-laws' house twice and returning only at the behest of panchas — Subsequently, deceased committing suicide by setting herself on fire — Held, totality of the evidence suggests that such a serious provocation would be enough for an ordinary woman in the Indian set-up to do what the deceased is stated to have done — Hence, order of acquittal passed by the High Court, against order of conviction passed by the Sessions Judge, unsustainable both on question of law and on facts. State of M.P.* v. *Guman*, (2009) 16 SCC 277.

Bench Strength **2**. Coram: *U.C. Banerjee* and *Arijit Pasayat*, JJ. [Date of decision: 12-9-2002]

Gurbachan Singh v. Satpal Singh, (1990) 1 SCC 445: 1990 SCC (Cri) 151; Gurpreet Singh v. State of Haryana, (2002) 8 SCC 18: 2003 SCC (Cri) 186, followed

[8110] — S. 306 — Suicide — Suicide by married woman — Presumption as to abetment by husband — Death by drowning about one-and-a-half years after marriage — *Harassment meted out to deceased by husband sufficiently proved — Presumption under S. 113-A must therefore be raised against husband — Illicit relationship of a married man with another woman, held, could be used as a piece of evidence of harassment and misbehaviour of appellant towards deceased — Evidence Act, 1872, S. 113-A* (Para 6). *Laxman Ram Mane* v. *State of Maharashtra*, (2010) 13 SCC 125.

Bench Strength **2**. Coram: *H.S. Bedi* and *R.M. Lodha*, JJ. [Date of decision: 7-10-2010]

[8111] — Ss. 306, 107 and 498-A — Abetment — Ingredients of, stated — Suicide by wife — Abetment of — Proof — *The only fact established was that there were frequent quarrels between husband and wife, sometimes involving physical assault on wife, on account of husband's addiction to "****bhang****" — No direct evidence to establish that the husband either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide — Held, husband cannot be convicted under S. 306 — But on facts, liable to be convicted under S. 498-A — Evidence Act, 1872, S. 113-A*

The trial court took the view that since the wife of the appellant committed suicide and since the appellant did not disclose as to what conversation preceded her committing suicide and that there were allegations of cruelty against the appellant, it must be presumed under Section 113-A that the suicide had been abetted by him. The finding of the trial court is not sustainable. The allegations that the appellant did not like to keep the deceased with him because she was not good-looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the appellant intended to remarry and had told his wife about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, do not find place in the statements recorded by the police in the course of investigation. These allegations have been made at the trial for the first time. All that was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between the husband and wife sometimes resulting in physical assault, on account of the husband being addicted to consumption of "*bhang*". The other allegation that the appellant was aggrieved of the fact that his sister (married to PW 3, brother of the deceased) was not being properly treated by PW 3, also appears to be untrue because there is nothing on record to show that there was any disharmony in the marital life of his sister. In fact, PW 3 himself stated on oath that he was living happily with his wife. On such slender evidence, the Court is not persuaded to invoke the presumption under Section 113-A of the Evidence Act to find the appellant guilty of the offence under Section 306 IPC. Having regard to the facts of the case, though the prosecution has failed to establish the offence under Section 306 IPC, the evidence on record justifies the conviction of the appellant under Section 498-A IPC. (Paras 16 and 17). *Hans Raj* v. *State of Haryana*, (2004) 12 SCC 257: AIR 2004 SC 2790: 2004 Cri LJ 1759.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-2-2004]

[8112] — Ss. 306 and 498-A — Abetment of suicide — Suicide committed due to alleged cruelty and harassment meted out to victim — Guilt of accused — When established — *Duty of court regarding — Need to prove by direct evidence, active role on part of accused in the abetment by direct or indirect act(s) of instigation or by doing of certain act(s) to facilitate the commission of suicide*

Before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to commit suicide. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. (Para 12)

In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (Para 13). *Amalendu Pal* v. *State of W.B.*, (2010) 1 SCC 707.

Bench Strength 2. Coram: **Dr. M.K. Sharma** and *R.M. Lodha*, JJ. [Date of decision: 11-11-2009]

Randhir Singh v. State of Punjab, (2004) 13 SCC 129: 2005 SCC (Cri) 56, relied on

[8113] — Ss. 306 and 498-A — Bride burning — Death of housewife in nuptial home as a result of extensive burn injuries — *Nature of injuries sustained by deceased, expert opinion and surrounding situation at the scene of occurrence, establishing cause of death as suicidal and not accidental — Circumstantial evidence also establishing torture of deceased for dowry — Held on facts, circumstances in contextual facts and material on record substantiate the requirements of S. 113-A of Evidence Act and having regard to the language used in S. 498-A IPC, cruelty was writ large as regards the conduct of the accused husband towards the deceased wife — Circumstances unerringly point to the appellant as abettor and hence he was rightly convicted under Ss. 306 and 498-A and sentenced to 6 years' RI — Evidence Act, 1872 — S. 113-A* (Paras 4 to 11). *Pawan Kumar* v. *State of Haryana*, (2001) 3 SCC 628: 2001 SCC (Cri) 594: AIR 2001 SC 1324: 2001 Cri LJ 1679.

Bench Strength 2. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 13-3-2001]

Balwinder Singh v. State of Punjab, 1995 Supp (4) SCC 259: 1996 SCC (Cri) 59; Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235; State of Punjab v. Gurdip Singh, (1996) 7 SCC 163: 1996 SCC (Cri) 244; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487, distinguished

[8114] — Ss. 306 and 498-A — S. 113-A, Evidence Act, 1872 — Abetment to commit suicide and cruelty — Presumption — *Deceased alleged to have set herself on fire when none of the family members were present at home, within two years of marriage — Trial court convicting Appellants 1 and 2 (husband and mother-in-law of deceased) under Ss. 306 and 498-A IPC, which judgment affirmed by High Court — Appellant 1 dying during pendency of appeal — Only evidence against Appellant 2 was the dying declaration and an undated letter, Ext. P-1 alleged to be written by deceased — In the dying declaration it was categorically stated that occurrence was accidental and no quarrel had taken place and that there was no problem in her matrimonial home — Said statement read over to her and her thumb impression was put as she could not sign because of the burn injuries received by her — Held, there is nothing incriminating in the said statement against Appellant 2 and is rather helpful to appellant-accused — Ext. P-1 appeared to be written on day of occurrence which was found in the box seized from the room where the incident occurred — In the said letter she had given vent to all her expressions, feelings and contempt for the family — It was stated that she was unable to tolerate the atmosphere in the family in her matrimonial home and that she would prefer to live in hell because in-laws had done such acts which could not be mentioned — It was further mentioned that her mother-in-law had told that if she (S) was kept in their house then nothing would remain and hence, she did not want to become burden on herself, nor on her in-laws and that moment was the last time of her life — Evidence of PWs 1 and 3 (mother and sister-in-law of deceased) proving that at times the deceased was not treated well by the appellant — No direct evidence to establish abetment by appellant — In the said letter there was no reference of any act or incident whereby the appellants were alleged to have committed any wilful act*

(4)(iii) Presumption of abetment of suicide (S. 113-A, Evidence Act) *(contd.)*

or omission or intentionally aided or instigated the deceased to commit suicide — On the other hand, evidence showing that the deceased wanted to be married in a literate family and was not happy with the fact that her husband was illiterate and also with the status and condition of the family of her husband — She was also required to do some domestic work as the family was poor, for which she was not happy — She was of the viewpoint that her life has been spoilt by marrying Appellant 1 — Hence, on such slender evidence S. 113-A cannot be invoked to convict appellant under S. 306 — As far as allegation of cruelty is concerned, deceased had only mentioned that the attitude of the family was not good towards her and she was not treated well but there is no mention about any of such incident — PWs 1 and 3 had emphasised that the mother-in-law of the deceased used to ask the deceased to run hand-driven flourmill to which she was not habitual — In the year 1988 when incident occurred, the hand-driven flourmills were generally used by women in the poor families in the villages and even till today one may find use of the same in some villages in the country — Hence, asking one to run the same at that point of time may not amount to an act of cruelty — Further, Appellant 2 cannot be held liable for beatings given by Appellant 1, rather evidence shows that she had restrained her son — Possibility of embellishment as far as allegations against A-2 by PW 1 for beating the deceased expressed — Moreover, father of deceased (PW 2) had also not stated about cruelty being meted out to deceased in her matrimonial home — Hence, conviction of Appellant 2 set aside (Paras 1, 2, 9 to 12, 16 and 22 to 25). *Rajbabu* v. *State of M.P.*, (2008) 17 SCC 526: AIR 2008 SC 3212: 2008 Cri LJ 4301: (2008) 69 AIC 65 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **Dr. M.K. Sharma**, JJ. [Date of decision: 24-7-2008]

[8115] — Ss. 306 and 498-A — Suicide by a married woman — Abetment of — Presumption under S. 113-A in respect of — *Nature of, held, is discretionary — Said presumption, when can be drawn — Mere fact that the woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by the husband, held, does not automatically give rise to the presumption that suicide had been abetted by the husband — Court to look into all other circumstances of the case — It must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word "cruelty" in S. 498-A IPC — Only two allegations in FIR — Firstly, there were frequent quarrels between husband and wife sometimes resulting in physical assault on wife, on account of husband being addicted to consumption of "bhang" — Secondly, husband was aggrieved of the fact that his sister, married to PW 3 (brother of deceased), was not being properly looked after by PW 3 — Improvements in prosecution evidence — Second allegation, found untrue — On such slender evidence, held, presumption under S. 113-A could not be invoked — Conviction of husband under S. 306 IPC set aside — However, conviction under S. 498-A maintained — Husband sentenced to one-year RI — Evidence Act, 1872, S. 113-A*

Partly allowing the appeal preferred by the accused-husband,

Held :

Any person who abets suicide is liable to be punished under Section 306 IPC. In the instant case, there is no direct evidence to establish that the appellant husband either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide to bring the case within Section 107 IPC. In the absence of direct evidence the prosecution has relied upon Section 113-A of the Evidence Act under which the court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. (Para 12)

Unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113-A of the Evidence Act. Under Section 113-A, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. Thus, where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word "cruelty" in Section 498-A IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. (Para 13). *Hans Raj* v. *State of Haryana*, (2004) 12 SCC 257: AIR 2004 SC 2790: 2004 Cri LJ 1759.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-2-2004]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; Sanju v. State of M.P., (2002) 5 SCC 371: 2002 SCC (Cri) 1141; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107, relied on

***Followed** in Devi Lal v. State of Rajasthan, (2007) 14 SCC 176*

[8116] — Ss. 306 and 498-A — Suicide by married woman — Presumption against mother-in-law — If any — *Investigating agency not proceeding against husband of deceased who was a strong suspect but making scapegoat of his old mother, perhaps relying on age-old concepts of bickering between mother-in-law and daughter-in-law — Held, that is not universal truth — Also, court should appreciate evidence with an open mind without being driven by age-old concepts — Evidence, in instant case fell short of required standard of proof — Evidence Act, 1872, S. 114-A* (Paras 16 to 17). *Mankamma* v. *State of Kerala*, (2009) 10 SCC 164.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 8-10-2009]

[8117] — Ss. 306 and 498-A r/w S. 34 — Applicability — Accused alleged to have ill-treated and harassed the deceased for dowry and consequently abetted the committment of suicide by her — *PWs 1, 2 and 5 (father, mother and brother respectively of deceased) not stating anything about dowry demand — On the other hand, testimony of PW 1 showing that there was no ill-treatment by Accused 1 to 3, and ill-treatment, if any, was only by Accused 4 to 6 — Accused 4, sister-in-law was said to have ill-treated the deceased because she refused to give her son in adoption to Accused 4 who had no issue — Held, such version is unbelievable — But, even assuming that Accused 4 had demanded so, it cannot be said to be dowry demand so as to attract S. 498-A — Further, cheque of Rs 10,000 which was given to Accused 1 by PW 2 probabilises the defence version that it was given towards repairing the truck plied by Accused 1 which had met with an accident, rather than towards dowry demand as alleged — Held, in such circumstances interference by High Court with order of acquittal was not proper — Impugned order set aside* (Paras 13 to 22). *Bhaskar Ramappa Madar* v. *State of Karnataka*, (2009) 11 SCC 690: 2009 Cri LJ 2422.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 31-3-2009]

Bhagwan Singh v. State of Rajasthan, (1976) 1 SCC 15: 1976 SCC (Cri) 737; Megha Singh v. State of Haryana, (1996) 11 SCC 709: 1997 SCC (Cri) 267, limited to facts of case

[8118] — Ss. 306/34 — Suicide by a married woman — Abetment of, by her husband or relative of husband — Proof — *Demand of dowry by husband and his mother, established — Death of wife occurring within 7 years of marriage — Cruelty meted out to the victim inducing her to end the life by committing suicide — Held, conviction proper — However, in view of the peculiar facts of the case, custodial sentence reduced to three years — Evidence Act, 1872, S. 113-A*

The prosecution alleged that the accused persons (husband and in-laws of the deceased) started abusing the deceased from the very beginning after the marriage on the pretext that she should bring more money from her parents. The husband of the deceased had threatened her that if she fails to do so, he would arrange a second marriage. Thereafter, though the accused were paid a sum of Rs 10,000 by the parents of the deceased, they were not satisfied with the same. On 3-2-1985 the deceased again went to the house of her parents and told them that the appellants (husband and his mother) had sent her to bring more money. She also told that they had warned her that in case she did not bring the money, she would not be allowed to live. The father of the deceased (complainant) assured her that he along with his wife would visit very shortly the house of her in-laws after making arrangement of the money. On 7-2-1985 the complainant was present at his house when PW 10 came and told him that the deceased had died after putting herself on fire. The appellants along with *G* (father-in-law of the deceased) faced trial under Section 306 r/w Section 34 IPC in respect of abetment of commission of suicide by the deceased. *G* was acquitted, but the appellants were found guilty. While the trial court had imposed sentence of imprisonment for five years and fine of Rs 3000 each with default stipulation, the High Court by the impugned judgment maintained sentence of the husband but reduced the sentence so far as his mother was concerned.

Confirming the conviction but reducing the sentence,

Held :

In the present case the evidence of relatives, more particularly of the father and the mother of the deceased, clearly proves demand of dowry. The mere fact that whatever the father had obtained by way of pension or compensation for land acquisition had been spent, the capacity to pay may be affected; but it

(4)(iii) Presumption of abetment of suicide (S. 113-A, Evidence Act) *(contd.)*

does not prove that the accused persons did not make a demand. The trial court and the High Court have considered this aspect and given positive finding about the demand of dowry having been established. The death occurred during 7 years of marriage. In view of the elaborate analysis of the evidence by the courts below, there is no infirmity in the conclusion arrived at regarding guilt of the accused persons. The conviction is, therefore, confirmed. However, looking to the peculiar facts of the case the custodial sentence is reduced to 3 years in each case. (Paras 10 and 14). *Randhir Singh* v. *State of Punjab*, (2004) 13 SCC 129: 2005 SCC (Cri) 56: AIR 2004 SC 5097: 2004 Cri LJ 4985.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 12-10-2004]

State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107, relied on

[8119] — Ss. 306/34 and 498-A — Demand of dowry — Absence of — Proof in respect of — *Held, merely because the deceased wife did not tell her close friends about the demand of dowry or harassment that does not positively prove the absence of demand of dowry — In a traditional custom-bound society one may not discuss family discords — Where there is cogent and reliable evidence regarding demand of dowry, the said fact would be of no consequence — Dowry Prohibition Act, 1961, S. 4*

Great stress was laid on the victim's statement having not expressed before her friends about any harassment. In a tradition and custom-bound Indian society no conservative woman would disclose family discords before a person, however close he or she may be. Merely because the deceased had not told close friends about the demand of dowry or harassment that does not positively prove the absence of demand of dowry. The said circumstance has to be weighed along with the evidence regarding demand of dowry. If the evidence regarding demand of dowry is established, and is cogent and reliable then merely because the victim had not stated before some persons about the harassment or torture that would be really of no consequence. (Para 9). *Randhir Singh* v. *State of Punjab*, (2004) 13 SCC 129: 2005 SCC (Cri) 56: AIR 2004 SC 5097: 2004 Cri LJ 4985.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 12-10-2004]

(iv) Temperament of person committing suicide

[8120] — S. 306 — Abetment of suicide — Ingredients of offence, reiterated — Temperament of person committing suicide — Relevance — *Deceased was undoubtedly hypersensitive — Human sensitivity of each individual differs from the other — Different people behave differently in same situation*

An enquiry was conducted by the Security Officer of the University, the appellant herein, regarding the theft of a mobile phone. A dispute arose between deceased and *H*. Deceased committed suicide during enquiry, by jumping in front of a train, leaving a suicide note. In the suicide note it is stated that he did not commit the theft and he had committed suicide because he was falsely implicated in the theft case of a mobile phone. On the basis of the suicide note an FIR under Section 306 IPC was registered. In the said FIR, the appellant was not even named as an accused. A report under Section 173 CrPC was submitted only against *H*. Charges were framed against *H*. Complainant, being the father of the deceased filed a private complaint alleging that the appellant *S* and *M* were responsible for abetting the suicide of his son. The trial court, on the basis of the said complaint, summoned the appellant as well as *M* to face trial under Section 306 IPC. The appellant, aggrieved by the framing of the charge moved the High Court in the revision petition which was dismissed. The appellant submitted that whether it would be just and fair to compel the appellant to face the rigmarole of a criminal trial in the absence of any credible material against him? When the appellant was in no manner connected with this case and there was no credible material to connect the appellant with the crime, in this view of the matter, according to the appellant, it would be a futile exercise to compel him to undergo the rigmarole of a criminal trial.

Allowing the appeal,

Held :

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. (Para 25)

In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. (Para 26)

When the facts of this case are carefully scrutinised and critically examined in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under Section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under Section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside. (Para 27). *S.S. Chheena* v. *Vijay Kumar Mahajan*, (2010) 12 SCC 190: (2010) 3 UPLJ 223 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 12-8-2010]

Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750: (2010) 1 SCC (Cri) 917; Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107; Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605: (2010) 3 SCC (Cri) 367, relied on

[8121] — Ss. 306 and 107 — Abetment of suicide — Ingredients of, reiterated — Proof thereof — Requisites for — Susceptibility of person concerned to commit suicide — Relevance — Suicide by wife — *Held, abetment involves mental process of instigating or intentionally aiding a person in doing of a thing — There should be clear mens rea to commit offence under S. 306 — It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide — In instant case, neither were there any instances of instigation attributable to appellants nor even any allegations thereof — No proximate link between event when deceased (wife of A-1) was denied permission to use family car and she, her husband and child were made to use public transport instead to reach Theme Park where whole family was headed, allegedly being told "if you want to go by a car, you have to bring a car from your family", and factum of suicide — Deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences of everyday life — Appellants not being even remotely connected with occurrence, held, cannot be convicted under S. 306* (Paras 44 to 49). *M. Mohan* v. *State*, (2011) 3 SCC 626.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *S.S. Nijjar*, JJ. [Date of decision: 1-3-2011]

Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750: (2010) 1 SCC (Cri) 917; Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107; Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605: (2010) 3 SCC (Cri) 367; V.P. Shrivastava v. Indian Explosives Ltd., (2010) 10 SCC 361: (2010) 3 SCC (Cri) 1290; Madan Mohan Singh v. State of Gujarat, (2010) 8 SCC 628: (2010) 2 SCC (L&S) 682: (2010) 3 SCC (Cri) 1048, relied on

[8122] — Ss. 306 and 107 — Applicability of S. 306 — Sensitivity to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged — Relevance — Abetment of suicide — Conviction reversed — *Allegation against appellant-accused for harassing his deceased servant by accusing him of committing theft of gold ornaments, two days prior to servant's death — Appellant, allegedly, also demanded Rs 7000 from deceased, given in advance to him at the time he was kept in employment — Deceased, not able to bear harassment meted out to him, allegedly committed suicide — Appellant's conviction under S. 306, upheld by High Court — Sustainability — Held, abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing — Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained — In order to convict a person under S. 306, there has to be a clear mens rea to commit offence — It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide — Also, reiterated, if it appears to court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, conscience of court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty — Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in day-to-day life — In facts and circumstances of* *case, none of the ingredients of offence under S. 306 made out — Hence, appellant's conviction, held, unsustainable* (Paras 17, 13, 15 and 18). *Gangula Mohan Reddy* v. *State of A.P.*, (2010) 1 SCC 750.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 5-1-2010]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107; Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605, relied on

(5) Trial, Proof and Other issues

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(i) Acquittal justified

[8123] — S. 306 — Abetment of suicide — Acquittal justified — *Dowry death alleged — Witnesses, mother, aunt and cousin of the deceased, stating about demand of dowry and consequential ill-treatment to the deceased by her in-laws — But letters written by the deceased to her parents and sister not indicating that she had ever been taunted or humiliated on account of dowry demand or that she had ever been physically or mentally tortured in her in-laws' house — Uncorroborated testimony of chance witness found unreliable — Held, in the circumstances of the case, no interference with order of acquittal passed by the High Court called for. State of Punjab* v. *Gurdip Singh*, (1996) 7 SCC 163: 1996 SCC (Cri) 244.

Bench Strength 2. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 5-12-1995]

[**Ed.**: In para 7 it has been observed "if the allegation of such demand of dowry and the consequential torture on the newly married girl, Jyoti Bala, was there, it is reasonably expected that the charge under Section 304-B would have been made against the accused". With due respect it is submitted that in the present case the offence was committed much before addition of Section 304-B.]

[8124] — S. 306 — Abetment of suicide — Ingredients if made out — Acquittal justified — *Deceased caused death of two children by administering poison and then she herself committed suicide by consuming poison — In suicidal note left by deceased, she alleged that her husband was impotent and a sexual pervert who behaved like an animal, that he was trying to defame her for having a sexual relationship with other women and that she wanted to kill him but she tolerated the insulting manner in which he behaved — Appellant-accused in his statement under S. 313 CrPC alleged that deceased was a lesbian — He submitted that the fact that deceased took lives of innocent children and then committed suicide established that she was mentally unsound and that the suicide note at the most described accused as a sexual pervert but his behaviour could not be taken to be an act of abetting suicide — Held, ingredients of S. 306 not made out — Therefore, conviction recorded by the courts below cannot be maintained. Sohan Raj Sharma* v. *State of Haryana*, (2008) 11 SCC 215: AIR 2008 SC 2108: 2008 Cri LJ 2569: (2008) 2 KLT 287.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 7-4-2008]

Randhir Singh v. State of Punjab, (2004) 13 SCC 129; Kishori Lal v. State of M.P., (2007) 10 SCC 797, relied on

[8125] — S. 306 — Abetment of suicide — Involvement of accused mother-in-law, if made out — Acquittal justified — *On facts, no direct or circumstantial evidence that she tortured or harassed the deceased regarding inadequate dowry — Held, entitled to acquittal under S. 306 and under S. 4 of the Dowry Prohibition Act* (Para 8). *Arvind Kumar* v. *State of M.P.*, (2007) 12 SCC 681: (2008) 3 SCC (Cri) 356: AIR 2007 SC 2674: (2007) 57 AIC 54 (SC): 2007 Cri LJ 3741.

Bench Strength 2. Coram: *R.V. Raveendran* and **L.S. Panta**, JJ. [Date of decision: 24-7-2007]

[8126] — S. 306 — Abetment to commission of suicide — Absence of dependable evidence — *Conviction reversed. Chanchal Kumari* v. *UT, Chandigarh*, AIR 1986 SC 752.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *A. Varadarajan*, JJ. [Date of decision: 23-7-1985]

[8127] — S. 306 — Acquittal justified — Husband charged for abetment of suicide by wife — Doubtful testimony of prosecution witnesses — Material omissions in statement made under S. 161 CrPC — Unreasoned non-examination of an important witness — *High Court, reversing the order of acquittal by Sessions Judge, convicting accused under S. 306 IPC — High Court, held, acted beyond its jurisdiction by not adverting to the grounds and reasons given for discarding the testimony of witnesses by Sessions Judge — Prosecution having failed to establish their case beyond reason-*

able doubt, impugned order of High Court set aside — CrPC, 1973, Ss. 378 & 386. Anil Kumar v. *State of Punjab*, (2000) 9 SCC 455: 2001 SCC (Cri) 469.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-3-2000]

[8128] — S. 306 — Suicide by housewife by sprinkling kerosene on her body and setting herself on fire — Acquittal justified — *Trial court on appreciation of evidence finding that ingredients necessary to attract S. 306 not satisfied — High Court on reappreciation of evidence also affirming that conclusion and taking the view that there was no evidence to establish the case of instigation or abetment of the accused persons to commit suicide — In view of order of acquittal passed by the trial court and High Court, held, there was no justification for Supreme Court's interference with the same — CrPC, 1973, Ss. 378 and 386. State of Haryana* v. *Jasvinder Singh*, (2000) 9 SCC 387: 2001 SCC (Cri) 402.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-3-2000]

[8129] — Ss. 306, 107 and 498-A — Abetment of suicide — Conviction not sustainable — *On facts neither of the ingredients of abetment are attracted — Dying declaration of the deceased wife alone not sufficient to bring the acts of the appellants husband, mother-in-law and sister-in-law of the deceased, within S. 306 — Conviction for abetment of suicide merely on the allegation of harassment to the deceased not sustainable — Appellants not charged under S. 498-A though offence had been committed after commencement of that section — Prejudice would be caused if the appellants are involved under S. 498-A in substitution particularly when the husband and mother-in-law have undergone the sentence imposed on them and the sister-in-law has also undergone some sentence. Mahendra Singh* v. *State of M.P.*, 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157.

Bench Strength **2**. Coram: *M.M. Punchhi* and *Sujata V. Manohar*, JJ. [Date of decision: 7-2-1995]

Followed in Kishori Lal v. State of M.P., (2007) 10 SCC 797: (2007) 3 SCC (Cri) 701

[8130] — Ss. 306 and 498-A — Benefit of doubt — Conflicting dying declarations — Charge of abetment of suicide — Death from burn injuries — *First dying declaration stating that while the deceased was pumping the stove, it burst suddenly and her saree caught fire and that hearing her shouts her husband rushed towards her and tried to save her — Subsequent dying declarations stating that being angry with her husband, the deceased herself set her body ablaze — In such circumstances, guilt of abetting suicide under S. 306 IPC, held, not proved beyond reasonable doubt — Hence, the accused husband, held, entitled to benefit of doubt — Evidence Act, 1872, S. 32(1)*

The appellant, his wife *S* and their child resided in a rented house separate from the appellant's parents. *S* gradually became aggrieved of the behaviour of the appellant including his returning late in the night and that too in a drunken state, neglecting of his business, neglecting *S* and neglecting the child. Once, when the appellant allegedly returned home in the midnight in a drunken state there was a quarrel between him and *S* with the result that *S* poured kerosene on her person and set herself ablaze. She was immediately taken to a private hospital and thereafter to Government Medical College and Hospital. In the noon following that night, one *H* recorded the dying declaration of *S*. On the same day in the afternoon, the Executive Magistrate recorded her dying declaration. On the next day, one *HC* recorded her statement. Six days later, *S* succumbed to the burn injuries. The appellant and his father were tried under Section 306 IPC. The prosecution version is that the subsequent dying declarations made by *S* alleging that she had committed suicide because there used to be quarrels between her and her husband (the appellant) were corroborated by two letters allegedly written by *S* to her parents. That the so-called first written dying declaration could not render the voluminous evidence untrustworthy. The trial court, after considering the evidence, held that the offences had been proved against the appellant. After unsuccessfully approaching the High Court, the appellant filed the present appeal by special leave.

Allowing the appeal,

Held :

In the first dying declaration *S* stated that while she was pumping the stove it suddenly burst and her saree caught fire. She shouted loudly and then her husband rushed towards her and extinguished the fire. Nothing was alleged against the appellant in it. Rather it showed that the appellant tried to save *S*. In the subsequent dying declaration *S* is said to have stated that she poured kerosene on her and set herself ablaze because she was angry with her husband. (Para 12)

In view of the different dying declarations it would not be safe to uphold the conviction of the appellant and he has to be given the benefit of doubt. It could not be said in the present case that

(5)(i) Acquittal justified *(contd.)*

the prosecution had proved the appellant's guilt under Section 306 IPC of abetting the suicide beyond reasonable doubt. (Para 16). *Sanjay* v. *State of Maharashtra*, (2007) 9 SCC 148: (2007) 3 SCC (Cri) 91: AIR 2007 SC 1368: 2007 Cri LJ 1801: (2007) 52 AIC 20 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 8-3-2007]

[8131] — Ss. 306 and 498-A — Improvements made in testimony by two star prosecution witnesses from time to time — Reliability of — Acquittal justified — *Appeal against acquittal of accused — Copy of evidence of said witnesses having not been produced for appreciation before SC, held, High Court was justified in acquitting the accused persons by reappreciating the evidence — CrPC, 1973, S. 386. State of Haryana* v. *Jai Parkash*, (2002) 9 SCC 663: 2003 SCC (Cri) 1523: AIR 2000 SC 3569 (2).

Bench Strength **2**. Coram: *G.B. Pattanaik* and *R.P. Sethi*, JJ. [Date of decision: 14-3-2000]

(ii) Circumstantial evidence

[8132] — Ss. 306 and 498-A — Suicide or accidental death — Circumstantial evidence — *Prosecution case that appellant's wife committed suicide by jumping into a tank near the field where she was working at about 1.30 p.m. — Trial court accepted the prosecution case on the basis of the facts that during the course of preparation of "mahazar" SI found a pair of chappals on the bank of the tank, that there were no visible signs of somebody slipping into the tank and that deceased was being ill-treated by her appellant husband — No other evidence adduced by prosecution — Three other persons who were alleged to have reached the spot immediately after the incident not examined by prosecution — Held, circumstantial evidence relied on by prosecution not sufficient to uphold conviction of appellant under Ss. 306 and 498-A*

Had the three other witnesses who were alleged to have reached the spot immediately after the incident been examined they would have thrown some light as to whether it was a suicide or not. The presumption drawn on the basis of the presence of chappals on the side of the tank that it was suicide, is not on sound reasoning. If somebody wants to wash the foot, normally the chappal would be kept by the side of the tank and only after removing the chappal one would touch the water. The absence of slippery marks also cannot be a valid reason for coming to the conclusion that it was a case of suicide. It is true that the prosecution had produced a series of letters allegedly written by the deceased to prove that she was being ill-treated by her husband and that her life was miserable. Even if it is accepted that the contents of the letters are true, that would only prove that she was being ill-treated by her husband and if it was an accidental death the appellant could not have been found guilty of the offence under Section 498-A or 306 IPC. The incident had happened at 1.30 p.m. in broad daylight which also may not advance the theory of the prosecution of suicidal death. (Para 3)

These facts were not correctly considered and appreciated by the Sessions Court as well as the High Court and the only evidence in this case adduced by the prosecution is not sufficient to hold that the appellant had committed the offence under Sections 498-A and 306 IPC. The circumstantial evidence relied on by the prosecution is not conclusive in nature and for this sole reason the conviction and sentence entered against the appellant on both counts is set aside. (Para 4). *N.D. Nanjappa* v. *State of Karnataka*, (2007) 14 SCC 763.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision: 19-1-2006]

(iii) Conviction justified

[8133] — S. 306 — Charge of abetment of suicide by husband — Proof — Suicide committed by wife by pouring kerosene on her person and setting her body on fire soon after marriage — Conviction confirmed — *Constant harassment, humiliation and torture of wife by appellant husband for bringing insufficient dowry articles and his persistent demand for more sophisticated articles proved by reliable evidence of PWs — Defence of accused husband that his wife was suffering from mental ailment belied by evidence of PWs — Fact that deceased sustained 100% burn injuries showing that neither accused made any effort to save his wife from committing suicide nor he called any doctor though he was present in the house when the incident took place — This apathetic conduct of accused provided an additional circumstance in the link of the ocular version of PWs who supported prosecution case in its entirety — Courts below found accused guilty — Evaluation of findings of trial court and High Court not suffering from any illegality, manifest error or perversity, nor those courts overlooked or wrongly discarded any vital piece of evidence against accused — Held findings of fact of courts below do not call for any interference by Supreme Court in appeal — Hence conviction and sentence of 7 years' RI under S. 306 and 6 months' RI under S. 4 of the Dowry Prohibi-*

tion Act and fine of Rs 5000 with default clause against the husband upheld — Dowry Prohibition Act, 1961, S. 4 — CrPC, 1973, Ss. 374 and 386 (Paras 11 to 14). *Arvind Kumar* v. *State of M.P.*, (2007) 12 SCC 681: (2008) 3 SCC (Cri) 356: AIR 2007 SC 2674: (2007) 57 AIC 54 (SC): 2007 Cri LJ 3741.

Bench Strength 2. Coram: *R.V. Raveendran* and **L.S. Panta**, JJ. [Date of decision: 24-7-2007]

[8134] — Ss. 306 and 498-A — Abetment of suicide — Death of a married woman by burning — Conviction confirmed — *High Court giving cogent and convincing reasons for ruling out defence theory of accident — Finding of High Court that the deceased had been treated cruelly by the appellants, husband and mother-in-law of deceased, confirmed — Reversal of acquittal upheld — Evidence Act, 1872, S. 113-A. Naresh Kumar* v. *State of Haryana*, 1994 SCC (Cri) 502.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 7-4-1993]

(iv) Dying declaration

[8135] — Ss. 306 and 498-A — Abetment of suicide — Death by burning — Dying declaration not credible — Conviction set aside — *Allegation of dowry demand made by appellants — Trial court convicted appellants under Ss. 306 and 498-A — High Court upheld conviction, relying on dying declaration recorded by SDM — Primary evidence was, dying declaration recorded by SDM — In deceased's statement recorded by doctor before IO, she had stated about an accident — Repeated efforts had been made by IO to record her dying declaration, but failed because of incapacity of victim — Dying declaration was allegedly recorded by SDM after an application was moved before him by PW 10 — Fitness certificate from doctor not obtained prior to recording dying declaration — Dying declaration, held, was manoeuvred at instance of PW 10 — Actual incident rested exclusively on statements of PWs 2 and 10 — Fact regarding oral dying declaration omitted in statements under S. 161 CrPC — Hence, held, statements of PWs 2 and 10 also, inspire no confidence* (Paras 11 to 17). *Subhash* v. *State of Haryana*, (2011) 2 SCC 715.

Bench Strength 2. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 16-12-2010]

[8136] — Ss. 306 and 498-A r/w S. 34 — Dowry death — Burn injuries upto 94% — Alleged dying declaration exonerating the accused, held, not genuine — Victim on oxygen — No case of prosecution that deceased *M* made any dying declaration — *But doctor (PW 5), who conducted the post-mortem, stating during cross-examination that a dying declaration was made by M when she was in hospital — This alleged dying declaration supportive to the defence — PW 5 was not the doctor who was treating M when she was alive — Death within half an hour after the alleged declaration made — Declaration admitted in evidence on behest of defence by trial court — Source of production of this document neither mentioned in trial court's judgment nor was there any evidence to prove the said document — Held, High Court rightly rejected the said dying declaration and rightly set aside the acquittal by trial court based on it — Evidence Act, 1872, S. 32(1)*

Until PW 5, the doctor who conducted the post-mortem was examined, the defence did not, in any manner, indicate or disclose the factum of the existence of a dying declaration. No suggestion was put to the other prosecution witness as to the existence of a dying declaration. It is very surprising that a doctor who admittedly did not treat a patient during her lifetime would be called upon to certify the fitness of the patient to make a dying declaration when other doctors who treated the said patient were available for the said purpose. From the evidence on record also, it is clear that the deceased was in no condition to make a dying declaration. She had almost 95% burns and she was put on oxygen right from the moment she was brought to the hospital and continued to be on oxygen till she died. In such circumstances, it is difficult to believe that she could have made a dying declaration when she was not even capable of breathing by herself. The evidence on record shows that she died within about half an hour after making the alleged dying declaration. All these circumstances lead to one and the only conclusion that this dying declaration is not a genuine document and the High Court was justified in rejecting the same on that basis. (Para 7). *Kamalakar Nandram Bhavsar* v. *State of Maharashtra*, (2004) 10 SCC 192: AIR 2004 SC 503: 2004 Cri LJ 615: (2004) 14 AIC 336 (SC).

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-11-2003]

(v) Other issues

[8137] — Ss. 306, 294(b) and 323 — 7 days' delay in registering FIR — 40 days' delay in sending it to court — Effect — *Trial court convicting appellant-accused under Ss. 306 and 294(b) — Co-accused convicted under Ss. 306 and 323 — Both accused acquitted in appeal — In revision petition High Court converting acquittal into conviction with reduced sentence — Sustainability —*

(5)(v) Other issues *(contd.)*

Held, unexplained delay was large — Judgment of High Court set aside and matter remitted for considering the effect of delay keeping in view the scope and ambit of S. 401(3) — CrPC, 1973, Ss. 154 & 173 and 401(3) (Paras 16 to 18). *Kannika* v. *Mookaiah*, (2009) 3 SCC 735: (2009) 2 SCC (Cri) 197: AIR 2009 SC 1919: (2009) 76 AIC 215 (SC). Bench Strength **2.** Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-2-2009]

[8138] — Ss. 306 and 506 r/w S. 120-B — Inter-religious/inter-class marriage — Abetment of suicide and criminal intimidation of one spouse — Interference with investigation already concluded — Unsustainability — *CBI investigation ordered by Single Judge of High Court and pursuant thereto charge-sheet filed under S. 120-B r/w Ss. 306 and 506 — Investigation transferred to CBI due to nexus alleged between police officials and girl's relatives — In appeal Division Bench directing CBI to start investigation afresh and register a case of murder against accused — Sustainability of — Held, once an FIR had been registered lawfully and investigation had been conducted, leading to filing of charge-sheet before competent court of law for trial of accused persons, there was absolutely no justifiable reason for Division Bench to direct CBI to start investigation afresh after three years — Fresh investigation into same allegations would be a futile exercise more particularly when there was no adverse comment on concluded investigation by CBI — De novo investigation would result in delay of justice — Single Judge's orders, restored — Any action against officers of State Police Department, as directed by Single Judge, to be in accordance with law and service conditions applicable to them and after affording them opportunity of hearing — CrPC, 1973, Ss. 173(8) & (2) and 156*

One *RR*, the deceased, a Computer Graphics Engineer fell in love with a girl, namely, *P*, daughter of *AK*. On 18-8-2007, *RR* married *P* under the Special Marriage Act, 1954 in the Marriage Registration Office. On 31-8-2007, *P* left her father's house and started living in her husband's home at Tiljala within the jurisdiction of Karaya Police Station, Kolkata. The couple informed the Police Commissioner, Deputy Commissioner of Police (South), the Superintendent of Police, 24 Parganas (S), the Officer-in-charge, Karaya Police Station and the Officer-in-charge, Bidhan Nagar Police Station about their marriage by a letter dated 31-8-2007 along with a copy of the marriage registration certificate. On the same day i.e. 31-8-2007, *P* informed her father about her marriage with the deceased and also of the fact of her residing with her husband in her in-laws' house. On the very same day, in the evening, around 6.30 p.m., *AK*, *P*'s father, *AS*, maternal uncle of *P* and *T*, brother of *AK* went to the house of the deceased and persuaded him and his family members to send *P* back to their house but *P* did not agree to their request. On the same night, *AK* lodged a complaint at Karaya Police Station and consequently two police officers went to the residence of the deceased to create mental pressure on him.

On 1-9-2007, early in the morning, *AK* and *AS* threatened the deceased that if *P* did not return back to her parents' house, they would face dire consequences. On the same day, *T* lodged a complaint with the Deputy Commissioner of Police alleging that *P* has been taken away by the deceased by deceitful means with intent to marry her. On various dates, the Deputy Commissioner of Police (DD) called *P* and her husband at his office and asked *P* to go back to her parents' house, but she refused to accept the proposal.

On 8-9-2007, *T* made another application to the police that *P* has been detained forcibly by the deceased. On the action of the complaint, the Sub-Inspector went to the residence of the deceased and summoned the couple to Police Headquarters, Lal Bazar, Kolkata and the custody of *P* was handed over to her uncle *AS* with condition that she will return to her husband's house after one week.

On 21-9-2007, the dead body of *RR* was found on the railway tracks between Dum Dum and Bidhan Nagar Road Stations with injuries and the head smashed. On the same day, *RB* the brother of the deceased, lodged a written complaint with Karaya Police Station suspecting the hands of *AK* behind the unnatural death of his brother and the same was registered. The body of the deceased was sent for post-mortem. The post-mortem report revealed that the death was due to 10 injuries on the body and consistent with the injuries caused by train running at moderate speed. On 24-9-2007, the case was taken over by the Criminal Investigation Department (CID). CID carried out investigation and examined various witnesses including *AK* and his family members.

The mother and brother of the deceased filed a writ petition before the High Court. The Single Judge of the High Court, after hearing the parties, by an interim order dated 16-10-2007 directed CBI to investigate into the cause of death of the deceased and to file a report in a sealed cover before the Court within two months. Pursuant to the abovesaid direction, CBI registered case under Section 120-B read with Sections 302 and 506 of the Penal Code, 1860 (IPC) against *AK* and others.

On 8-1-2008, CBI filed report before the Single Judge which indicated that the deceased committed suicide by lying before the train and sought permission to file charge-sheet against *AK*, his brother *T, AS, SM, AJ, SC* and *K* under Section 120-B read with Sections 306 and 506 IPC. After considering the case, the Single Judge of the High Court, by final order dated 14-8-2008, granted liberty to CBI to proceed in accordance with law for filing charge-sheet before a competent court under Section 173(2) CrPC. Liberty was also reserved to CBI to conduct further investigation before it actually files the charge-sheet. Pursuant to that order, CBI continued with the investigation and filed a charge-sheet under Section 120-B read with Sections 306 and 506 IPC against *AK, T, AS, SC* and *K, SM, AJ*.

Aggrieved by the judgment and order dated 14-8-2008 passed by the Single Judge, *AK* and others filed appeals before the Division Bench of the High Court. The Division Bench of the High Court heard all the appeals together and by the impugned judgment and order dated 18-5-2010 set aside the judgment and order dated 14-8-2008 passed by the Single Judge and directed CBI to start investigation afresh in accordance with law by treating the complaint dated 21-9-2007 filed by the brother of the deceased as FIR and to register a case of murder and further directed to complete the investigation preferably within a period of four months from the date of the order. Aggrieved thereby, the appellants were before the Supreme Court. The Supreme Court held as above.

Disposing of the appeals in terms below,

Held :

The Division Bench has erred in directing CBI to start investigation afresh in accordance with law by treating the complaint of the brother of the deceased as FIR and to register a case of murder. All this had already been done by CBI three years back. Once an FIR had been registered lawfully and investigation had been conducted leading to filing of charge-sheet before the competent court of law for the trial of accused persons, absolutely, there was no justifiable reason for the Division Bench to direct re-registration of the same by lodging another FIR after three years and proceed with the investigation which had already been concluded by CBI. The Division Bench of the High Court has failed to note that the fresh investigation into the same allegation would be a futile exercise and no purpose would be served by investigating the case afresh, more particularly, when there is no adverse comment on the investigation carried out by CBI. The de novo investigation by lodging another FIR would result in delay of justice since the Division Bench has ordered to conduct the same investigation under the same sections started three years back by the same agency, namely, CBI. Therefore, reasonings of the Division Bench for a fresh investigation by CBI is not sustainable. (Paras 53 to 55)

Regarding the directions passed by the High Court about the conduct of the officers and taking action against them on the departmental side, it is clarified that the department concerned is free to take appropriate action in accordance with the statute/rules/various orders applicable to them, after affording reasonable opportunity of hearing. The Single Judge rightly deprecated the conduct of the police officers in interfering with the conjugal affairs of the couple even without any formal complaint against any one of them. (Para 56). *Ashok Kumar Todi* v. *Kishwar Jahan*, (2011) 3 SCC 758. Bench Strength 2. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 1-3-2011]

(vi) Quashment or continuance of proceedings

[8139] — S. 306 — Abetment of suicide — Quashment of charge — Not justified — *Held, on facts, High Court in revision was not justified in quashing the charge under S. 306 holding that the suicide was not the result of abetment by accused-respondent merely because suicide was committed 20 days after deceased was accused of stealing 10 gm of gold — Whether or not the allegation was based on truth would have to be decided on basis of evidence presented by prosecution before the Court — CrPC, 1973, S. 397* (Para 4). *State of Haryana* v. *Surinder Kumar*, (2000) 10 SCC 337. Bench Strength 2. Coram: *G.T. Nanavati* and *S.N. Phukan*, JJ. [Date of decision: 15-10-1999]

Netai Dutta v. State of W.B., (2005) 2 SCC 659, followed

[8140] — S. 306 — Power to summon other persons appearing to be guilty — Material to be considered — Test to be applied — Relevance of defences raised by the persons summoned — *Deceased committing suicide by consuming "sulphos" tablets after accused S had delivered nude photographs to her house and her paternal uncle's house and thereafter telephoned her that her father and uncle must have received his gifts — Alleged that prior to said incident, S always used to follow her despite her protests and when she*

(5)(vi) Quashment or continuance of proceedings *(contd.)*

*refused his marriage proposal, S and appellants threatened and blackmailed her — However, charge-sheet filed only against **S** — When witnesses deposed before trial court that it was not only **S** but appellants also who had threatened to "defame" the deceased, and on perusing dying declaration wherein deceased had categorically named them as active participants in abetting her to commit suicide, trial court summoned them as additional accused in connection with FIR under Ss. 306/509/420/120-B/456 IPC — Sustainability — Held, only because no charge-sheet had been submitted against certain persons, same by itself, would not be a sufficient ground to decline to exercise jurisdiction to add other persons as accused on considering evidence adduced before court by prosecution — Dying declaration together with deposition of witnesses prima facie shows participation of appellants in alleged offence — It cannot be concluded that said evidence, even if given face value and taken to be correct in its entirety had not disclosed commission of an offence or on basis thereof judgment of conviction could not be recorded at all — Defences raised by appellants may or may not be accepted, but at present stage evidence adduced discloses some offence — Hence, summoning of appellants, upheld — CrPC, 1973, S. 319* (Paras 9, 10, 15 to 18). *Harbhajan Singh* v. *State of Punjab*, (2009) 13 SCC 608: (2009) 82 AIC 29 (SC): 2009 Cri LJ 4429.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 29-7-2009]

Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544: (2009) 1 SCC (Cri) 889, distinguished

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, considered and relied on

Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532; Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203; Kailash v. State of Rajasthan, (2008) 14 SCC 51: (2009) 1 SCC (Cri) 1006; Sarabjit Singh v. State of Punjab, (2009) 16 SCC 46, relied on

[8141] — Ss. 306 and 107 — Abetment of suicide — Proceedings against alleged abetment of suicide initiated without any factual foundation therefor — *Fitness for interference by High Court with, under S. 482 CrPC — Following the reasons given in* Netai Dutta *v.* State of W.B., *(2005) 2 SCC 659, such proceedings quashed — CrPC, 1973, S. 482* (Para 3). *Pawan Kumar Bhalotia* v. *State of W.B.*, (2005) 2 SCC 661: 2005 SCC (Cri) 545: AIR 2005 SC 1531: 2005 Cri LJ 1810.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Tarun Chatterjee*, JJ. [Date of decision: 28-2-2005]

[8142] — Ss. 306 and 107 — Abetment of suicide — Quashment of charge — When warranted — Appellant not named in FIR — *Order of framing a charge under S. 306 IPC on basis of allegation of father of deceased — Allegations not substantiated — Held, suicide note does not even remotely connect appellant with offence of abetment — Order framing charge against appellant is unsustainable — CrPC, 1973, Ss. 228 and 482* (Paras 14, 21 to 27). *S.S. Chheena* v. *Vijay Kumar Mahajan*, (2010) 12 SCC 190: (2010) 3 UPLJ 223 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 12-8-2010]

[8143] — Ss. 306 and 107 — Quashing of charges/criminal proceedings under S. 306 IPC — *Allegation that appellant wife who belonged to higher caste used to harass the deceased husband who belonged to lower caste and was working as a Civil Judge — Held, High Court rightly appreciated material on record before quashing the complaint — CrPC, 1973, S. 482* (Para 8)

The present Respondent 1 was married to *MA* (hereinafter referred to as "the deceased") in the year 2003. According to the prosecution, the deceased was working as a Civil Judge. Respondent 1's in-laws did not approve of the marriage as Respondent 1 belonged to an upper caste while the deceased belonged to the Scheduled Caste. A child was born to them. The deceased consumed some poisonous substance and lost his life in 2007.

It was the case of the prosecution that during enquiry it surfaced that Respondent 1-accused used to harass the deceased and subject him to mental cruelty as she belonged to higher caste and she did not like association of the deceased with his parents and relatives. This was stated to be the ground of suicide and the accused abetted the suicide. Charge-sheet was filed in the Court of Magistrate.

An application under Section 482 of the Code was filed questioning the order passed by the learned Magistrate. The High Court quashed the proceedings. It was held that the ingredients of Section 306 were not established.

Dismissing the appeal, the Supreme Court held as above. *Kailashi Bai* v. *Aarti Arya*, (2009) 13 SCC 548: (2009) 79 AIC 256 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 27-4-2009]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, applied

[8144] — Ss. 306 and 107 — Quashment of proceedings — When warranted — Circumstances envisaged — Alleged abetment of suicide — *A-1 (husband of deceased) and A-3 (wife of A-2 who* *was elder brother of A-1) alleged to have tortured deceased on some pretext or other, especially in connection with getting a car from her father — No proximate link between event when deceased (wife of A-1) was denied permission to use family car and she, her husband and child were made to use public transport instead to reach Theme Park where whole family was headed, allegedly being told "if you want to go by a car, you have to bring a car from your family", and factum of suicide — Deceased committing suicide four days later — No allegations of dowry demand, nor any instances of instigation alleged against appellants A-4 and A-5, who were elder brother and mother respectively of A-1 — Hence held, High Court was not justified in rejecting appellants' application for quashing charges under S. 306 IPC — Proceedings quashed — CrPC, 1973, S. 482* (Paras 51 to 68). *M. Mohan* v. *State*, (2011) 3 SCC 626.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *S.S. Nijjar*, JJ. [Date of decision: 1-3-2011]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203: AIR 1945 PC 18; Lala Jairam Das v. King Emperor, (1944-45) 72 IA 120: AIR 1945 PC 94; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 1 Cri LJ 1: (1964) 2 SCR 336; Connelly v. Director of Public Prosecutions, 1964 AC 1254: (1964) 2 WLR 1145: (1964) 2 All ER 401 (HL); Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Devendra v. State of U.P., (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461; State of A.P. v. Gourishetty Mahesh, (2010) 11 SCC 226: (2011) 1 SCC (Cri) 142, relied on

[8145] — Ss. 306 and 294(b) — Allegations required to ground proceedings under — Quashing of FIR — Specific allegations and definite material to prima facie sustain allegations — Need for — Abetment of suicide — *Suicide note of deceased as well as FIR failing to depict any intention of accused (superior officer of deceased) that deceased might commit suicide — Hence held, if prosecution was allowed to continue on basis of such absurd allegations it would be difficult for every superior officer to work — Merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing charge under S. 306 IPC — As far as S. 294(b) IPC was concerned, there was nothing in FIR or in suicide note to prima facie satisfy ingredients thereof — Neither was there any proximity nor any nexus between so-called suicide (if at all it was one for which also there was no material on record) and any of the alleged acts on part of appellant — Courts in such cases have to be extremely careful as main person is not available for cross-examination by appellant-accused — Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential), it would be hazardous to ask appellant-accused to face trial — CrPC, 1973, S. 482* (Paras 13 to 18). *Madan Mohan Singh* v. *State of Gujarat*, (2010) 8 SCC 628: (2010) 2 SCC (L&S) 682: (2010) 3 SCC (Cri) 1048.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 17-8-2010]

Netai Dutta v. State of W.B., (2005) 2 SCC 659: 2005 SCC (Cri) 543; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[8146] — S. 306 r/w S. 34 and S. 107 — Abetment of suicide — Framing of charge — Essentials — *Held, a person is said to have abetted in doing a thing, when he "instigates" others to do it — Further held, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred — Appellant charged that he along with other two accused "in furtherance of common intention", mentally tortured* ***JS*** *(the deceased) and thereby abetted him to commit suicide — Apart from the suicide note, statements recorded by the police during investigation, showing that on account of business transactions with the accused, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do —* ***Prima facie****, the conduct of the appellant and his accomplices appeared such that the deceased was left with no other option except to end his life — Hence, impugned judgment upholding order of trial court framing charge for offence under S. 306 r/w S. 34, calls for no interference — CrPC, 1973, S. 228 & S. 397 r/w Ss. 401 & 482* (Paras 15, 19 and 21 to 24). *Chitresh Kumar Chopra* v. *State (NCT of Delhi)*, (2009) 16 SCC 605.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 10-8-2009]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088, followed

(vii) Relatives of husband

See also under S. 304-B and S. 498-A

[8147] — **S. 306 — Abetment of suicide — Conviction on general allegations, maintainability of** — *Testimonies of the witnesses pointed towards mother-in-law of deceased — General allegations with regard to the other accused found mention only in statement of father of the deceased — Mother-in-law acquitted — In this background maintaining conviction of the appellant on the basis of this evidence, held, not possible* (Para 11). *Anand Kumar* v. *State of M.P.*, (2009) 3 SCC 799: (2009) 2 SCC (Cri) 28: AIR 2009 SC 2155.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 20-2-2009]

[8148] — **S. 306 — Abetment of suicide — Conviction reversed — Accused mother-in-law alleged to have ill-treated the deceased abetting her to commit suicide** — *Testimonies of PWs not indicating strained relations between accused and deceased, nor pinpointing that it was only because of cruel behaviour of accused that deceased committed suicide — In her last purported letter deceased had merely stated that accused was a "horrible lady" and that she did not approve of anything done by the deceased — Held, said expression was not such a strong expression to conclude that it was only and only because of behaviour of accused that deceased committed suicide — Letter Ext. P-8 written by sister-in-law of deceased although evidencing that accused may not have had a civil tongue, yet was not sufficient to conclude that accused was so bad and ill-treated the deceased to drive her to commit suicide — In such circumstances it cannot be inferred that accused abetted the deceased to commit suicide — Besides, what the ill-treatment was and frequency thereof remained a mystery which was never brought forth* (Paras 6 to 15). *Mankamma* v. *State of Kerala*, (2009) 10 SCC 164.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 8-10-2009]

[8149] — **S. 306 — Sentence — Extenuating circumstances** — *Death of a married woman by burning — Conviction of husband and mother-in-law of deceased for abetment of suicide — Husband not present at the time of incident — Mother-in-law immediately taking the deceased to the hospital and rendering all possible assistance — Sentence of 5 years' R.I. reduced to 2 years' R.I. Naresh Kumar* v. *State of Haryana*, 1994 SCC (Cri) 502.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 7-4-1993]

[8150] — **Ss. 306, 107 and 498-A — Abetment of suicide — Conviction not sustainable** — *On facts neither of the ingredients of abetment are attracted — Dying declaration of the deceased wife alone not sufficient to bring the acts of the appellants husband, mother-in-law and sister-in-law of the deceased, within S. 306 — Conviction for abetment of suicide merely on the allegation of harassment to the deceased not sustainable — Appellants not charged under S. 498-A though offence had been committed after commencement of that section — Prejudice would be caused if the appellants are involved under S. 498-A in substitution particularly when the husband and mother-in-law have undergone the sentence imposed on them and the sister-in-law has also undergone some sentence. Mahendra Singh* v. *State of M.P.*, 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157.

Bench Strength **2**. Coram: *M.M. Punchhi* and *Sujata V. Manohar*, JJ. [Date of decision: 7-2-1995]

Followed in Kishori Lal v. State of M.P., (2007) 10 SCC 797: (2007) 3 SCC (Cri) 701

[8151] — **Ss. 306, 304-B and 498-A — Suicide — Dowry death — Charges framed under Ss. 304-B and 498-A — Absence of charge under S. 306 — Effect of** — *Held, inconsequential — On facts, father-in-law convicted under Ss. 498-A and 304-B, whereas mother-in-law convicted under S. 498-A but acquitted under S. 304-B — CrPC, 1973, Ss. 221, 218 and 215* (Paras 11, 9, 10 and 12). *Kaliyaperumal* v. *State of T.N.*, (2004) 9 SCC 157: 2004 SCC (Cri) 1417: AIR 2003 SC 3828: 2003 Cri LJ 4321.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-8-2003]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271, followed

[8152] — **Ss. 306 and 498-A — Involvement of appellant (father-in-law of the deceased) in crime doubted by trial court on the ground that he was old and feeble-sighted — High Court reversing the acquittal by trial court** — *Evidence of PW 2 that the appellant made a specific demand of Rs 25,000 as dowry before the Panchayat, not dislodged in any manner during the cross-examination — Held, the High Court rightly relied upon this evidence to convict the appellant — Tests laid down in Ramesh Kumar case, held, satisfied — However, having regard to the old age of appellant and the fact that the incident took place about 14 years ago, maintaining the fine, sentence reduced to period already undergone — Evidence Act, 1872, S. 113-A* (Paras 3, 4 and 5). *Devi Ram* v. *State of Haryana*, (2002) 10 SCC 76.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *Doraiswamy Raju*, JJ. [Date of decision: 17-1-2002]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, applied

[8153] — Ss. 306 and 498-A — Suicide by married woman — Presumption against mother-in-law — If any — *Investigating agency not proceeding against husband of deceased who was a strong suspect but making scapegoat of his old mother, perhaps relying on age-old concepts of bickering between mother-in-law and daughter-in-law — Held, that is not universal truth — Also, court should appreciate evidence with an open mind without being driven by age-old concepts — Evidence, in instant case fell short of required standard of proof — Evidence Act, 1872, S. 114-A* (Paras 16 to 17). *Mankamma* v. *State of Kerala*, (2009) 10 SCC 164.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 8-10-2009]

[8154] — Ss. 306 and 498-A r/w S. 34 — Dowry death/Bride burning — Ill-treatment and harassment of bride — *Suicide committed by her within 7 years of marriage — Involvement of husband, mother-in-law and sister-in-law, held on facts, established — However, father-in-law acquitted as there was no evidence to hold him guilty*

Considering the circumstances in the case, the fact that the victim was treated badly, consequent to which she had to commit suicide can very well be accepted. (Para 10)

The evidence of PW 2 shows that this witness stated that the deceased had told her that her mother-in-law, sister-in-law and husband were ill-treating her on the ground that she was dark-complexioned and that she was hard of hearing. PW 3 also states that the deceased had complained about her husband, mother-in-law and sister-in-law beating her. This witness also stated that the deceased had told her that because of her harassment, she may even commit suicide. PW 1, the brother similarly states that the deceased had complained about the ill-treatment meted out to her by her husband, mother-in-law and sister-in-law. It is clear from the evidence of these witnesses that so far as the harassment meted out to the deceased is concerned, the said prosecution witnesses have consistently spoken about the involvement of the husband, mother-in-law and sister-in-law. Therefore, the High Court was justified in holding these accused persons responsible for offences punishable under Sections 306 and 498-A read with Section 34 IPC, because by this harassment meted out to the deceased, these accused persons have abetted her suicide. But so far as the father-in-law of the deceased is concerned, there is no evidence at all to hold him guilty of the said offence. (Para 10). *Kamalakar Nandram Bhavsar* v. *State of Maharashtra*, (2004) 10 SCC 192: AIR 2004 SC 503: 2004 Cri LJ 615: (2004) 14 AIC 336 (SC).

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-11-2003]

[8155] — Ss. 306 and 498-A r/w S. 34 — Sentence — Reduction of — *Taking into consideration the individual roles played by the accused persons (husband, mother-in-law and sister-in-law of deceased wife) in abetting the suicide of the victim and the respective age as well as family circumstances, held, it would be appropriate to reduce the sentences awarded to them accordingly*

The High Court sentenced the accused appellants under Section 306 r/w Section 34 IPC to undergo rigorous imprisonment for ten years and to pay a fine of Rs 5000 each. In default of payment of the said fine, appellants were directed to undergo further rigorous imprisonment for a period of one year. The High Court also convicted the appellants for the offence punishable under Section 498-A r/w Section 34 IPC and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs 5000 each. In default of payment of the said fine, the appellants were directed to undergo rigorous imprisonment for six months. All the substantive sentences were to run concurrently.

The appellants contended that they belonged to economically backward community and had not been accused or convicted of any other offence prior to the incident in this case. It was submitted that the third appellant being an old lady and the fourth appellant being a divorcee and dependent on her parents and the fifth appellant being a young lady recently married having a small child should be dealt with leniently and the sentence awarded by the High Court being far in excess, the same should be reduced considerably in regard to all the convicted appellants. Allowing the said contention, the Supreme Court held as above. *Kamalakar Nandram Bhavsar* v. *State of Maharashtra*, (2004) 10 SCC 192: AIR 2004 SC 503: 2004 Cri LJ 615: (2004) 14 AIC 336 (SC).

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-11-2003]

(viii) Suicide note

[8156] — S. 306 — Abetment of suicide — Requirements of — Weight to be given to suicide note — *Deceased a field officer in the employment of appellant (A-1), who owned a finance firm — A-1 joining as a partner in **K** group — Deceased selling 15 plots on behalf of **K** group and handing over collected amount to A-1 — A-1 not paying the said amount to **K** group and consequently the other*

(5)(viii) Suicide note *(contd.)*

partners not registering the plots in favour of the persons who paid the money to the deceased — On demand by deceased to register the plots in favour of the purchasers, A-1 abusing deceased in filthy language and neither registering plots nor returning the amount — Deceased committing suicide — Suicide note clearly stating that he was taking the extreme step because he was unable to bear the pressure from purchasers and mental harassment — Submission by appellant that there was no element of abetment and hence, offence under S. 306 not made out — Held, in view of the suicide note offence under S. 306 clearly proved — High Court rightly rejected the prayer of exercise of power under S. 482 CrPC to quash the proceedings — CrPC, 1973, S. 482 (Paras 3, 8 and 9). *Didigam Bikshapathi* v. *State of A.P.*, (2008) 2 SCC 403: (2008) 1 SCC (Cri) 434: AIR 2008 SC 527: 2008 Cri LJ 724: (2008) 106 Cut LT 313.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 29-11-2007]

Netai Dutta v. State of W.B., (2005) 2 SCC 659: 2005 SCC (Cri) 543, distinguished

[8157] — S. 306 — Suicide note — Appellant specifically named in suicide note which was otherwise not coherent and reflected disturbed state of mind — *There was also evidence on record that the deceased always indulged in drinking and was not doing any work — Suicide note, taken with other circumstances, held, deserved no credence*

A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife. He was a frustrated man. Reading of the suicide note suggests that such a note is not the handiwork of a man with a sound mind and sense. The wife had stated that on 26-7-1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25-7-1998. Viewed from the aforesaid circumstances independently, the ingredients of "abetment" are totally absent in the instant case for an offence under Section 306 IPC. It is in the statement of the wife that the deceased always remained in a drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25-7-1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, who was responsible for his death. (Para 14). *Sanju* v. *State of M.P.*, (2002) 5 SCC 371: 2002 SCC (Cri) 1141: AIR 2002 SC 1998: 2002 Cri LJ 2796.

Bench Strength **2**. Coram: *M.B. Shah* and **H.K. Sema**, JJ. [Date of decision: 1-5-2002]

Swamy Prahaladdas v. State of M.P., 1995 Supp (3) SCC 438: 1995 SCC (Cri) 943; Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, relied on

[8158] — S. 306 r/w S. 34 and S. 107 — Abetment of suicide — Framing of charge — Essentials — *Held, a person is said to have abetted in doing a thing, when he "instigates" others to do it — Further held, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred — Appellant charged that he along with other two accused "in furtherance of common intention", mentally tortured* ***JS*** *(the deceased) and thereby abetted him to commit suicide — Apart from the suicide note, statements recorded by the police during investigation, showing that on account of business transactions with the accused, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do —* ***Prima facie****, the conduct of the appellant and his accomplices appeared such that the deceased was left with no other option except to end his life — Hence, impugned judgment upholding order of trial court framing charge for offence under S. 306 r/w S. 34, calls for no interference — CrPC, 1973, S. 228 & S. 397 r/w Ss. 401 & 482* (Paras 15, 19 and 21 to 24). *Chitresh Kumar Chopra* v. *State (NCT of Delhi)*, (2009) 16 SCC 605.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 10-8-2009]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088, followed

(6) Sentence/Fine/Compensation/Other punishment/relief

[8159] — S. 306 — Sentence — Extenuating circumstances — *Death of a married woman by burning — Conviction of husband and mother-in- law of deceased for abetment of suicide — Husband not present at the time of incident — Mother-in-law immediately taking the deceased to the hospital and rendering all possible assistance — Sentence of 5 years' R.I. reduced to 2 years' R.I. Naresh Kumar* v. *State of Haryana*, 1994 SCC (Cri) 502.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 7-4-1993]

[8160] — S. 306 — Sentence, adequacy of — *Conviction under S. 306 IPC for abetment of suicide of wife and sentence of 5 years' RI awarded — In revision High Court reducing sentence to 2 months only — Held, no justification for High Court's order which seems a mockery of law — In the circumstances 3 years' RI plus fine of Rs 5000 adequate for meeting ends of justice — CrPC, 1973, Ss. 401 & 397. State of A.P.* v. *Kuna Satyanarayana*, (1998) 8 SCC 268.

Bench Strength **2**. Coram: *B.N. Kirpal* and *S.S.M. Quadri*, JJ. [Date of decision: 14-9-1998]

[8161] — Ss. 306 and 304-B — Sentence — Mitigating circumstances — Husband convicted for abetting suicide by wife — *Acquitted by High Court — Part of sentence served meanwhile — 11 years later Supreme Court finding the acquittal improper — State only interested in setting right the error committed by High Court in acquitting the accused — Sentence reduced to period of imprisonment already undergone but fine enhanced from Rs 500 to Rs 20,000 with a direction to pay Rs 18,000 to father of deceased for bringing up her minor son. Brij Lal* v. *Prem Chand*, 1989 Supp (2) SCC 680: AIR 1989 SC 1661.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 20-4-1989]

[8162] — Ss. 306 and 498-A — Appropriate sentence — Quantum of sentence — Scope of interference in appeal — *Wife committed suicide after a family quarrel — Trial court convicted appellant under Ss. 306 and 498-A IPC, sentenced to four years' imprisonment — High Court relying on two letters observed appellant's quarrelsome and aggressive nature — Sentence enhanced from four to six years — Held, enhancement was not justified on account of appellant's quarrelsome nature — Interference with quantum of sentence should be rare and only in exceptional cases — There was no misbehaviour on part of appellant over a period of time — Incident was a spontaneous one arising out of a family quarrel in the morning — Two letters written about a year before incident, have little value in light of dying declaration — Appellant had undergone about four years of sentence — Appeal allowed — Trial court's judgment restored — CrPC, 1973, Ss. 377 and 386* (Paras 2 to 8). *Ravindra Tukaram Hiwale* v. *State of Maharashtra*, (2010) 13 SCC 253.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 2-8-2010]

[8163] — Ss. 306 and 498-A — Sentence of two years' RI each for the said offences ordered to run concurrently — Reduction of — *Having regard to the facts that both the appellants suffered imprisonment for about two months, the incident took place on 9-3-1988, and that Appellant 2 (mother of Appellant 1) was aged 60 years, the Supreme Court reducing the sentence to period already undergone*

Having regard to the evidence brought on record and looking to the reasons recorded by the High Court, the trial court committed manifest error in disbelieving the dying declaration and the evidence of PWs 3 to 7. The High Court was right and justified in reversing the order of acquittal and convicting and sentencing the appellants for the offences under Sections 306 and 498-A IPC. However, having regard to the fact that both the appellants were in imprisonment for about two months, the incident took place on 9-3-1988, Appellant 2 is the mother of Appellant 1 and she is aged 60 years, it would be just and appropriate to modify the sentence of imprisonment to the period already undergone. (Para 8). *Mohd. Hoshan* v. *State of A.P.*, (2002) 7 SCC 414: 2002 SCC (Cri) 1765: AIR 2002 SC 3270.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Shivaraj V. Patil**, JJ. [Date of decision: 16-9-2002]

[8164] — Ss. 306 and 498-A r/w S. 34 — Offences under — Compensation — Award of — *80% of the fine amount, if realised, directed to be paid to the parents of the victim girl as compensation — CrPC, 1973, S. 357* (Para 16). *Kamalakar Nandram Bhavsar* v. *State of Maharashtra*, (2004) 10 SCC 192: AIR 2004 SC 503: 2004 Cri LJ 615: (2004) 14 AIC 336 (SC).

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-11-2003]

[8165] — Ss. 306 and 498-A r/w S. 34 — Sentence — Reduction of — *Taking into consideration the individual roles played by the accused persons (husband, mother-in-law and sister-in-law of deceased wife) in abetting the suicide of the victim and the respective age as well as family circumstances, held, it would be appropriate to reduce the sentences awarded to them accordingly*

The High Court sentenced the accused appellants under Section 306 r/w Section 34 IPC to undergo rigorous imprisonment for ten years and to pay a fine of Rs 5000 each. In default of payment of the said fine, appellants were directed to undergo further rigorous imprisonment for a period of one year. The High Court also convicted the appellants for the offence punishable under Section 498-A r/w Section 34 IPC and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs 5000 each. In default of payment of the said fine, the appellants were directed to undergo rigorous imprisonment for six months. All the substantive sentences were to run concurrently.

The appellants contended that they belonged to economically backward community and had not been accused or convicted of any other offence prior to the incident in this case. It was submitted that the third appellant being an old lady and the fourth appellant being a divorcee and dependent on her parents and the fifth appellant being a young lady recently married having a small child should be dealt with leniently and the sentence awarded by the High Court being far in excess, the same should be reduced considerably in regard to all the convicted appellants. Allowing the said contention, the Supreme Court held as above. *Kamalakar Nandram Bhavsar* v. *State of Maharashtra*, (2004) 10 SCC 192: AIR 2004 SC 503: 2004 Cri LJ 615: (2004) 14 AIC 336 (SC).

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-11-2003]

SECTION 307 — ATTEMPT TO MURDER

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(1) S. 307 or Ss. 302/304

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C.4. Attempted murder (S. 307)' in Vol. 2

[8166] — Ss. 307, 302 and 34 — Fatal injury caused by the acquitted accused — *Appellant firing merely on the back of the deceased — Author of fatal injury having been acquitted S. 34 not applicable — Since appellant fired at the deceased with a rifle he is liable to be convicted for attempt to commit murder — Conviction altered from S. 302 to S. 307 and sentence reduced to ten years' RI from life imprisonment. Jarnail Singh* v. *State of Punjab*, (1996) 1 SCC 527: 1996 SCC (Cri) 146: AIR 1996 SC 755.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 23-11-1995]

[8167] — S. 307 or S. 304 Pt. II — Single blow causing death — Appellant-accused gave hammer-blow on head of deceased, resulting in his death — *High Court converting appellant's conviction under S. 302 to S. 307 IPC and sentencing him to 7 years' RI with fine — Sustainability — Held, guilt of appellant amply established — Considering medical evidence and established facts and circumstances, held, appellant can be clothed with the knowledge that injury caused by him with a hammer on the head of deceased, a vital part of the body, was likely to cause his death, though without any intention to cause death or such injury as was likely to cause his death — Appellant gave a single blow on the head — Offence would, therefore, squarely fall under S. 304 Pt. II — He, accordingly, convicted for the said offence — Sentence for the offence under S. 304 Pt. II reduced to the period already undergone — But, in addition, he directed to pay a fine of Rs 20,000 by way of compensation under S. 357 CrPC, to widow of deceased — CrPC, 1973, S. 357* (Paras 4 to 7). *Sarup Singh* v. *State of Haryana*, (2009) 16 SCC 479.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 10-3-1995]

[8168] — Ss. 307/34 and S. 302 — Accused convicted under S. 302 — Conviction under S. 307/34 also in connection with same murder improper. *Jagtar Singh* v. *State of Punjab*, 1994 Supp (1) SCC 65: 1994 SCC (Cri) 226: AIR 1993 SC 2448: 1993 Cri LJ 2886.

Bench Strength **2**. Coram: *P.B. Sawant* and *S. Mohan*, JJ. [Date of decision: 7-1-1993]

Chenna Jagadeeswar v. State of A.P., 1988 Cri LJ 549: (1987) 2 Andh LT 263: 1987 APLJ (Cri) 110 (AP), approved on this point

Maruti Shripati Dubal v. State of Maharashtra, 1987 Cri LJ 743 (Bom), overruled on this point

(2) S. 307 and other offences

[8169] — S. 307 — Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 2(h), 3 and 6 r/w S. 27 Arms Act, 1959 — Firing with a pistol at a former Chief Minister in broad daylight at a public function causing injury on right side of his chest — Offence falls within the definition of "terrorist activity" — *Considering the weapon used by the appellant and the seat and nature of injury appellant was rightly convicted for offences under S. 307 IPC and S. 6 TADA Act read with S. 27 Arms Act — Sentences of 10 years' RI for offence under S. 307 IPC and 5 years' RI under TADA Act and Arms Act maintained — But Designated Court was not justified in making the sentence under S. 307 IPC to run consecutively with the sentence for offences under TADA Act and Arms Act — Fine of Rs 50,000 imposed for offence under S. 307 IPC reduced to Rs 2000 — Direction for payment of amount of fine to the injured Chief Minister by way of compensation is unwarranted. Rajbir* v. *State of Haryana*, (1996) 7 SCC 86: 1996 SCC (Cri) 178.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 29-9-1994]

[8170] — S. 307 — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 5 — Explosive Substances Act, 1884, S. 4-A — *Conviction of appellant under, for hurling a hand grenade from the roof of co-accused in the courtyard of PW 5 — Hand grenade did not explode — Conviction based on sole evidence of PW 5 — Evidence of PW 5 found to be not wholly reliable — Held, conviction cannot be sustained* (Paras 8, 9 and 10). *Mohinder Singh* v. *State Govt. (NCT of Delhi)*, (2002) 10 SCC 189.

Bench Strength **2**. Coram: *K.T. Thomas* and *A.P. Misra*, JJ. [Date of decision: 7-9-1999]

[8171] — S. 307 or S. 308 — Attempt to commit murder or culpable homicide — *Incised injuries caused by knife on non-vital parts of body during scuffle in dark night — Accused can be attributed only knowledge that he was likely to cause death — Having regard to age of accused, suddenness in which whole occurrence took place during scuffle, held, offence falls under S. 308 and not S. 307 IPC. Tukaram Gundu Naik* v. *State of Maharashtra*, (1994) 1 SCC 465: 1994 SCC (Cri) 432: 1994 Cri LJ 224.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 5-10-1993]

[8172] — S. 307 or S. 308 — Out of six injuries sustained by injured first two injuries were grievous — *Finding recorded by High Court that appellant had caused injuries to **R** in an attempt to escape, not borne out from the record — No such suggestion was even made to any of eyewitnesses — On the contrary, reliable evidence of **R** satisfactorily proving that appellant had caused injuries to him when he had made an attempt to save his brother (deceased victim) — Hence, appellant could not have been convicted under S. 308 for causing injuries to **R** and was liable to be convicted under S. 307* (Paras 53 and 54). *Shaukat* v. *State of Uttaranchal*, (2010) 5 SCC 68.

Bench Strength **2**. Coram: **J.M. Panchal** and *Deepak Verma*, JJ. [Date of decision: 22-4-2010]

[8173] — Ss. 307 and 324 — Appellants attacking with diverse weapons — *17 injuries caused but cumulatively not dangerous to life — Not clear who weilded which weapon — Conviction proper under S. 324 only. Rekha Mandal* v. *State of Bihar*, 1968 SCD 208: (1968) 1 SCWR 14.

Bench Strength **2**. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 22-11-1967]

[8174] — Ss. 307 and 324 — Attempt to commit murder — *Pellet injury only grazing the head of the victim — Held, ingredients of S. 307 not satisfied qua the victim — Merely because the injury was caused by a pellet intention to cause death cannot be inferred — Offence falls under S. 324. Merambhai Punjabhai Khachar* v. *State of Gujarat*, 1997 SCC (Cri) 1078: AIR 1996 SC 3236: 1996 Cri LJ 2465.

Bench Strength **2**. Coram: **B.L. Hansaria** and *K. Venkataswami*, JJ. [Date of decision: 18-4-1996]

[8175] — Ss. 307 and 324 — Attempt to murder — Necessary ingredients — *Held, in order to bring the case within the ambit of S. 307 it must be shown that the accused acted with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder — That is, intention or knowledge to commit murder must exist — In the present case the injuries were only skin deep and the circumstances under which the incident occurred would preclude any inference that the assault was launched with intent to murder — At best the case would fall within the scope of S. 324 IPC — But since the parties, who were neighbours, desired to compound the matter, the court permitted them to do so to ensure lasting peace — Accordingly the conviction and sentence imposed by the High Court under S. 307 IPC set aside and the appellants acquitted — CrPC, 1973, S. 320. Sanjay Kumar* v. *State of M.P.*, 1994 Supp (1) SCC 502: 1994 SCC (Cri) 586.

Bench Strength **2**. Coram: *A.M. Ahmadi* and *S. Mohan*, JJ. [Date of decision: 15-2-1993]

[8176] — Ss. 307 or 324/34 — Two accused, *L* and the appellant, causing simple injuries with gandasa on knee and hand of *A* and on intervention of *P*, *L* inflicting two and *A* one gandasa blows on head of *P* — *One of the head injuries found to be dangerous to the life of 'P' but who among the two accused caused that injury not established — 'P' not concerned with the dispute of accused with 'A' — Held on facts, appellant had no intention to cause death or knowledge of possible death of 'P' — Hence appellant can be convicted under Ss. 326/34 and not under Ss. 307/34. Pashora Singh* v. *State of Punjab*, 1993 Supp (2) SCC 33: 1993 SCC (Cri) 387: AIR 1993 SC 1256: 1993 Cri LJ 1053: (1993) 1 An WR 25 (SC).

Bench Strength **2**. Coram: *Kuldip Singh* and **N.M. Kasliwal**, JJ. [Date of decision: 9-10-1992]

[8177] — S. 307 or S. 325 r/w S. 34 — Modification of sentence — *Trial court convicted accused persons to 7 years' RI and a fine — Admittedly a gunshot was fired at **B**, which hit him in the leg — Held, appellants are guilty under S. 325 r/w S. 34 — Sentence modified to period already undergone. Jagga Singh* v. *State of Punjab*, (2011) 3 SCC 137.

Bench Strength **2**. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 3-2-2011]

[8178] — Ss. 307 and 326 — Accused charged under may be convicted under S. 326 even though he was not charged under S. 326, if he could on facts be charged alternatively under S. 307 and S. 326 — *CrPC, 1898, S. 237. Bejoy Chand Patra* v. *State of W.B.*, AIR 1952 SC 105: 1952 SCR 202: 1952 Cri LJ 644.

Bench Strength **2**. Coram: **Fazl Ali** and *Vivian Bose*, JJ. [Date of decision: 14-12-1951]

Begu v. Emperor, 52 IA 191: 26 Cri LJ 1059, followed
See also 1952 Cri LJ 839, 845: AIR 1952 SC 159

[8179] — Ss. 307 and 326 — Conviction under both Ss. 307 and 326 — Sustainability — *Large number of witnesses giving direct evidence of severe assault on PW 12 who also lost his right hand index finger — Offence and conviction under S. 307, held, proved and upheld — Therefore, conviction under S. 326 not necessary*

Based on evidence of eyewitnesses and medical evidence, the trial court and the appellate court have correctly come to the conclusion that the accused is guilty for the offence punishable under Section 307 IPC. In fact, on that count it was not necessary for the trial court to additionally convict him for the offence under Section 326 IPC. That part dealing with the conviction and sentence of the appellant-accused under Section 326 IPC would have to be set aside and is set aside. (Paras 18 and 19)

A-1 did not stop after hacking the two unfortunate persons but proceeded in the direction of the house of PW 12. A-1 immediately after murdering *A* and *S* assaulted PW 12. This is proved and corroborated from the evidences of PWs 10, 26, 13, 29, 30, 17 and 27. The assault on PW 12 was so severe that he lost one of his fingers, being right hand index finger. Other circumstantial evidence like the bloodstained clothes, etc. need not be gone into in view of this direct evidence of the eyewitnesses. (Paras 18 and 19). *Haru Ghosh* v. *State of W.B.*, (2009) 15 SCC 551: (2009) 82 AIC 186 (SC).

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 27-8-2009]

[8180] — Ss. 307 and 326 — Intention to cause death — Inference from weapons used — *Four to five persons using deadly weapons but causing only three simple and one grievous hurt to the injured — Conviction under S. 307 not justified*

Where four or five persons attack a man with a deadly weapon it may well be presumed that the intention is to cause death. However, when three injuries are of simple nature though deadly weapons were used and the fourth injury, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid the benefit of doubt must be given to the accused with regard to the injury intended to be caused. Therefore, the offence is not one under S. 307 but under S. 326, IPC. *Jai Narain Mishra* v. *State of Bihar*, (1971) 3 SCC 762: 1972 SCC (Cri) 40: AIR 1972 SC 1764: 1972 Cri LJ 469.

Bench Strength **2**. Coram: *A.N. Ray* and **D.G. Palekar**, JJ. [Date of decision: 3-11-1971]

[8181] — S. 307 or S. 326 — Appreciation of evidence — *Appellant along with nine others tried for offence under S. 307 IPC — Trial court disbelieving eyewitnesses and acquitting the co-accused but convicting the appellant on the sole testimony of the victim, whose right hand was cut off from the wrist by the appellant and imposing a sentence of 5 years' RI — Motive was political rivalry — In the Court of Session appellant acquitted but on further appeal order of trial court restored by High Court — Held, the word of the victim stood singular and apart to the effect that the injury whereby his wrist was cut off was the first one and caused by the appellant — The Court of Session overlooked the fact that the victim could never have substituted the appellant who had dismembered his most important limb — In this state of affairs, there was no option to the*

High Court but to upset the Court of Session and to record conviction of the appellant — The contention that the offence fell under S. 326 IPC could not be accepted — Had the hand of the victim not been raised in a bid to defend, the aim was the head of the victim — The blow thus aimed clearly spelled out the murderous intent of the appellant — CrPC, 1973, Ss. 378 and 386. Antony v. *State of Kerala,* 1997 SCC (Cri) 218: AIR 1995 SC 2450: 1995 Cri LJ 4166.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 8-3-1995]

[8182] — S. 307 or S. 326 — Conviction under S. 307 altered to that under S. 326 — *Loss of index finger of one of the injured — Accused also sustaining injuries in same occurrence — On facts, held, conviction under S. 326 IPC would be proper. Ram Ekbal Upadhya* v. *State of Bihar,* (2001) 10 SCC 233.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 17-11-2000]

[8183] — S. 307 or S. 326 — Nature of injuries — Though a number of injuries quite grievous but none on any vital part of body — *While assaulting victim ruthlessly, accused aiming all blows on his legs and arms apparently to make sure that it would not lead to his death — Doctor stating the injured might have died if medical care was not given to him but he did not say that injuries were sufficient in course of nature to cause death — Held, impugned judgment altering conviction of respondent-accused from S. 307 to S. 326 calls for no interference* (Paras 9 to 11). *Mangal Singh* v. *Kishan Singh,* (2009) 17 SCC 303: AIR 2009 SC 1535.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **Aftab Alam**, JJ. [Date of decision: 21-11-2008]

[8184] — Ss. 307 and 333 — Terrorist act — Offence committed, if on facts was covered under the TADA Act — *Murder of a gang leader attempted in broad daylight within the court premises by accused-appellant, a member of another gang — Held, the blatant manner in which the plan was executed proved undoubtedly that the intention of the perpetrator was not merely to kill the victim, but also to send a terrorising message to the people in general, so that there was no defiance of their command in future — Further, the attempt made on the lives of 3 policemen reinforces the conclusion that the intention was to strike terror and the killing was attempted to achieve that objective — Hence, on facts commission of offences under the TADA Act, held, established — TADA Act, 1987, Ss. 3(1) & (2)(ii), 5 and 6*

On account of a gang rivalry as well as personal enmity between A-3 and *N*, A-3 decided to eliminate *N* and with that in view, entered into a conspiracy with A-1 (appellant), A-2 and *S* to kill him. A-2 helped the appellant in identifying *N*. The appellant, who was dressed as an advocate, attempted to commit the murder of *N* in broad daylight within the court premises when *N* was brought by the police from jail to the Sessions Court in a TADA case pending against him. The appellant fired a shot on the back of the head of *N*, as a result of which he fell down on the ground. After the exchange of fire between the policemen and the appellant, the policemen, who were escorting *N* as well as the other accused facing trial with *N*, overpowered the appellant and arrested him. The 3 policemen (PW 3, PW 4 and PW 6) as well as *N* and the appellant, who received injuries in the said incident, were removed to the hospital for treatment. The appellant along with A-2 and A-3 was put on trial. During the trial, apart from the police witnesses, the prosecution examined several persons from the public as panch witnesses, but unfortunately almost all of them had to be declared hostile. The trial court doubted the reliability of the confessional statements made by the appellant and A-2. On consideration of the material on record the trial court held that so far as the appellant is concerned, the prosecution had succeeded in proving his guilt. The court, however, did not accept the prosecution case insofar as it related to Accused 2 and 3. The appellant challenged his conviction and sentence passed by the trial court on the grounds (*i*) that he was not arrested in the manner alleged nor was he involved in the shoot-out, (*ii*) that there was no reliable evidence regarding recovery of the weapon of offence from him as also regarding the seizure of the clothes worn by him, (*iii*) that the weapon allegedly seized was not connected with the offence, (*iv*) that the medical evidence falsifies the prosecution case that only 5 shots were fired whereas there were as many as 8 gunshot injuries on *N* and the injured policemen, (*v*) that if PW 2 fired 25 shots from his carbine and the accused fired 5 shots from his revolver, many more injuries should have been caused, (*vi*) that the prosecution had failed to explain as to how one bullet was found tucked in the collar of the appellant's coat, (*vii*) that the bullet recovered after a surgery was performed on PW 3, was not sent for examination by the ballistic expert, and (*viii*) that in any event no offence under the TADA Act had been made out.

Dismissing the appeal,

Held :

The testimony of the police witnesses, namely, PW 3, PW 4, PW 6 and PW 1 is totally consistent. PW 2 has also fully supported the prosecution case and his evidence fully corroborates the evidence of other eyewitnesses. That the occurrence took place in the manner alleged is not even disputed by the appellant. The direct testimony of the eyewitnesses is unambiguous and each one of them has clearly stated that it was the appellant who was seen firing from his revolver. The appellant is not an advocate, and there appears to be no other reason for him to put on the dress of an advocate but for the fact that his movement in the court was facilitated by his wearing the attire of an advocate. (Paras 39, 41 and 42)

In the facts and circumstances of the case, it is evident that the weapon of offence was seized from the appellant. Read with the ocular testimony of the witnesses, the evidence on record leaves no room for doubt that the said weapon was used in the commission of the offence. (Paras 49 and 50)

Even though the crime committed by a "terrorist" and an ordinary criminal would be overlapping to an extent, it is not the intention of the legislature that every criminal should be tried under TADA, when the fallout of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. The provision of the Act need not be resorted to if the nature of the activities of the accused can be checked and controlled under the ordinary law of the land. It is only in those cases where the law-enforcing machinery finds the ordinary law to be inadequate or not sufficiently effective for tackling the menace of terrorism and disruptive activities that resort should be had to the drastic provisions of the Act. Some difficulties, however, arise when the intended activity of the offender results in striking terror or creating fear and panic amongst the people in general or a section thereof. It is in this situation that the courts have to be cautious to draw a line between the crime punishable under the ordinary criminal law and the ones which are punishable under Section 3(1) of TADA. (Para 60)

When a dastardly act is sought to be executed in such a bold and daring manner as in the present case, the message which the accused intends to convey to the ordinary people of this country is that the obedience to law is irrelevant. People must obey the dictates of the law-breakers. Neither the courts nor the police force can give them any protection for it is the right of the criminals to command habitual obedience from the citizens of this country. The State has lost its supremacy, in any event, its subjects must disregard the code of conduct established by law and must obey the dictates of those for whom law is meaningless. If they fail to do so, they shall be dealt with in the same manner as the victim in the instant case, notwithstanding the fact that he was under police protection, and the incident was being witnessed by a large number of persons within the court premises. Such activities have the effect of undermining the very authority of the State and have a terrorizing effect on those who witness such an incident, and those who come to know of it. The terror, fear and panic which they suffer is unfathomable and tends to completely demoralize the ordinary man in the street. The blatant manner in which the plan was executed in the instant case leaves no manner of doubt that the intention of the perpetrator was not merely to kill the victim, but also to send a terrorising message to the people in general, so that there was no defiance of their command in future. An attempt was also made on the lives of three policemen which reinforces the conclusion that the intention was to strike terror and the killing was attempted to achieve that objective. Therefore, the facts proved do establish the commission of offences under TADA. (Para 64). *Ravindra Shantaram Sawant* v. *State of Maharashtra*, (2002) 5 SCC 604: 2002 SCC (Cri) 1158: AIR 2002 SC 2461.

Bench Strength **2**. Coram: *R.P. Sethi* and **B.P. Singh**, JJ. [Date of decision: 8-5-2002]

Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602: 1994 SCC (Cri) 1087; Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47, relied on

Jayawant Dattatray Suryarao v. State of Maharashtra, (2001) 10 SCC 109: 2002 SCC (Cri) 897, followed

[8185] — S. 307 r/w S. 149 and S. 3(2) TADA — Bombay Police Act, 1951 (22 of 1951) — S. 135(1) — Appellants, members of a mob comprising 70/80 people, armed with various weapons and burning rags, pelting stones on houses of Hindus, breaking the glasses, causing damage to the rickshaws and causing injuries to the injured witness — *Evidence of the injured witness and his father corroborated by the medical evidence and the evidence of a Sub-Inspector of Police — Conviction of the three out of the four appellants upheld — However, since father of the injured witness not correctly identifying the fourth appellant he is entitled to the benefit of reasonable doubt. Mohd. Arif* v. *State of Gujarat*, (1996) 11 SCC 261: 1997 SCC (Cri) 79: AIR 1997 SC 105.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 3-10-1996]

[8186] — Ss. 307/34 and 324/34 — Victim receiving only one simple injury on his shoulder — *Having regard to the nature of injury sustained, conviction altered from one under S. 307 read with S. 34 to S. 324 read with S. 34. Ram Prasad* v. *State of U.P.*, (1982) 2 SCC 149: 1982 SCC (Cri) 375.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *E.S. Venkataramiah*, JJ. [Date of decision: 21-4-1980]

[8187] — Ss. 307/109 and 324/109 — Conviction under Ss. 307/109 on the ground that appellant instigated his companions to kill — *Evidence showing that he instigated assault only — Conviction under Ss. 324/109 proper. Jai Narain Mishra* v. *State of Bihar*, (1971) 3 SCC 762: 1972 SCC (Cri) 40: AIR 1972 SC 1764: 1972 Cri LJ 469.

Bench Strength **2**. Coram: *A.N. Ray* and **D.G. Palekar**, JJ. [Date of decision: 3-11-1971]

[8188] — Ss. 307/149 & 324/149 — Injuries caused during quarrel between college students *— Supreme Court in view of the young age of the students and nature of injuries caused taking a lenient view and altering conviction to S. 324 — (Offence then compounded before Supreme Court). Bhupendra Singh* v. *State of M.P.*, 1980 Supp SCC 352: 1981 SCC (Cri) 280: AIR 1981 SC 1240: 1981 Cri LJ 751.

Bench Strength **2**. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai*, J. [Date of decision: 17-12-1980]

[8189] — Ss. 307/149 and 325/149 — In absence of Government's appeal against acquittal of the appellants of charge under Ss. 307/149 and instead their conviction under Ss. 325/149 recorded by trial court *— Held, High Court erred in altering their conviction under Ss. 325/149 to Ss. 307/149 — Sentence also altered accordingly — CrPC, 1973, Ss. 378 and 386. Amar Singh* v. *State of Rajasthan*, 1987 Supp SCC 144: 1987 SCC (Cri) 670: AIR 1987 SC 2023.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 12-2-1987]

(3) Ingredients of attempt to murder

[8190] — S. 307 — Applicability — Essential conditions for, stated *— Not essential to inflict bodily injury capable of causing death — Held on facts, offence under S. 307 with the aid of S. 34 made out*

To justify conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. (Para 13)

In this case, PW 3 had sustained eleven injuries. Though Injury 1 was attributed to firearm, there were two other injuries which were considered to be very serious. He was assaulted by the appellant and the other accused persons. When the factual background is considered in the background of true ambit of Section 307, the inevitable conclusion is that the appellant has been rightly convicted under Section 307 read with Section 34 IPC. (Paras 12 and 15). *Girija Shankar* v. *State of U.P.*, (2004) 3 SCC 793: 2004 SCC (Cri) 863: AIR 2004 SC 1808: 2004 Cri LJ 1388: 2004 All LJ 683.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 4-2-2004]

State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320, relied on

[8191] — S. 307 — Applicability — Essential requirement — Intention to kill or knowledge that death will be caused *— Existence of, held, essential — Not necessary that bodily injury capable of causing death should have been inflicted — Accused firing from a very close range (6-8 feet) at victim when he was sleeping on a cot — Shot hitting springs of cot — Bullet broke into pieces and three such pieces struck the victim — Held, both intention and knowledge in terms of S. 307 could be attributed to accused — Conviction under S. 307 upheld*

It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 307. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstance that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. (Paras 10, 9, 13 and 14)

In the case at hand the accused fired the gun from a very close range of about 6-8 feet aiming at the victim when he was sleeping. The bullet broke into pieces and three such pieces struck the victim. Both intention and knowledge in terms of Section 307 can be attributed to the accused. Therefore, the High Court was justified in recording conviction of the accused-appellant under Section 307 IPC. (Para 14). *Vasant Vithu Jadhav* v. *State of Maharashtra*, (2004) 9 SCC 31: 2004 SCC (Cri) 1323: 2004 Cri LJ 1786.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **Arijit Pasayat**, JJ. [Date of decision: 9-3-2004]

State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320; Girija Shankar v. State of U.P., (2004) 3 SCC 793; R. Prakash v. State of Karnataka, (2004) 9 SCC 27; Sarju Prasad v. State of Bihar, AIR 1965 SC 843: (1965) 1 Cri LJ 766, relied on

Ram Prasad v. State of U.P., (1982) 2 SCC 149: 1982 SCC (Cri) 375; Kundan Singh v. State of Punjab, (1982) 3 SCC 213: 1982 SCC (Cri) 700 (1), impliedly distinguished

[8192] — S. 307 — Applicability — Explained in detail — Conviction confirmed — Absence of injury to victim — Effect — *Held, to justify a conviction under S. 307, it is not essential that bodily injury capable of causing death should have been inflicted — What court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in S. 307 — An attempt in order to be criminal need not be the penultimate act — It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof — Further held, although nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds — Distinction is made between an act of the accused and its result, if any — Such an act may not be attended by any result so far as person assaulted is concerned, but still there may be cases in which culprit would be liable — Accused charged under S. 307 IPC cannot be acquitted merely because injuries inflicted on victim were in the nature of a simple hurt — Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case — In the instant case, accused mercilessly and in a cruel manner alleged to have assaulted victim with a sharp-edged weapon causing serious injuries which in opinion of doctor were enough to cause death of the victim — Several fractures were also noticed and x-rays of head, chest and left shoulder were advised — Held, considering nature of injuries sustained, weapon used and opinion of the doctors that injuries were enough to cause death, trial court had rightly convicted respondent-accused for offence punishable under S. 307 IPC* (Paras 12 and 13). *State of M.P.* v. *Kedar Yadav*, (2009) 17 SCC 280.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 30-11-2006]

Sarju Prasad v. State of Bihar, AIR 1965 SC 843: (1965) 1 Cri LJ 766, considered and relied on

State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320; Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863; R. Prakash v. State of Karnataka, (2004) 9 SCC 27: 2004 SCC (Cri) 1408, relied on

Kundan Singh v. State of Punjab, (1982) 3 SCC 213: 1982 SCC (Cri) 700 (1), distinguished

[8193] — S. 307 — Applicability — Explained in detail — Distinction between act of accused and its result, if any — *Held, determinative question is intention to kill or knowledge that death will be caused by act of accused, irrespective of the result — Hence nature of injury is irrelevant, though helpful in deducing the intention — It is sufficient to justify conviction under S. 307 if there is present an intent coupled with some overt act in execution thereof — Hence, accused charged under S. 307 cannot be acquitted merely because injuries inflicted are simple or minor*

To justify a conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference to actual wounds at all. The section makes a distinction between an act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple or minor hurt. (Paras 12, 13 and 16)

Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. (Para 16)

Section 307 deals with two situations so far as the sentence is concerned. Firstly, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and secondly if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life or to such punishment as indicated in the first part i.e. 10 years. The maximum punishment provided for Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine. The maximum sentence in each case goes to show the gravity which is attached to respective offences. This is another sad example where a learned Single Judge, Madhya Pradesh High Court, totally oblivious of the consequences has passed an order directing reduction of the custodial sentence to the period already undergone. We have come across a large number of such cases which have been disposed of in very casual and mechanical manner with no trace of application of mind regarding the question of sentence. Unfortunately, the High Court has not kept these features in view in reducing sentences of five and four years' RI respectively, imposed by trial court, to period of custody undergone of merely six months and twenty three days. The High Court found that the accused persons are illiterate persons belonging to lower-income group and on consideration of the fact that at the time of commission of offence they were of 23 years of age, reduced the sentence of imprisonment to the period already undergone. (Paras 17, 3 and 2)

The matter is remitted to the High Court to hear the matter only relating to sentence. Normally, in view of the established law on the subject the matter would have been finally disposed of, but the accused submitted that the High Court has not noted several other mitigating factors which were placed for consideration and granted relief on only some of the grounds. The High Court shall consider factors to be placed for consideration and decide the question of sentence keeping in view the principles indicated above. (Para 18). *State of M.P.* v. *Saleem*, (2005) 5 SCC 554: 2005 SCC (Cri) 1329: 2005 Cri LJ 3435.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2005]

[8194] — S. 307 — Applicability — Intention to kill or knowledge that death will be caused — Determination of — *Held, is a question of fact and would depend on facts of each case*

Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. (Para 16). *State of M.P.* v. *Saleem*, (2005) 5 SCC 554: 2005 SCC (Cri) 1329: 2005 Cri LJ 3435.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2005]

State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320; Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863; R. Prakash v. State of Karnataka, (2004) 9 SCC 27: 2004 SCC (Cri) 1408; Sarju Prasad v. State of Bihar, AIR 1965 SC 843: (1965) 1 Cri LJ 766, relied on

[8195] — S. 307 — Applicability of — Essential requirement for — *Intent coupled with some overt act in execution thereof, held, is sufficient — Not essential that bodily injury capable of causing death should have been inflicted — First blow given by accused-appellant (A-1) on vital part of PW 3 — Other blows on non-vital parts — Fact that in spite of interference by five persons A-1 continued to assault PW 3, held, indicated intention of A-1 — Offence under S. 307 established — Conviction thereunder upheld — Further, sentence of two years, held on facts, would not be higher or disproportionate*

It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt. (Para 9)

In the present case, the evidence of the eyewitnesses goes to show that they tried to intervene and save PW 3 from being assaulted by the appellant A-1, but he continued to assault PW 3. The first blow was on a vital part, that is, on the temporal region. Even though other blows were on non-vital parts, that does not take away the rigour of Section 307 IPC. It is to be noted that in spite of interference by five persons, the appellant continued to assault PW 3. This clearly indicates the intention of the appellant. Hence, the High Court rightly held that the evidence on record clearly establishes commission of offence punishable under Section 307 IPC. (Paras 8 and 11). *R. Prakash* v. *State of Karnataka*, (2004) 9 SCC 27: 2004 SCC (Cri) 1408: AIR 2004 SC 1812: 2004 Cri LJ 1391.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 11-2-2004]

State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320; Girija Shankar v. State of U.P., (2004) 3 SCC 793, relied on

[8196] — S. 307 — "Attempt" to commit murder — Distinguished from intent to commit it or preparation of its commission — *Appellant trying to assault a police officer and to pierce with a sword but when the officer escaped and caught hold of him, he threatening to kill the officer — No injury sustained by the officer — Held, act did not constitute attempt to murder*

The ASI (PW 2) was deputed to search the house of the appellant along with two other members of his staff. When he went to the house of the appellant along with the other officers, the accused tried to assault them. He somehow escaped from the assault. Again, the accused is said to have tried to pierce with a sword but he escaped that assault and caught hold of the accused but then the accused threatened that he would kill him.

Held :

This would only mean that there was only a threat to assault the said ASI but the overt acts attributed to him would not amount to an attempt to murder, at best it can be one of attempt to assault but there is not even an injury upon the victim. A charge of this nature when there is not even an injury upon the victim cannot lead to an inference that there was any attempt to kill when the incident took place. It is possible that the accused confronted the ASI but that by itself would not result in coming to the conclusion that it was an attempt to murder him. (Paras 7 and 8)

To justify conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act foreboding death. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation. There are different stages in a crime. First, the intention to commit it; second, the preparation to commit it; third, an attempt to commit it. If at the third stage, the attempt fails, the crime is not complete but the law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission. (Para 6). *Sagayam* v. *State of Karnataka*, (2000) 4 SCC 454: 2000 SCC (Cri) 819: AIR 2000 SC 2161: 2000 Cri LJ 3182.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **S. Rajendra Babu**, JJ. [Date of decision: 26-4-2000]

[8197] — S. 307 — Attempt to commit murder — What constitutes — *Accused causing injury by knife in vital region of victim — Mere fact that no vital organ of victim was cut is not sufficient to take the act out of preview of S. 307*

The act to fall within S. 307 must be such that but for the intervention of some circumstance it would, if completed, have resulted in death. There is no evidence in this case that a fatal injury or an injury to a vital organ was prevented by any intervening circumstance. The mere fact that the injury actually inflicted by the appellant did not cut any vital organ of the victim is not by itself sufficient to take the act out of the purview of S. 307.

The burden is still upon the prosecution to establish that the intention of the appellant in causing the particular injury to the victim was of any of the three kinds, referred to in S. 300, Indian Penal Code. Unless the prosecution discharges the burden the offence under S. 307, IPC cannot possibly be brought home to the appellant. The state of the appellant's mind has to be deduced from the surrounding circumstances and the existence of a motive to cause the death would have been a relevant circumstance. *Sarju Prasad* v. *State of Bihar*, AIR 1965 SC 843: (1965) 1 Cri LJ 766, 767.

Bench Strength **3**. Coram: *A.K. Sarkar*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 20-8-1964]

[8198] — S. 307 — Attempt to murder — Applicability of S. 307 — Determination — Necessary considerations — *Held, court to see whether the act in question, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in S. 307 — Thus, to justify a conviction under S. 307, it is sufficient if there is present an intent coupled with some overt act in execution thereof — Not essential that bodily injury capable of causing death should have been inflicted — On facts, held, S. 307 was rightly invoked*

Accused-appellant and PW 10 (victim) had gone to watch a movie and were coming back by bicycle. Suddenly the appellant got down from the bicycle and stabbed PW 10 on his stomach and back and started to press his neck. Hearing his cries for help some villagers came running. The accused tried to run away from the spot but was caught by the villagers and handed over to the police. The courts below convicted the appellant under Section 307 IPC. Hence the present appeal.

Partly allowing the appeal,

Held :

Section 307 makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 307. Thus, it is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. In the instant case, the accused-appellant has been rightly convicted under Section 307 IPC. (Paras 7 and 10). *Bappa* v. *State of Maharashtra*, (2004) 6 SCC 485: 2004 SCC (Cri) 1794: AIR 2004 SC 4119.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker* JJ. [Date of decision: 5-8-2004]

Sarju Prasad v. State of Bihar, AIR 1965 SC 843: (1965) 1 Cri LJ 766; State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320; Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863; Vasant Vithu Jadhav v. State of Maharashtra, (2004) 9 SCC 31: 2004 SCC (Cri) 1323, relied on

[8199] — S. 307 — Attempt to murder — Applicability of S. 307 — Essential requirements — *Held, not essential that bodily injury capable of causing death should have been inflicted — If the act in question was done with intention to kill or knowledge that death would be caused, held, that is sufficient to attract S. 307 — Considering incised wound over left supraorbital area obliquely placed in oozing condition (which was a grievous injury on a vital part) and taking into account other injuries, held on facts, S. 307 rightly invoked*

To justify a conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. Hence, the circumstance that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. (Paras 10, 11 and 14)

In the instant case, the first injury was certainly on a vital part and taking into account the injuries on the various parts of the body, Section 307 IPC has been rightly invoked. (Para 17). *Hari Mohan Mandal* v. *State of Jharkhand*, (2004) 12 SCC 220: AIR 2004 SC 3687: 2004 Cri LJ 3112.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-3-2004]

State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320; R. Prakash v. State of Karnataka, (2004) 9 SCC 27: 2004 SCC (Cri) 1408 ; Sarju Prasad v. State of Bihar, AIR 1965 SC 843: (1965) 1 Cri LJ 766, relied on

[8200] — S. 307 — Attempt to murder — Conviction — Ingredients — *For justifying conviction under S. 307, held, intent coupled with some overt act in execution thereof need be present — Not essential that injury inflicted should be capable of causing death, though nature of injury actually caused may give considerable assistance in inferring the intention of the accused — Intention of accused can also be deduced from other circumstances and may even, in some cases, be ascertained without any reference to actual wounds — Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section — An attempt in order to be criminal need not be the penultimate act* (Para 13). *Lachman Singh* v. *State of Haryana*, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123: AIR 2006 SC 2763: 2006 Cri LJ 4041.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 28-7-2006]

[8201] — S. 307 — Attempt to murder — First part of S. 307 — Applicability — Intention or knowledge regarding commission of murder and doing of an act towards it are necessary ingredients — Receipt of injury by victim not a prerequisite for convicting accused under first part — *When victim receives injuries, second part would be attracted — Pursuant to rivalry inter se between the parties in regard to grant of railway contracts, two bombs hurled by accused at the victims, one of which did not explode and the second one exploded but victims did not sustain any injury — Trial court convicted accused persons under Ss. 307 and 307/109 — High Court held that no injury having been sustained by the victims, no case under S. 307 was made out — No finding arrived at by High Court that PWs contradicted themselves in material particulars so as to render their testimonies untrustworthy or that findings of trial court were either unsatisfactory or contrary to legal principles — Held, High Court's judgment cannot be sustained — Matter remitted to High Court for consideration afresh — CrPC, 1973, Ss. 374 & 386. Prakash Chandra Yadav* v. *State of Bihar*, (2007) 13 SCC 134: 2008 Cri LJ 438.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Parsuram Pandey v. State of Bihar, (2004) 13 SCC 189: 2005 SCC (Cri) 113, followed

[8202] — S. 307 — Attempt to murder by firearm — Act amounting to an attempt to commit murder is necessarily bound to be the only and last act of the culprit

In cases of attempt to commit murder by firearm, the act amounting to an attempt to commit murder is bound to be the only and the last act to be done by the culprit. Till he fires, he does not do any act towards the commission of the offence and once he fires, and something happens to prevent the shot taking effect, the offence is under S. 307. *Om Parkash* v. *State of Punjab*, AIR 1961 SC 1782: (1962) 2 SCR 254: (1961) 2 Cri LJ 848.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 24-4-1961]

[8203] — S. 307 — Attempt to murder two persons by firing a single shot — *Held, only one offence is committed — However, there is no fixed rule that in no case can a single act constitute more than one offence. Bhagat Singh* v. *State*, AIR 1952 SC 45: 1952 SCR 371: 1952 Cri LJ 323, 324.

Bench Strength **3**. Coram: **Fazl Ali**, *M.C. Mahajan* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 19-12-1951]

[8204] — S. 307 — Causing such injury as would endanger life, held, not an essential condition for applicability of — *Hence mere infliction of simple injuries, held, cannot by itself be ground for acquittal, if the offence otherwise falls under S. 307*

It is sufficient to justify a conviction under S. 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused my often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under S. 307 merely because the injuries inflicted on the victim were in the nature of a simple hurt. *State of Maharashtra* v. *Balram Bama Patil*, (1983) 2 SCC 28: 1983 SCC (Cri) 320: AIR 1983 SC 305: 1983 Cri LJ 331: 1983 MLJ (Cri) 474.

Bench Strength **2**. Coram: *E.S. Venkataramiah* and **R.B. Misra**, JJ. [Date of decision: 1-2-1983]

[8205] — S. 307 — Conviction under — Appellant firing pistol shot at the chest of Police Officer who tried to overpower him but the bullet getting embedded in the bullet proof vestment which the officer was wearing — *Held, appellant's conviction under S. 307 justified — In* *view of use of the lethal weapon and situs of the wound, it is not possible to accept the contention that there was no intention to kill the officer and that intention was only to escape after inflicting injury on the officer* (Para 8). *Chandrasekhar Sureshchandra Bhatt* v. *State of Maharashtra*, (2000) 10 SCC 582: 2001 SCC (Cri) 1504.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 29-3-2000]

[8206] — S. 307 — Conviction under — Requisites for — *Held, to justify conviction under S. 307 it is sufficient if there is an intent coupled with some overt act in execution thereof — Not essential that bodily injury capable of causing death should have been inflicted — Intention can be deduced not only from the nature of injury caused but also from other circumstances and may even, in some cases, be ascertained without any reference to actual wounds — Distinction between the act of the accused and its result — Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section — An attempt in order to be criminal need not be the penultimate act — On facts, accused brandishing his gun and threatening complainant of dire consequences on his intervention in the altercation between appellant and complainant's sister-in-law — Despite that complainant catching hold of the gun whereupon appellant hurling abuses and threatening to kill him — Thereafter, appellant fired the gun and the bullet ripped off flesh from complainant's right calf — Complainant still grappled with the appellant and prevented him from reloading the gun — On such facts and circumstances, held, accused rightly convicted under S. 307* (Paras 3 and 9). *Bipin Bihari* v. *State of M.P.*, (2006) 8 SCC 799.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 20-9-2006]

Sarju Prasad v. State of Bihar, AIR 1965 SC 843: (1965) 1 Cri LJ 766; State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320; Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863; Vasant Vithu Jadhav v. State of Maharashtra, (2004) 9 SCC 31: 2004 SCC (Cri) 1323; Bappa v. State of Maharashtra, (2004) 6 SCC 485: 2004 SCC (Cri) 1794, relied on

[8207] — S. 307 — Essential ingredients of — Relevant considerations while invoking S. 307 — *Held, it is not necessary that the injury capable of causing death should have been actually inflicted — Accused persons armed with deadly weapons causing serious injuries to PW 1 and severing his left arm — Assuming PW 1 to be dead, accused went away — Considering the injuries sustained, manner of assaults and weapons used, held, S. 307 was clearly applicable in instant case*

The essential ingredients required to be proved in the case of an offence under Section 307 are:

(*i*) that the death of a human being was attempted;

(*ii*) that such death was attempted to be caused by, or in consequence of the act of the accused; and

(*iii*) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as: (*a*) the accused knew to be likely to cause death; or (*b*) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (*a*) death, or (*b*) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury. (Para 20)

In offence under Section 307 all the ingredients of the offence of murder are present except the death of the victim. For the application of Section 307, it is not necessary that the injury capable of causing death should have been actually inflicted. The injuries sustained, the manner of assaults and the weapons used clearly make out a case of Section 307 IPC. The trial court was therefore justified in convicting accused-Respondent 1 under Section 307 IPC. (Paras 21 and 20). *State of Maharashtra* v. *Kashirao*, (2003) 10 SCC 434: AIR 2003 SC 3901.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-8-2003]

[8208] — S. 307 — Firearm injuries sustained by the victim — Attempt to commit murder — Inference regarding from nature of injuries — *Multiple punctured wounds with about 17 entry wounds in the middle part of the hand from right side elbow — Fracture of right side ulna — Held, attempt to murder made out*. *Merambhai Punjabhai Khachar* v. *State of Gujarat*, 1997 SCC (Cri) 1078: AIR 1996 SC 3236: 1996 Cri LJ 2465.

Bench Strength **2**. Coram: **B.L. Hansaria** and *K. Venkataswami*, JJ. [Date of decision: 18-4-1996]

[8209] — S. 307 — Firing of gun shots in darkness — Direction not certain — Conviction whether sustainable

The prosecution must prove that when the accused fired his gun it was intended to be fired at some one because it may be that the shots were fired in the air or in some direction only with a view to create confusion and not to kill. *Hazara Singh* v. *State of Punjab*, (1971) 1 SCC 529: 1971 SCC (Cri) 237.

Bench Strength **2**. Coram: *K.S. Hegde* and **A.N. Grover**, JJ. [Date of decision: 4-2-1971]

[8210] — S. 307 — Ingredients of — *Offence is committed when the accused has an intention to commit murder and does an act towards its commission in pursuance of the intention — It is not necessary that the act is the penultimate act — Immediate effect of the act committed need not be death, but death must be the result of that act whether immediately or after a lapse of time — Accused regularly starving his wife with the object of causing her end — Held, accused is guilty under S. 307, IPC*

A person commits an offence under S. 307 when he has an intention to commit murder and in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in S. 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression "whoever attempts to commit an offence" in S. 511 can only mean "whoever intends to do a certain act with the intent or knowledge necessary for the commission of that offences". The same is meant by the expression "whoever does an act with such intention or knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder" in S. 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression "by that act" does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time. The word 'act' again, does not mean only any particular, specific, instantaneous act of a person, but denotes, according to S. 33 of the Code, as well, a series of acts.

An attempt to commit culpable homicide is punishable with imprisonment for a certain period and therefore but for its being expressly made an offence under S. 308, it would have fallen under S. 511 which applies to all attempts to commit offences punishable with imprisonment where no express provisions are made by the Code for the punishment of that attempt. It should follow that the ingredients of an offence of attempt to commit culpable homicide not amounting to murder should be the same as the ingredients of an offence of attempt to commit that offence under S. 511.

The course of conduct adopted by the accused in regularly starving *B* comprised a series of acts and therefore acts falling short of completing the series, and would therefore come within the purview of S. 307 of the Code. *Om Parkash* v. *State of Punjab*, AIR 1961 SC 1782: (1962) 2 SCR 254: (1961) 2 Cri LJ 848, 850.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 24-4-1961]

AIR 1961 SC 1698: 1961 (2) Cri LJ 822, followed

See also the discussion in AIR 1965 SC 843: 1965 (1) Cri LJ 766

Emp. v. Vasudeo, ILR 56 Bom 434: AIR 1932 Bom 279, approved

Jeetmal v. State, AIR 1950 Madh B. 21 and Cassidy's case, 4 Bom HC Cr 17, disapproved

Queen v. Nidha, ILR 14 All 38: 1891 All Wn 176, overruled

Rex v. White, 1910-2 KB 124, relied on

[8211] — S. 307 — Ingredients of — Intention or knowledge relating to commission of murder essential — Intention — Proof of — *Factors from which inference can be drawn — Indiscriminate firing from guns by accused persons causing simple injuries to some villagers — Held on facts, S. 307 not attracted*

To constitute an offence under Section 307 two ingredients of the offence must be present:

(*a*) an intention of or knowledge relating to commission of murder; and

(*b*) the doing of an act towards it. (Para 15)

For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence "of attempt to murder". Intent which is a state of mind cannot be proved by precise direct evidence; as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place. On the evidence on record, where the prosecution has been able to prove only that the villagers had sustained injuries by indiscriminate firing and it was an open area with none of the injured nearby there is a complete lack of evidence of intention to cause such injuries for which the accused persons could have been convicted under Section 302 IPC. Nature of the injuries sustained by the villagers was simple. None of the witnesses stated that the firearm causing injuries was being used by any particular accused for causing injuries to them. In fact the injured had not seen any of the accused persons using firearms. There is no evidence about the distance from which the said two accused fired. The only evidence regarding indiscriminate firing which caused simple injuries to the villagers does not constitute the intention or knowledge of the accused persons for committing the murder or doing of an act towards it. (Para 15). *Parsuram Pandey* v. *State of Bihar*, (2004) 13 SCC 189: 2005 SCC (Cri) 113: AIR 2004 SC 5068: 2004 Cri LJ 4978.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and **P.P. Naolekar**, JJ. [Date of decision: 14-10-2004]

Followed in Prakash Chandra Yadav v. State of Bihar, (2007) 13 SCC 134

[8212] — S. 307 — Ingredients under — *Held, are: (i) an intention of or knowledge relating to commission of murder; and (ii) the doing of an act towards it* (Para 14). *Sumersinbh Umedsinh Rajput* v. *State of Gujarat*, (2007) 13 SCC 83: AIR 2008 SC 904: (2008) 61 AIC 22 (SC): 2008 Cri LJ 1388.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 11-12-2007]

Parsuram Pandey v. State of Bihar, (2004) 13 SCC 189: 2005 SCC (Cri) 113; Sagayam v. State of Karnataka, (2000) 4 SCC 454: 2000 SCC (Cri) 819; Merambhai Punjabhai Khachar v. State of Gujarat, 1997 SCC (Cri) 1078, relied on

[8213] — S. 307 — Injury caused to wrong person — Sufficient in the ordinary course of nature to cause death, but the injured surviving — Whether offence under S. 307 made out

In view of the finding that he intended to cause such injury to Rangnath as was sufficient in the ordinary course of nature to result in his death, it was immaterial whether that particular injury was sought to be given to Rangnath or to Kashinath. *Sakharam* v. *State of Maharashtra*, (1969) 3 SCC 730.

Bench Strength 3. Coram: *J.M. Shelat*, **V. Bhargava** and *C.A. Vaidialingam*, JJ. [Date of decision: 22-4-1969]

[8214] — S. 307 — "Intention or knowledge" sufficient to constitute murder an essential precondition under — That can be ascertained from facts and circumstances — *That accused party carrying sharp-edged weapons (ballam) but using only blunt side of it even after suffering injuries by sharp-edged weapons wielded by the opposite party is a very significant circumstance showing absence of 'intention or knowledge' and suddenness of the incident — Accused therefore entitled to acquittal under S. 307*

Under S. 307 IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under S. 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention. In this case, two parties in the course of a fight inflicted on each other injuries both serious and minor. The accused, though armed with ballam, never used the sharp edge of it. They used only the blunt side of it despite their being attacked by the other side. They suffered injuries but they were not provoked or tempted to use the cutting edge of the weapon. It is very very significant showing that they had no intention to commit murder. They had no motive either. The fight might have been a sudden flare up. Where the fight is accidental owing to a sudden quarrel, the conviction under S. 307 is generally not called for. There is, therefore, no reason to disturb the acquittal of the accused under S. 307 in this case. *Hari Singh* v. *Sukhbir Singh*, (1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127.

Bench Strength 2. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 25-8-1988]

[8215] — S. 307 — Knowledge that by the act even death may result, and victim actually injured by such act and hospitalised for about 40 days — Conviction confirmed — *Accused alleged to have fired two shots at victim PW 3, over loss of income on account of fact that water for irrigation was now being provided by father of PW 3, which till then was provided by father of accused — Accused apprehended at spot with gun and spent cartridges — FIR lodged without delay — Testimonies of eyewitnesses PWs 1 and 4 found credible — Medical evidence corroborating prosecution version and chain of events as stated therein — Victim in hospital from 9-2-1975 to 20-3-1975 — Counter-case lodged by accused stating that it was accidental fire which occurred as a result of snatching of gun by PW 3 and other persons accompanying him — However, reason why he was carrying his brother's licensed gun not satisfactorily explained — Major part of occurrence not disputed* *by accused, and his statement recorded under S. 313 CrPC also to some extent in line with prosecution version — Moreover, presence of eyewitnesses also stood admitted — Held, act of firing at PW 3 obviously shows that accused had knowledge that by such act even death may result, and he actually injured victim — Hence, his conviction under S. 307 sustainable* (Paras 9 to 12, 29 to 32, 35, 38, 39 and 42). *Satyavir Singh* v. *State of U.P.*, (2010) 3 SCC 174.

Bench Strength **2**. Coram: *Altamas Kabir* and **Swatanter Kumar**, JJ. [Date of decision: 11-2-2010]

Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371: 1979 SCC (Cri) 1; Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2); Mathai Methews v. State of Maharashtra, (1970) 3 SCC 772; Khedu Mohton v. State of Bihar, (1970) 2 SCC 450: 1970 SCC (Cri) 479; Kunwar Bahadur Singh v. Shiv Baran Singh, (2001) 9 SCC 149: 2002 SCC (Cri) 428; Arulvelu v. State, (2009) 10 SCC 206: (2010) 1 SCC (Cri) 288; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, followed

[8216] — S. 307 — Requirements of

S. 307 requires that the act must be done with such intention or knowledge or under such circumstances that if death be caused by that act, the offence of murder will emerge. *Rekha Mandal* v. *State of Bihar*, 1968 SCD 208: (1968) 1 SCWR 14.

Bench Strength **2**. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 22-11-1967]

[8217] — S. 307 — Shooting from close quarters — *Causing injuries on abdomen and left arm — Knowledge of probable death can be imputed to him*

By this act of shooting from such close quarters, had the accused caused death, then, he would certainly have been guilty of murder. His guilt is thus quite clearly established on the plain language of S. 307 and on the reasonable consequences which must be assumed to flow from the act of shooting indulged in by him. Knowledge to this effect can legitimately be imputed to him. *Liyakat Mian* v. *State of Bihar*, (1973) 4 SCC 39: 1973 SCC (Cri) 680: AIR 1973 SC 807: 1973 Cri LJ 584.

Bench Strength **3**. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 21-12-1972]

[8218] — S. 307 — Shot fired by accused hitting the victim only a few inches away from a vital part of the body — *Held, conviction under S. 307 proper — However, in view of the prosecution being 14 years after the offence, sentence reduced from five years to two years' imprisonment. Shanabhai Dhulabhai Parmar* v. *State of Gujarat*, (1977) 1 SCC 454: 1977 SCC (Cri) 112: AIR 1977 SC 1338: 1977 Cri LJ 1007.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *R.S. Sarkaria* and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 2-9-1976]

[8219] — Ss. 307 and 34 — Attempt to murder — Nature and scope, restated — Acid-attack causing disfigurement — *Assault with iron rods, kicks, blows and pouring of acid — Applicability of S. 307 — Sentence warranted — On facts, PWs 1 to 3 suffered injuries on account of acid pouring by appellant-accused — Doctor indicated that each of the injured persons suffered more than 50% burn injuries caused due to acid, sufficient to cause death if not attended by medical aid at appropriate time — Held, analysis of evidence on record shows a clear application of S. 307 r/w S. 34 — Acid burns had caused disfigurement — However, considering the nature of dispute, custodial sentence of appellants reduced to 5 years' from 10 years' RI imposed by courts below — But, each of the appellants directed to pay a fine of Rs 25,000 — Out of each deposit, Rs 10,000 to be paid to each of the victims PWs 1 to 3 — In case of non-deposit of fine imposed, default custodial sentence of one year each, imposed — CrPC, 1973, S. 357* (Paras 9 to 13). *Sachin Jana* v. *State of W.B.*, (2008) 3 SCC 390: (2008) 2 SCC (Cri) 45: 2008 Cri LJ 1596: (2008) 64 AIC 187 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 25-1-2008]

Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863; State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320, relied on

[8220] — Ss. 307 and 34 — Gunshots fired at the victims by climbing on the roof of one of the accused's house — *Accused who actually fired at the victims causing pellet injuries to victims, held, rightly convicted under S. 307 and sentenced to 4 years' RI — Co-accused who had also climbed on the roof along with the main accused and encouraged him to fire also rightly convicted under S. 307 read with S. 34 and sentenced to 3½ years' RI — But the third accused having not participated in the shooting incident by climbing on the roof along with others and there being controversy about the manner in which the alleged shooting at the door by him took place his conviction and sentence under S. 307 read with S. 34 set aside in absence of common intention. Mastan Singh* v. *State of Punjab*, 1987 Supp SCC 186: 1988 SCC (Cri) 42.

Bench Strength **2**. Coram: *G.L. Oza* and *M.M. Dutt*, JJ. [Date of decision: 13-1-1987]

[8221] — Ss. 307 and 149 — All appellants members of unlawful assembly armed with deadly weapons at the time of occurrence — *But except one, who fired shots causing injuries, others not taking part in any overt action — Conviction under*

Ss. 307 read with 149 proper — But in the circumstances, sentence excessive and reduced to 2 years' RI. Tukaram Duyanu Gurav v. *State of Maharashtra*, (1982) 3 SCC 222: 1982 SCC (Cri) 694: AIR 1982 SC 59.

Bench Strength **2**. Coram: *A.D. Koshal* and *R.B. Misra*, JJ. [Date of decision: 14-10-1981]

[8222] — Ss. 307 and 324 — *Where one grievous and one simple injury was caused to the victim and the victim could not specify which injury was caused by the accused, held, as a matter of caution conviction should only have been under S. 324. Tameshwar Sahi* v. *State of U.P.*, (1976) 1 SCC 401: 1976 SCC (Cri) 19: AIR 1976 SC 59: 1976 Cri LJ 6.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 1-10-1975]

[8223] — Ss. 307, 326 and 34 — Incitement with knowledge of weapon possessed by person being incited — *Nature of common intention to be inferred — Vicarious liability of those inciting*

U was going to his residence. The three accused approached him. *M* accosted *U* by saying "You have become a wrestler and have assaulted my uncle". Two of the accused persons, herein appellants, incited *M* by saying "Assault the rascal, it is good that he has been found all alone". All the three accused chased him and he was caught hold of by the appellants while *M* inflicted injuries on his neck and head with a chhoora as a result of which he sustained serious injuries

Though the appellants have been absolved of the more serious offence under S. 307, IPC, the High Court was justified in convicting the appellants for the offence under S. 326, read with S. 34, IPC, having due regard to the nature of the injuries sustained by PW 1. *Ram Sarup Singh* v. *State of Bihar*, (1971) 3 SCC 262: 1971 SCC (Cri) 494.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 25-4-1971]

[8224] — Ss. 307 and 498-A — Attempt to murder — Strangulation — *Clear and categoric case of victim that while she was sleeping her husband (appellant) tried to strangulate her — She remaining unconscious for almost one-and-a-half months — Nature of injuries found on her neck fully consistent with her allegations — Her stray statement in cross-examination that she was deposing at the instance of her father, of no use to the defence because her testimony otherwise found trustworthy as there was no discrepancy in her statement to the police and her deposition in court — Statement by doctor that injuries could have been caused by hard and blunt object, inconsequential, since he was not cross-examined on the issue — Held, offence under S. 307 stood proved and hence sentence of RI for five years' and fine of Rs 10,000 with default stipulation, imposed by High Court confirmed, and conviction under S. 498-A affirmed* (Paras 5 and 7). *Vijayakumar Ramchandra Agarwal* v. *State of Maharashtra*, (2006) 9 SCC 604: (2006) 3 SCC (Cri) 352.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 8-3-2006]

[8225] — Ss. 307 and 506/34 — Appellants along with the co-accused going to the house of the victims and asking him to vacate the house — *On victim's refusal to vacate the house the appellants exhorting the co-accused to finish the victim who fired two shots causing injuries to the victims — Held, in the circumstances, the way the appellants acted leaves no doubt about their acting in furtherance of their common intention — Conviction upheld. Surjan Singh* v. *State of Haryana*, (1998) 7 SCC 336: 1998 SCC (Cri) 1621.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 13-8-1998]

[8226] — Ss. 307/149 — Applicability — Scope and ambit of S. 307, restated — Held, nature of injuries not determinative — *Respondent 2 filing petition under S. 482 CrPC before High Court, questioning framing of charges against him — Ground for challenge, inter alia, was that injuries inflicted on the victim were simple in nature and no injury was found on the vital parts of the body and, therefore, Ss. 307/149 had no application — High Court while accepting this submission, holding that framing of charge under S. 302 or S. 307 r/w S. 149 was an abuse of process of court — Sustainability — Reiterated, an accused charged under S. 307 IPC cannot be acquitted merely because injuries inflicted on the victim were in nature of simple hurt — Determinative question is intention or knowledge, as the case may be, and not the nature of injury — Therefore, held, impugned order of High Court, herein, is clearly unsustainable — CrPC, 1973, S. 482* (Paras 4 to 6). *Ratan Singh* v. *State of M.P.*, (2009) 12 SCC 585: (2009) 78 AIC 101 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

State of M.P. v. *Saleem, (2005) 5 SCC 554: 2005 SCC (Cri) 1329; State of M.P.* v. *Imrat, (2008) 11 SCC 523: (2009) 2 SCC (Cri) 558 , relied on*

(4) Trial, Proof and Other issues

See also CRIMINAL TRIAL in Vols. 18, 19 and 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or *SC on CrPC and Criminal Trial*

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(i) Acquittal justified

[8227] — S. 307 — Appreciation of evidence — Four to five persons using deadly weapons but causing only three simple and one grievous hurt to the injured — *Conviction under S. 307 IPC not justified. Jai Narain Mishra* v. *State of Bihar*, (1971) 3 SCC 762: 1972 SCC (Cri) 40: AIR 1972 SC 1764: 1972 Cri LJ 469.

Bench Strength **2**. Coram: *A.N. Ray* and **D.G. Palekar**, JJ. [Date of decision: 3-11-1971]

[8228] — S. 307 — Attempt to murder — Conviction improper where injured himself not identifying the assailant — *CFSL Report that bullet recovered matched those test fired through the same pistol, the only evidence against appellant — Held, merely because appellant was owner of the said weapon could not be a ground to convict him since even the injured did not identify the appellant as the person who fired the shot — Hence, conviction unsustainable and set aside — Arms Act, 1959, S. 27*

This is a case where even the injured did not identify the appellant to be the person who had fired the shot. Merely because he is the owner of the weapon, that cannot be a ground to convict him in terms of Section 307 IPC. Further, no question was put to the appellant in his examination under Section 313 of the Code of Criminal Procedure, 1973 regarding his purported role. The judgment of the High Court is clearly unsustainable and is set aside. (Paras 10 and 11). *Prem Singh* v. *State (NCT of Delhi)*, (2009) 14 SCC 192: 2009 Cri LJ 4296.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *V.S. Sirpurkar* and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

[8229] — S. 307 — Attempt to murder — Firing on patrolling party (BSF/police personnel) — Conviction, not proper — No attempt to recover lead/empties — *No definite evidence that accused targeted the members of the patrolling party — Direction in which shot travelled and details relating to other logistics, not forthcoming — Evidence of Inspectors vague and scanty — Every possibility of accused firing shot aimlessly to scare away those who challenged him from a distance — Held, conviction not sustainable — Accused acquitted* (Para 14). *Durgo Bai* v. *State of Punjab*, (2004) 7 SCC 144: 2004 SCC (Cri) 1865: AIR 2004 SC 4170.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 10-8-2004]

[8230] — S. 307 — Benefit of doubt — When warranted — Appreciation of evidence — *Appellant alleged to have fired a shot from his pistol at the victim's neck — Enmity between the parties admitted — Investigation conducted in a slipshod manner — No gun seized, no cartridge found at the place of occurrence — No attempt made to apprehend the culprits immediately — FIR was antetimed but general diary, wherein the FIR is required to be taken down, not produced — No explanation given why independent witnesses whose statements had allegedly been recorded, not examined — Statement of the injured taken after a very long time, although according to medical report, he was not unconscious — Held on facts, accused entitled to benefit of doubt. Jagdish Murav* v. *State of U.P.*, (2006) 12 SCC 626: (2007) 2 SCC (Cri) 234: (2006) 46 AIC 641 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

State of U.P. v. Gambhir Singh, (2005) 11 SCC 271: (2006) 1 SCC (Cri) 125, relied on

[8231] — S. 307 — Conviction under set aside on benefit of doubt. *Chhita* v. *State of Rajasthan*, 1987 Supp SCC 639: 1988 SCC (Cri) 133.

Bench Strength **2**. Coram: *V. Khalid* and *G.L. Oza*, JJ. [Date of decision: 19-2-1987]

[8232] — S. 307 — On facts, conviction and sentence under, passed by High Court set aside. *Dharam Pal* v. *State of U.P.*, 1981 Supp SCC 20: 1981 SCC (Cri) 640.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali, Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 25-3-1981]

[8233] — S. 307 r/w S. 34 — Case of accused-appellant 1 same as that of the accused persons who had been acquitted by Supreme Court in a connected appeal — *Hence appellant 1 entitled to be acquitted. Mohinder Singh* v. *State of Punjab*, 1987 Supp SCC 65: 1987 SCC (Cri) 631.

Bench Strength **2**. Coram: *G.L. Oza* and *M.M. Dutt*, JJ. [Date of decision: 22-1-1987]

See also 1983 SCC (Cri) 316

(4)(i) Acquittal justified *(contd.)*

[8234] — S. 307 r/w S. 34 & S. 333 r/w S. 34 — Conviction under set aside. *Bhagwan* v. *State of M.P.*, 1980 Supp SCC 316: 1981 SCC (Cri) 253: AIR 1980 SC 1750: 1980 Cri LJ 1269.

Bench Strength **2**. Coram: **A.C. Gupta** and *P.S. Kailasam*, JJ. [Date of decision: 30-7-1980]

[8235] — Ss. 307/34 — All three respondents alleged to have attacked one 'D' at night with kirpans etc., causing grievous injuries — *Daughter and son of the victim who came out on hearing the cries of the father not able to disclose names of assailants — Names of assailants given by associate of the victim who had deep-seated enmity against the respondents — Case of false implication probable — Acquittal of respondents by High Court upheld. State of Punjab* v. *Sohan Singh*, (1974) 3 SCC 585: 1974 SCC (Cri) 63: AIR 1974 SC 300: 1974 Cri LJ 351.

Bench Strength **2**. Coram: *S.N. Dwivedi* and **Y.V. Chandrachud**, JJ. [Date of decision: 16-11-1973]

[8236] — Ss. 307/34 — Attempt to murder — Appeal before High Court against conviction — Discrepancies in prosecution case — High Court justified in reversing trial court's judgment of conviction and directing acquittal of accused persons — *Prosecution version that gunshot fired at the instance of first respondent by his son — Occurrence alleged to have taken place at 7 a.m. on August 11, doctor said to have treated the injured informant at 11.30 a.m. on August 11 on the basis of requisition received from police, fardbeyan recorded at 1400 hours on August 11, FIR registered at 11.30 a.m. on August 13 and the report reached the court on August 14 — There was no explanation for delay of two days in lodging FIR — Investigating officer, who could have explained the delay in registering FIR and dispatching the same to court, not examined and no reason indicated for non-examination — Evidence of the informant also contrary to medical evidence in the sense that according to him only one shot was fired whereas there were three injuries and there was no explanation for the third injury — Even doctor's evidence showed that the two injuries could not be treated as entry and exit points — In view of these discrepancies as highlighted by High Court, held, there was no reason to interfere with the judgment of acquittal recorded by High Court. Balmiki Singh* v. *Ramchandra Singh*, (2008) 10 SCC 218: (2008) 70 AIC 106 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2008]

[8237] — Ss. 307/34 — Attempt to murder — Improbable prosecution case of doubtful veracity — Conviction not justified — *Victim complainant's allegations that in order to kill him, both appellant-accused along with one more co-accused tried to cut his throat with a knife and while trying to save himself he sustained injuries on his left cheek and left palm — No injury found on left palm and injury on right palm was a bruise and not incised in nature — Complainant not disclosing cause of injury to doctor — Weapon of alleged offence, other implements, mat with bloodstains on it, etc. not sent for forensic examination — FIR lodged after consultation with villagers — Hence, held, case made out by prosecution appears improbable and conviction of appellants not in conformity with evidence adduced on prosecution's behalf — Conviction, hence, set aside*

Having considered the submissions made on behalf of the respective parties and after going through the materials on record, the case made out by the prosecution appears to be improbable and the conviction of the appellants was not in conformity with the evidence adduced on behalf of the prosecution. (Para 17)

The main pillar of the prosecution case is PW 1, the complainant himself. The manner in which the alleged incident is supposed to have taken place does not fit in with the injuries received by the complainant. The most glaring inconsistency is the story of the complainant having held the blade of the knife, alleged to have been used in the commission of the offence, with both hands and thereby suffering incised injuries on his left palm. The injury report shows that the complainant did not have any incised injury or any other injury on his left palm and the injury to his right palm was not of an incised nature, but a bruise which could have been caused by a blunt instrument. Moreover, the knife, which was seized and was alleged to have been used for the commission of the offence, was never sent for forensic examination so as to connect it with the offence. Furthermore, the other sharp-cutting implements, which were also seized, were also not sent for such examination. Even the mat, which had bloodstains on it, was not sent for such examination and it could, therefore, not be proved as to whether the bloodstains thereon were of human or animal origin. (Para 18)

Coupled with the above is the fact that on going to the hospital in the night for medical treatment, the complainant did not even disclose to the doctor as to how he had sustained the injuries. The doctor was, therefore, not at all aware of any such incident, as presented by the prosecution, having been committed. Coupled with the above is the fact of the delay in lodging the FIR after consultation with the local villagers. Therefore, chances of fabrication in the FIR cannot be ruled out. (Para 19)

Neither the trial court nor the High Court appears to have looked into these details properly. Therefore, the judgment of conviction and sentence imposed by the trial court and upheld by the High Court is set aside. (Para 20). *Prabir Mondal* v. *State of W.B.*, (2010) 1 SCC 386.

Bench Strength **3**. Coram: **Altamas Kabir**, *Cyriac Joseph* and *A.K. Ganguly*, JJ. [Date of decision: 28-10-2009]

[8238] — Ss. 307/34 — Reversal of acquittal by High Court, held, not justified on the facts — *Appellants charged with attempt to murder PW 3, under Ss. 307/34 IPC — As a result of injury to thyroid cartilage appellant unable to speak and give out the name of his assailants — PW 3 remaining in hospital for about a month — After discharge from hospital PW 3 alleged to have divulged the names of assailants to the police — The motive alleged for the crime was that PW 3 had filed a complaint to the police against the appellants for causing damage to his crops by driving their cart through his fields — Trial court acquitting the appellants on the ground that the identity of the appellants had not been established — High Court in appeal, however, setting aside the acquittal and convicting the appellants and imposing a sentence of 3 years' RI — Held, on the basis of the motive attributed the appellants could hardly be aggrieved so as to cause grievous hurt to the victim — Besides, the identity of the appellants remained in doldrums for nearly a month — In these circumstances when there was delay and hesitation in conveying to the police the names of the appellants, it becomes difficult to maintain their conviction — Even otherwise, when two views were possible, the High Court should have been slow in upsetting the order of acquittal, all the more so when the trial court laid emphasis on the victim not naming the assailants, even before the investigation, as the culprits — CrPC, 1973, Ss. 378 & 386. Chandrabhan* v. *State of Maharashtra*, 1997 SCC (Cri) 220: AIR 1995 SC 2406.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 7-3-1995]

[8239] — Ss. 307/393 — Arms Act, 1959 — S. 25 read with S. 6 TADA Act, 1985 — Conviction under — Legality — *Injuries sustained by the accused not explained by the prosecution — Complainant first going to the Primary Health Centre for medical help but not disclosing the name of the assailant to the doctor — Name of the accused disclosed only at the time when the complaint was recorded by the Sub-Inspector of Police after about 5½ hours of the incident — In the circumstances of the case, conviction of the accused under Ss. 307/393 not sustainable — Evidence adduced by the prosecution in the case under S. 25 Arms Act read with S. 6 TADA suffering from same infirmity — Hence, conviction under those provisions also set aside. Rehmat* v. *State of Haryana*, (1996) 10 SCC 346: 1996 SCC (Cri) 1272: AIR 1997 SC 1526.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 3-9-1996]

(ii) Appeal/Revision/Writ petition

[8240] — S. 307 — Appeal against acquittal — Where view taken by trial Court is reasonably possible, High Court not justified in reversing the order of acquittal even if it does not agree with the trial court's view — *On facts, conviction and sentence under S. 307, Penal Code, 1860, passed by High Court set aside — CrPC, 1973, Ss. 378 and 386. Dharam Pal* v. *State of U.P.*, 1981 Supp SCC 20: 1981 SCC (Cri) 640.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali*, *Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 25-3-1981]

[8241] — S. 307 — Writ petition challenging conviction and sentence under S. 307 recorded by Court Martial against respondent-accused — *Reappreciation of evidence on record and interference by High Court — Held, justified when Court Martial recorded the conclusion of guilt on the basis of evidence of sole injured witness without examining defence plea and contentions raised on behalf of the accused*

It was contended that howsoever wide the jurisdiction of the Court under Article 226 may be, in exercising judicial review against an order of an inferior tribunal, the same jurisdiction would not extend to reappreciation of the evidence on record and interfere with a finding arrived at by the inferior tribunal.

Held :

There is no dispute with regard to the above proposition of law. It is true that in a court martial, it would be possible for the appropriate authority to record a conclusion of guilt on the basis of the uncorroborated testimony of the injured and if such a conclusion is arrived at then the High Court may not interfere with the same by reappreciating the evidence. But that does not confer the power on the Court Martial Authority not even to consider the

(4)(ii) Appeal/Revision/Writ petition *(contd.)*

defence plea and the contentions raised on behalf of the accused. In this case the order of the Court Martial unequivocally indicates that either the defence plea or even the contentions raised by the accused in the proceeding had not been taken into consideration and merely on the evidence of the injured who happened to be the sole witness of the entire incident, the conviction was recorded. That certainly vitiated the entire conviction and therefore, the High Court was justified in interfering with the conviction recorded. (Paras 4 to 6). *Union of India* v. *Sunil Tiwari*, (2009) 16 SCC 358.

Bench Strength **3**. Coram: *G.B. Pattanaik, S.N. Phukan* and *Brijesh Kumar*, JJ. [Date of decision: 30-1-2002]

[8242] — Ss. 307, 323, 326 and 447 — Concurrent findings regarding participation by the appellant — Interference by High Court in revision

There being concurrent findings regarding participation by the appellants in the crime, those findings could not be disturbed in revision before the High Court. They could not be challenged before the Supreme Court in appeal under special leave too. *Lakshmi Tiwari* v. *State of Bihar*, (1972) 3 SCC 122: 1972 SCC (Cri) 442: AIR 1972 SC 1058: 1972 Cri LJ 776.

Bench Strength **2**. Coram: **J.M. Shelat** and *H.R. Khanna*, JJ. [Date of decision: 19-1-1972]

[8243] — Ss. 307, 427 and 448 — Appellate court's approach, on facts, if was proper — *Held, the appellate court exercising appellate powers has not only to consider various points but objectively and critically analyse the evidence — That has not been done in the present case — On facts, trial court on finding appellant-accused guilty of offences punishable under Ss. 307, 427 and 448 IPC imposed different sentences which were directed to run concurrently — Appeal preferred by appellant-accused before High Court was disposed of without any indication in the order as to whether the appeal was dismissed or allowed — Only certain observations were made and directions given — High Court on being pointed out about there being no result of the appeal, listed the matter again and on the date of listing observed that for the reasons and discussions made, the order of conviction and sentence is confirmed and appeal is dismissed — Procedure adopted, held, was clearly not appropriate — Manner in which appeal was dealt with is not the correct way to deal with an appeal — No serious attempt was made by High Court to appreciate rival stand and/or analyse the evidence in its proper perspective — Hence, impugned judgment of High Court set aside and matter remitted to it for consideration afresh and disposal in accordance with law* (Paras 6, 9, 3, 4 and 13). *B. Vishwanath* v. *State of Karnataka*, (2008) 11 SCC 168: 2008 Cri LJ 1947: (2008) 63 AIC 58 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-2-2008]

(iii) Appreciation of evidence

[8244] — Ss. 307 and 353 — Large number of discrepancies — Effect — *In the instant case, there exist a lot of discrepancies in the prosecution case with regard to the manner in which incident had taken place — Hence, on facts, held, a case of S. 307 IPC not made out — Also, if prosecution case of attempt to murder by gunshot injury fails, resultantly prosecution under S. 25, Arms Act, would also fail — Having regard to the facts and circumstances herein, no case made out even under S. 353 IPC — Arms Act, 1959, S. 25(1)(a)*

The appellant was charged with and convicted for commission of offences under Sections 307 and 353 IPC as also Section 25(1)(*a*), Arms Act, 1959, and sentenced to undergo rigorous imprisonment of five years and fine of Rs 5000, two years and fine of Rs 1000 and three years and fine of Rs 1000 respectively.

Allowing the appeal,

Held :

The complainant, a PSI, examined himself as PW 8. PW 2, PSI of CID, who allegedly accompanied the complainant sought to support the prosecution case. However, he did not have any personal knowledge about the incident. He heard thereabout only from the complainant. (Para 5)

All the witnesses who were said to be independent witnesses viz. PWs 3, 6, 7 and 10 turned hostile. According to them, they were made to become witnesses of seizure of the clothes, etc., which had been kept in the police station. (Para 6)

PW 5, the doctor, in his evidence proved the medical report. In his deposition for all intent and purport, he conceded the deficiencies in the prosecution case vis-à-vis the report prepared by him. From the statements made by him, it is evident that even in relation to the purported marks of entry of the bullet through the garments owned by the complainant, there existed a lot of discrepancies. Some sort of makeshift report was placed before him by way of "yaadi", which was prepared by the complainant and whereupon he completely relied. If no burn injury was found in the clothes, it is difficult to believe that some burn injury was noticed in the wound. Prosecution did not obtain any clarification from him as to whether the nature of the injury which the complainant suffered could not take place due to rubbing of the skin on a rough substance. (Paras 7 and 8)

It is also noticed that the injury received by the complainant was allegedly caused to his loin. How such a simple injury could be caused from a shot fired from a firearm is open to question. So far as the report of the Forensic Science Laboratory is concerned, the clothes had not been identified as belonging to the injured. It may also be recorded that two bullets were sent to the Forensic Science Laboratory, although the specific case of the prosecution is that only one shot was fired. Two bullet holes were, therefore, not possible to be caused, one in the trousers and other in the waist, by one shot of fire. It has not been disclosed as to wherefrom the bullet was recovered. The mahazar witnesses did not say that any bullet was recovered from the place of occurrence in their presence. (Para 9)

According to PW 8, he came to know about the firing on hearing of sound of fire. He had immediately put his finger on the trigger of the revolver and caught the appellant from his wrist. If the finger of the complainant himself was on the trigger of the revolver, it is difficult to believe that the appellant was responsible for the act complained of. (Para 10)

According to PW 8, seizure took place at the place of occurrence but panch witnesses contradicted him as according to them, they were made to sign the seizure list only at the police station. (Para 10)

PW 8 resiled from his statement made before the investigating officer under Section 161 CrPC and built up another story in his examination-in-chief. (Paras 10 and 11)

PW 9 stated that blood had oozed out but the vest of the complainant did not contain any bloodstain. (Para 12)

There, thus, exist a lot of discrepancies in regard to the manner in which the incident had taken place. (Para 13)

Even assuming that PW 8 received a firearm injury which in the facts and circumstances of the case does not appear to be plausible, having regard to the positive evidence of the prosecution as has been stated by PW 4, it seems certain that a scuffle had ensued. A case of Section 307 IPC, therefore, has not been made out. (Para 14)

If the prosecution case of attempt to murder of PW 8 by gunshot injury fails, resultantly, the prosecution under Section 25, Arms Act, would also fail. Having regard to the facts and circumstances of this case, no case has been made out even under Section 353 IPC. (Paras 15 and 16). *Sumersinbh Umedsinh Rajput* v. *State of Gujarat*, (2007) 13 SCC 83: AIR 2008 SC 904: (2008) 61 AIC 22 (SC): 2008 Cri LJ 1388.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 11-12-2007]

[8245] — Ss. 307/34 — Factum of the complainant sitting down and escaping rifle shot injury at the hands of the appellant found by the High Court to be an exaggeration — *High Court was not justified in convicting the appellant on such finding*

The High Court has viewed the factum of *C* sitting down and escaping rifle shot injury at the hands of *H* to be an exaggeration. Yet the High Court convicted him for offence under Sections 307/34 IPC. The High Court was wrong in convicting *H* after such finding but right in coming to that conclusion. Therefore, it must be held that the account of the first occurrence has not been placed by the prosecution before the court in a true manner. *Harish Kumar* v. *State of M.P.*, (1996) 9 SCC 667: 1996 SCC (Cri) 1080: AIR 1996 SC 3433.

Bench Strength **2**. Coram: **M.M. Punchhi** and *Sujata V. Manohar*, JJ. [Date of decision: 9-7-1996]

(iv) Bail

[8246] — S. 307 — Considerations for cancellation of bail — *Cancellation should not be by way of punishment even if prima facie case against the accused is established — Held, High Court erred in interfering with Sessions Court's bail order on irrelevant considerations such as nature and gravity of circumstances in which offence committed — CrPC, 1973, S. 439(2)*

The appellant was arrested while inflicting several knife blows on a social and political worker who had come to visit a patient in a hospital. An offence under S. 307, IPC and S. 135 of the Bombay Police Act, was registered against him and he was remanded to judicial custody. His application for releasing him on bail was granted by the Sessions Court by a well-reasoned order made after hearing both the sides. The State moved an application to the High Court for cancellation of the order granting bail. The High Court allowed the application and cancelled the bail order holding that once a prima facie case was established, the Sessions Court ought to have taken into consideration the nature and gravity of the circumstances in which the offence was committed.

(4)(iv) Bail *(contd.)*

Held :

Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. Even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.

In the present case the High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application was for cancellation of the bail. It was misdirected while examining the question of directing cancellation of bail by interfering with discretionary order of the Sessions Court. The circumstance found by it that the victim attacked was a social and political worker cannot be considered to be so overriding as to permit such interference. The High Court was impressed by some of the most irrelevant considerations, overlooking the considerations relevant for deciding the question. The High Court's approach thus being erroneous must be set aside. *Bhagirathsinh* v. *State of Gujarat*, (1984) 1 SCC 284: 1984 SCC (Cri) 63: AIR 1984 SC 372: 1984 Cri LJ 160: (1984) 1 GLR 332.

Bench Strength **2**. Coram: *D.A. Desai* and *R.B. Misra*, JJ. [Date of decision: 21-11-1983]

[8247] — Ss. 307 and 395 r/w 149 — Bail, grant of in case of delay in commencing trial — *Accused languishing in jail since long time without commencement of the trial — Despite suppression of certain facts in bail application by the appellant's counsel, in view of the circumstances of the case, Supreme Court releasing the appellant on bail — Constitution of India, Art. 21 — CrPC, 1973, Ss. 437 and 439. Vivek Kumar* v. *State of U.P.*, (2000) 9 SCC 443: 2001 SCC (Cri) 416: AIR 2000 SC 3406 (2): 2000 Cri LJ 2774: 2000 All LJ 1470.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 4-1-2000]

[8248] — Ss. 307/34 — Bail — Cancellation of — Parameters regarding grant/cancellation of bail, restated — *Only because co-accused did not actually oppose prayer for cancellation of bail, held, could not be a ground to cancel bail — CrPC, 1973, S. 439* (Paras 5 and 6). *Ram Babu Tiwari* v. *State of M.P.*, (2009) 12 SCC 471.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

Dinesh M.N. (S.P.) v. State of Gujarat, (2008) 5 SCC 66: (2008) 2 SCC (Cri) 508, relied on

(v) Conviction justified

[8249] — S. 307 — Arms Act, 1959 — S. 27 read with S. 6(1) TADA Act — Appellant assaulting the complainant with a knife and giving repeated stab-blows to him — *Defence plea that the complainant was under influence of liquor and was beaten by the villagers as he was teasing woman found unacceptable — There being enough light at the place of incident and the appellant a known person there was no difficulty in identifying him — Two or three omissions on minor points in the evidence of the complainant inconsequential — Complainant naming the appellant as the person who had given him knife-blows as soon as he regained consciousness — Held, in the circumstances of the case, evidence of the complainant is quite sufficient to sustain conviction of the appellant — Conviction maintained — Arms Act, 1959, S. 27. Shankar Lal* v. *State of Haryana*, (1998) 6 SCC 239: 1998 SCC (Cri) 1434: AIR 1998 SC 3271.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 22-7-1998]

[8250] — S. 307 — Attempt to murder — Appreciation of evidence — Conviction confirmed — *Appellant giving two "khukhri" blows to PW 1 (ASI) at the police outpost and grievously injuring him — Appellant thereafter overpowered by constables PWs 4 and 5 and arrested — Incident recorded in the daily diary and sent to Distt. Headquarters situated 26 kms. away on basis whereof FIR was lodged and investigation commenced — Undisputed that IO had to walk all the way in difficult terrain from the Distt. Headquarters to the place of occurrence and hence he could reach there only the next night — Appellant neither examining any defence witness nor entering any particular defence — PW 1 stating in great detail injuries suffered by him which stood corroborated by medical evidence — Testimony of PW 1 also corroborated in material particulars by testimonies of PWs 4 and 5, which were found credible — Held, conviction of appellant under S. 307 by courts below sustainable* (Paras 1, 8, 9, 11, 12 and 15). *Bir Singh* v. *State of H.P.*, (2006) 9 SCC 579: (2006) 3 SCC (Cri) 343: AIR 2006 SC 1944: 2006 Cri LJ 2456: (2006) 102 Cut LT 426.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 25-4-2006]

[8251] — S. 307 — Attempt to murder — Conviction — Sustainability — *Appellant alleged to have purposefully hit PW 2's cycle with his Maruti car and on being questioned stated that he would do it again — When PW 2, along with his father-in-law who was closely related to appellant-accused's* *father, and PWs 3 and 4, his brothers-in-law had gone to lodge a complaint thereabout to appellant's father, heated words were exchanged, and appellant with his licensed .12 bore gun alleged to have fired at PW 2 hitting him in his abdomen, besides firing at PWs 3 & 4 also — Plea of right of self-defence found rightly rejected by courts below because PW 2 had gone with his father-in-law and others only to lodge a complaint and not as aggressors — Testimonies of PWs found cogent and credible and despite their lengthy cross-examination nothing elicited from them which would shake prosecution version — Hence, held, conviction of appellant under S. 307 calls for no interference* (Paras 13 and 18 to 22). *Karamjit Singh* v. *State of Punjab*, (2009) 7 SCC 178: (2009) 3 SCC (Cri) 330.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 6-7-2009]

Manjappa v. State of Karnataka, (2007) 6 SCC 231: (2007) 3 SCC (Cri) 76, followed

[8252] — S. 307 — Attempt to murder — Conviction, held, proper — *Altercation taking place between PWs 2 and 3 on the one hand, and the appellant on the other — PW 2 slapping the appellant — After a few hours of the said incident when PW 2 was going along with PW 3, appellant stabbing PW 2 with knife in his abdomen — Recovery of knife at the instance of the appellant — On chemical examination, knife found containing human blood of 'AB' group which was the blood group of the injured — Submission of appellant that he also received injuries in the course of the said occurrence which remained unexplained by the prosecution, had no force — Though prosecution has to prove every ingredient of the offence and defence only to probabilise, there must be some material to support the plea of the defence — Courts below concurrently found the evidence of PWs 2 and 3 to be acceptable — No reason to take a different view — Conviction upheld — CrPC, 1973, S. 428* (Paras 4 and 7). *Nasir Sikander Shaikh* v. *State of Maharashtra*, (2005) 10 SCC 585: AIR 2005 SC 2533: 2005 Cri LJ 2621.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 5-5-2005]

[8253] — S. 307 — Attempt to murder — Evidence of victim fully supported by eyewitnesses and prosecution case not shown to be untrustworthy — *Courts below, held, rightly convicted the accused — No case made out for Supreme Court's interference. Sher Singh* v. *State of Punjab*, (1979) 3 SCC 606: 1979 SCC (Cri) 740: AIR 1979 SC 699: 1979 Cri LJ 642.

Bench Strength **2**. Coram: *P.S. Kailasam* and **A.D. Koshal**, JJ. [Date of decision: 17-11-1978]

[8254] — S. 307 — Conviction under, upheld accepting the concurrent finding of fact that the defence plea of right of private defence untenable — *But on facts, sentence of 4 years' RI reduced to 2 years' RI. Bhanwar Singh* v. *State of U.P.*, 1987 Supp SCC 148: 1987 SCC (Cri) 666.

Bench Strength **2**. Coram: *V. Balakrishna Eradi* and *S. Natarajan*, JJ. [Date of decision: 6-2-1987]

[8255] — S. 307 — Ingredients of, if fulfilled — Conviction restored—*Applying the ruling in* State of M.P. v. Saleem, *(2005) 5 SCC 554 to the current facts, held, the High Court had arrived at erroneous hypothetical conclusions ignoring the fact that the nature of injuries were grievous and were caused by use of sufficient force by sharp-edged weapons — Order of acquittal of the High Court set aside and that of the trial court restored* (Para 13). *State of M.P.* v. *Imrat*, (2008) 11 SCC 523: AIR 2008 SC 2967: (2008) 68 AIC 104 (SC): 2008 Cri LJ 3869.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 11-7-2008]

[8256] — S. 307 — Offence under — Acquittal, improper — Attack on police officials —*After the firing by accused **RP**, the police officials were trying to take the gun from him — Meanwhile, accused **V** snatched away the gun from **RP** and started firing — Death of one police official and injuries sustained by PWs 4 and 5 — V fired from very close range — Though the bullets did not hit PWs 4 and 5 on vital parts, yet the intention of the accused was crystal clear — Held, case under S. 307 made out — High Court was not justified in directing acquittal of V in respect thereof — Conviction by trial court restored. State of U.P.* v. *Virendra Prasad*, (2004) 9 SCC 37: AIR 2004 SC 1517: 2004 Cri LJ 1373: 2004 All LJ 673.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 3-2-2004]

[8257] — S. 307 — Reversal of acquittal by High Court, held, proper — *Assault on PW 3 by appellant — Evidence of eyewitnesses (friends of PW 3) rejected by trial court without any plausible reason — No reason given as to why the evidence of PW 3 was not worthy of credence — Since trial court itself observed that there was exchange of hot words between the accused and PW 3, plea that genesis of occurrence not established, held, rightly discarded by High Court — Reliance placed by High Court on evidence of PW 3 and other eyewitnesses, held, proper — High Court was justified in reversing the acquittal — CrPC, 1973, Ss. 386 and 378* (Paras 6 and 7). *R. Prakash* v. *State of Karnataka*, (2004) 9 SCC 27: 2004 SCC (Cri) 1408: AIR 2004 SC 1812: 2004 Cri LJ 1391.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 11-2-2004]

(4)(v) Conviction justified *(contd.)*

[8258] — Ss. 307, 147, 148 and 149 — Conviction, proper — Appellants assaulting PW 1 by means of swords — *Injuries sustained by PW 1 were sufficient in the ordinary course to cause his death, but due to the efforts of the doctors he survived — Non-disclosure of names of appellants to the doctor by PW 1, not fatal since a subsequent statement recorded (at that time as a dying declaration) contained their names — Having regard to the medical evidence as well as statement of PW 1 which was corroborated by the eyewitness account of PWs 3, 7, 8 and 9, held on facts, concurrent findings of conviction recorded by the courts below not liable to be interfered with* (Paras 5, 7, 8, 9 and 10). *Shrawan Bhadaji Bhirad* v. *State of Maharashtra*, (2002) 10 SCC 56: 2003 SCC (Cri) 1510: AIR 2003 SC 199.

Bench Strength **2**. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 13-11-2002]

[8259] — Ss. 307, 148, 307/149, 100 and 101 — Attack on PW 1 when he was returning from a well to his house — Plea of self-defence — *Accused persons stating that it was PWs who came and attacked them — Evidence indicating that the well was near to the house of PW 1 — House of accused about 1½ furlongs away from the place of incident — Held, not possible to assume that PW 1 and others came to the house of accused and attacked them — Plea that accused acted in private defence, held, not acceptable* (Para 7). *Karan Singh* v. *State of M.P.*, (2003) 12 SCC 587.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 26-9-2003]

[8260] — Ss. 307 and 307/34 — Arms Act, 1959 — S. 27 read with S. 6(1) TADA — Attempt to commit murder — Conviction upheld — *A-1 firing from his gun hitting the thigh of the witness and A-2 causing pistol shot injury on the shoulder of the other witness — Injured witnesses giving all necessary details how the accused persons caused injuries on their person — Incident having taken place at about 7 a.m. in the month of July when there was sufficient light to identify the accused — Evidence of the injured witnesses corroborated by the promptly lodged FIR giving the names of all the three accused with reference to specific role and the place from where they used the firearm — Conviction upheld — In the circumstances of the case sentence of 7 years' RI to each of the appellants not disproportionate — No leniency in respect of sentence is called for. Bhagirath* v. *State of Haryana*, 1996 SCC (Cri) 1014: AIR 1996 SC 3431.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 11-7-1996]

[8261] — Ss. 307, 324 & 498-A — Appreciation of evidence — Housewife admitted in Emergency Ward of hospital by her jeth in a serious condition — Insecticide poison viz. organophosphorus found in her gastric lavage and blood sample — *Doctor deposing that the said poison was dangerous to life and that if the treatment had not been given in time, she would have died — The victim, who survived, deposing that her husband Respondent 2, used to beat her regularly, that on the day of occurrence her husband had forced her to consume the poison and that she had told this fact to her father when he came to the hospital — Her father, appellant, corroborating her testimony — In view of this direct evidence, held, non-examination of her Jeth (who was not an eyewitness) or her mother-in-law and sister-in-law by prosecution was not fatal to the prosecution case — Trial court erred in acquitting Respondent 2 taking the view that there was no oral, documentary or circumstantial evidence — High Court by summarily dismissing the criminal revision approached the matter in a perfunctory manner — Hence Respondent 2 liable to be convicted under Ss. 307, 324 and 498-A — Matter sent back to trial court for hearing the 2nd respondent on the quantum of sentence and for imposing the necessary sentence* (Para 14). *Mangilal* v. *State of Rajasthan*, (2001) 8 SCC 519: 2002 SCC (Cri) 16: AIR 2001 SC 2937.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 18-10-2001]

[8262] — Ss. 307, 326 and 324 — Appeal against conviction — Proper mode of disposal — *Trial court convicted appellant under Ss. 307, 326 and 324 IPC and sentenced him to rigorous imprisonment for 7 years and 5 years respectively — High Court disposed of the appeal by a brief order — Sentence reduced from 7 years to 6 years, for being his first offence — Material evidence against appellant not taken into account — No reason given for maintaining conviction — Held, High Court while hearing appeal is the last court of facts — Order of High Court set aside and appellant's appeal before High Court is restored to its file for a fresh hearing and decision in accordance with law — In case appeal is not disposed of by end of year, it will be open to appellant to make a prayer for bail before High Court — CrPC, 1973, Ss. 374 and 386. Ram Ratan* v. *State of Rajasthan*, (2010) 13 SCC 509.

Bench Strength **2**. Coram: **Aftab Alam** and *R.M. Lodha*, JJ. [Date of decision: 8-10-2010]

[8263] — Ss. 307 and 326 r/w S. 34 — Conviction upheld — Accused armed with iron chain, hockey stick and gandasa alleged to have seriously assaulted *R* and his two sons *N & S* causing them grievous injuries — Attack so severe that others ran away and no one tried to save the victims — *PW 9 doctor, who conducted medico-legal examination of injured stating that injuries sustained by* **S** *were grievous in nature, while those sustained by* **R** *&* **N** *were sufficient to cause death in ordinary course of nature (***R** *had lost his memory consequent to injuries inflicted on him) — Held, in view of cogent and credible evidence of injured witnesses no interference with conviction called for — Further held, plea of false implication was without any foundation — Besides, all injured would not shield actual culprit and implicate an innocent person* (Paras 1, 4, 14 and 15). *Suresh* v. *State of Haryana*, (2009) 13 SCC 538: 2009 Cri LJ 2985.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 27-2-2009]

[8264] — Ss. 307, 427, 323/120-B, 148 and 149 — Attempt to commit murder of SSP by driving and dashing truck against the staff car — Conviction upheld — *Appellant purposely parking his truck on the wrong side with the engine on and waiting for staff car of SSP — When the staff car passed in front of the truck, the appellant intentionally dashing against the said car — Staff car completely smashed on the left side and minor injuries and abrasions caused to the SSP, his gunman and driver — Evidence of police officials found reliable — Failure to examine independent witnesses not fatal — In the circumstances of the case held, it was a planned action on the part of the appellant to commit the murder of the SSP with a view to create terror in the public at large — Conviction upheld — TADA Act, 1987, S. 4(3). Prem Pal Singh* v. *State of Punjab*, (1996) 10 SCC 301: 1996 SCC (Cri) 1267: AIR 1997 SC 388.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 3-9-1996]

[8265] — Ss. 307 and 452 — Appreciation of evidence — Conviction confirmed — *Relying upon testimony of the witnesses, courts below concurrently finding that the appellant had opened the attack and fired a shot injuring a witness — Held, evidence of the witnesses had been correctly appreciated and there is no reason to differ from the same. Vijay Kumar* v. *State of Punjab*, AIR 1999 SC 841: 1999 Cri LJ 592.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 24-9-1998]

[8266] — S. 307 r/w S. 34 and S. 120-B — Conviction justified — *Appellant-Accused 2 alleged to have caught hold of complainant, while Accused 1 poured poisonous insecticide into her mouth — Reason for the action was refusal by complainant to abort child which was the result of love affair with accused, who retracted from marrying her and intended to kill her — Conviction under S. 307 r/w S. 34, upheld — However, reduced to period of 40 months already undergone* (Paras 10 to 14 and 6). *Chimanbhai Jagabhai Patel* v. *State of Gujarat*, (2009) 11 SCC 273: (2009) 3 SCC (Cri) 1323: (2009) 76 AIC 20 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 16-3-2009]

State of M.P. v. Deshraj, (2004) 13 SCC 199: 2005 SCC (Cri) 123, applied

State of Maharashtra v. Kashirao, (2003) 10 SCC 434: 2004 SCC (Cri) 801; Mahbub Shah v. Emperor, AIR 1945 PC 118: 46 Cri LJ 689, relied on

[8267] — S. 307 r/w S. 109 — Attempt to murder — Conviction upheld — *Due to minor quarrel between mother of PWs 1, 2 and wife of A-3, A-1 nursed a grudge and A-1 to A-3 waylaid PWs 1 and 2 on their way to the well — A-1 and A-2 attacked PW 2 with an "aruval" (sword) inflicting several injuries — PW 2 was taken to hospital and PW 1 had complaint recorded — Trial court finding prosecution evidence not credible and contradictory acquitting the accused — High Court on analysis and review of evidence of PWs 1, 2 and 5 convicted appellants under S. 307 IPC — Sustainability — Held, analysis made by High Court to set aside acquittal does not suffer from any infirmity — CrPC, 1973, Ss. 378 and 386*

PWs 1, 2 and 3 were brothers residing near the house of Accused 1 and 2 who were also brothers. In this matter the mother of PWs 1 and 2 went to the corner of the street to collect water from the common water pipe where the third accused's wife also came to take water when a quarrel took place between them. PW 2 on seeing this went there and separated them and took his mother to his house. The next day when PWs 1 and 2 and the wife of the other brother went to the well, the first accused who had come to know of the fight which had taken place on an earlier day had grievance against PW 2 thinking that PW 2 abused the wife of the third accused in support of his mother and A-1 to A-3 waylaid them. A-1 and A-2 had an aruval with them. A-3 caught hold of PW 2 from behind and A-1 and A-2 attacked him with the aruval on the back, left shoulder, right shoulder, hands, etc. PW 2 received number of bleeding injuries all over the body and began to cry out. PW 1 and PW 5 and two

(4)(v) Conviction justified *(contd.)*

others went near the injured who were threatened by the accused. PW 2 swooned and fell on the ground. The accused then fled from the scene. PWs 1 and 5 took the victim in a car to Government Hospital where PW 2 was examined and nine injuries were found. Head Constable (PW 7) came and recorded statement from PW 1. A complaint was then registered against the accused. PW 8, the Inspector of Police, took up further investigation and went to the scene and examined the witnesses. Thereafter, he went to the hospital and recorded the statement of PW 2.

The trial court found the evidence of prosecution witnesses to be not cogent and credible and accordingly directed acquittal. The State preferred an appeal. The High Court found that the reasoning indicated by the trial court to direct the acquittal could not be maintained. After analysing the evidence of PWs 1, 2 and 5, it was held that the accusations had been established and convicted the appellants for the offence punishable under Section 307 IPC and each was sentenced to undergo RI for four years and to pay a fine of Rs 5000 with default stipulation. However, the High Court confirmed the acquittal of the third accused.

Dismissing the appeal,

Held :

PW 3, the doctor attached to Government Hospital, examined PW 2 and as per the wound certificate, Ext. P-3, Injuries 3 and 9 were grievous in nature and the other injuries were simple injuries. (Para 10)

Evidence of PWs 1, 2 and 5 clearly show that PW 2 was indiscriminately attacked by A-1 and A-2 with aruval. As a result of those injuries, the victim (PW 2) fell on the ground. (Para 11)

According to PW 5, as soon as PW 2 fell on the ground, he became unconscious and thereafter, the accused persons ran away from the scene. This occurrence took place at about 7.30 a.m. and the victim was taken to the hospital at about 8.15 a.m. PW 3 doctor stated that the victim was conscious and the victim stated to him that he was attacked by three persons with aruval. (Para 12)

PW 1 stated that when PW 2, the victim was taken to the hospital, he was in an unconscious state and after admitting the victim in the hospital, while PW 3 was giving PW 2 treatment PW 7 came and at that time, he was informed by PW 1 that PW 2 was not in a position to give statement, since he was unconscious. Even assuming that PW 2 was conscious at that time, the nine serious injuries found on various parts of the body of the victim would clearly show that he could not have given full details to PW 7. Under those circumstances, obtaining of Ext. P-1, complaint from PW 1 is quite proper. (Para 14)

Merely because PW 2 was conscious at that time, it cannot be said that the statement should not have been recorded from PW 1 and the same is doubtful. No law prohibits the police officer from recording complaint relating to the occurrence, that too, from an eyewitness. The ground of acquittal as recorded by the trial court is not at all a proper ground. (Para 15)

According to the trial court, PW 1 could not have been seen the occurrence. This again is not the reasoning based on evidence. According to both PWs 1 and 2, they went to take bath in the well one after another. PW 5 stated that after hearing the cry of PW 2, PW 1 and others came to the scene. This would not mean that PW 1 did not accompany PW 2. As a matter of fact, even according to PW 5, PWs 1 and 5 took the victim in a taxi to Nanguneri Hospital. The occurrence took place in daylight at 7.30 a.m. The house of the accused and PWs 1 and 2 are situated nearby and the well also is situated just two furlongs away from the village. Under those circumstances, it cannot be said that PW 1 could not have accompanied PW 2 to take bath. Therefore, this ground of acquittal was rightly held by the High Court to be untenable. (Para 16)

The analysis made by the High Court to set aside the order of the trial court does not suffer from any infirmity. (Para 17)

It was contended by the appellants that an appeal against the acquittal cannot be interfered with by the appellate court except for the compelling reasons. The appellants questioned the correctness of the High Court's judgment. According to them, the High Court had not kept in view the parameters of appeal against acquittal. It was submitted that even if two views are possible, the view supporting the accused had to be accepted and since the trial court had precisely done that there was no reason to interfere with the judgment of the trial court. Herein, when the factual position is analysed in the background of the conclusions arrived at by the High Court, the inevitable conclusion is that the High Court's judgment is correct. (Paras 17, 18 and 22). *Murugan* v. *State*, (2008) 16 SCC 40: AIR 2009 SC 72: (2008) 71 AIC 201 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 30-9-2008]

[8268] — Ss. 307/34 — Attempt to commit murder — *Assailants causing bullet injuries on the hands and face of the victim and stabbing in his abdomen — Medical evidence that the bullets fired had little force — No suggestion put to the doctor that the victim could not have offered any resistance — Held, in the circumstances of the case, prosecution version that the injured snatched away the knife from the hands of the assailant and caused injury to him not improbable. Tarak Nath Singh* v. *State of W.B.*, 1998 SCC (Cri) 587.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 4-12-1997]

[8269] — Ss. 307/34 — Attempt to murder by gunshot firing — *Having regard to evidence of the victim coupled with medical evidence and the fact that identity of the accused persons was established, held, there was no infirmity as regards conviction of the accused under Ss. 307/34 recorded by High Court. Murarilal Jivaram Sharma* v. *State of Maharashtra*, 1998 SCC (Cri) 375: AIR 1997 SC 1593: 1997 Cri LJ 782: (1997) 1 An LT (Cri) 376: (1997) 34 ACC 278: (1997) 1 GCD 880.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 20-12-1996]

[8270] — Ss. 307/34 — Conviction under, proper — *Testimony of the injured witness that shots were fired by one of the accused, one of which hit the witness on his arm found truthful — Accordingly held, conviction under Ss. 307/34 established* (Para 16). *State of Punjab* v. *Hakam Singh*, (2005) 7 SCC 408: 2005 SCC (Cri) 1679: 2005 Cri LJ 4111.

Bench Strength **2**. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 31-8-2005]

[8271] — Ss. 307/34 — Murder trial — Conviction confirmed — Ocular evidence vis-à-vis medical evidence — Effect of one contradiction between, rest being consistent — *Appellant-accused alleged to have fired at deceased who was standing in his courtyard, which was just opposite to their house, from their gallery resulting in his death and causing injuries to others — PW 11, doctor who conducted post-mortem stating that Injury 1 to scrotum of deceased caused by ground level firing — Said statement if demolished prosecution version that guns were fired from gallery — Also fact that dead body recovered from cattle shed if indicated that deceased had been fired at while he was sleeping there — Held, evidence of PW 11, while generally corroborating prosecution case, is at variance with ocular evidence to the extent of Injury 1 — However, where eyewitness account is found to be credible and trustworthy, medical opinion suggesting an alternate possibility is not accepted to be conclusive — Besides, PW 11 had categorically stated that all injuries found on deceased (except Injury 1) and PWs could be caused by firing from height, which fitted with prosecution version — Furthermore, PW 11 also definitely stating that it was not possible to sustain injuries as suffered by deceased if he was sleeping on the ground — As regards place from where dead body was recovered, PWs clearly stating that after deceased sustained injuries in the firing, he was removed by them to cattle shed where he was ultimately found — Hence, no interference with impugned judgment convicting appellants under Ss. 302, 307/34 IPC and S. 25(1)(a) of Arms Act called for — Arms Act, 1959, S. 25(1)(a)* (Paras 1, 4, 5 and 26 to 32). *Sunil Dattatraya Vaskar* v. *State of Maharashtra*, (2008) 16 SCC 554: AIR 2009 SC 210.

Bench Strength **2**. Coram: **Altamas Kabir** and *H.S. Bedi*, JJ. [Date of decision: 17-9-2008]

Ramakant Rai v. Madan Rai, (2003) 12 SCC 395: 2004 SCC (Cri) Supp 445, followed

[8272] — Ss. 307/149 — Attempt to murder — Appreciation of evidence — Assault with deadly weapons — *Accused fled from the scene thinking victim was dead — Testimony of injured eyewitnesses categorical and consistent and corroborated by medical evidence — Minor omissions but no inconsistency — On facts held, High Court rightly convicted the accused*

In this case the contention that the FIR was made 15 days after the incident cannot be accepted. The incident occurred on 30-10-1988. Evidence of the doctor of the hospital indicated that on 11-11-1988 he had medically examined the victim who was brought to the hospital by a Constable. The requisition slip carried by the Constable indicated that the FIR preceded 1-11-1988 when the victim and his wife (who had also sustained some injuries while attempting to save her husband from assault) were brought to the hospital. In the circumstances the FIR cannot be said to be ante-timed. (Para 18)

Another question was whether the FIR was lodged in the police station by the victim or whether it was at his residence. The victim had collapsed when he was assaulted with lathis. His arm was fractured. He was taken to the hospital where he regained his consciousness. However, before being taken to the hospital, he was taken to his house where his signature was taken on the FIR. He was taken to the hospital after x-ray. In any event the FIR cannot discredit the evidence of the eyewitnesses. It is well settled that an FIR is not a substantive piece of evidence. It cannot contradict the testimony of the eyewitnesses even though it may contradict its maker. (Para 18)

A common thread runs through the evidence of the victim, his wife and another person who had also sustained injuries in the incident. They categorically stated that at around 1.00 p.m. when they were returning for lunch after sowing their fields, the accused persons were hiding in the tuar, that the incident took place near a certain field, that the accused who were armed with ballam and lathis, assaulted the victim and when his wife fell upon him to save him she also got injured and the third person accompanying them also sustained lathi-blows. The witnesses elaborately described the manner in which the assault was carried out and the manner in which the injuries were inflicted. The evidence shows that one of the appellant-accused tried to pierce the ballam into abdomen of the victim, that if the victim would not have caught hold of the ballam, the accused had almost succeeded in piercing the ballam into the abdomen and that the accused persons fled when they thought the victim had died when in fact he had become unconscious on account of the injuries. Their evidence was fully corroborated by medical evidence. In view of the categorical statements of the witnesses, it is not possible to believe the investigating officer who stated that the incident took place 1 to 1½ km away from the place indicated by the witnesses. Further, there were minor omissions in the statement under Section 161 CrPC but there were no contradictions. The injuries sustained by the victim as also by his wife and the third witness were duly proved. They were hospitalised for 15 days. (Para 18)

As regards the plea of alibi taken by one of the accused on ground that during the period of the incident he was ill and was undergoing treatment for typhoid under a government doctor, the High Court found that the Medical Officer had not proved his having treated the said co-accused for typhoid during the period of the incident. No document or register of the hospital was produced to show that the accused was an indoor patient in the hospital. There was nothing to show that he was treated in a private hospital. The Medical Officer had deposed that he had issued the certificate on the demand of the accused. The doctor did not maintain any register of the certificates issued by him, particularly when he says that he had private practice also. In the circumstances, the High Court was right in disbelieving the doctor. (Para 18)

There is no reason to doubt the credibility of the victim. Even assuming for the sake of argument that there are inconsistencies in the deposition of the victim, there is no reason to disbelieve the evidence of the other two eyewitnesses, who have substantially corroborated the evidence of the victim. (Para 18)

Under the above circumstances, the High Court was right in coming to the conclusion that there was a common intention to cause serious injuries; that the presence of all the accused was proved on the scene of offence; that the specific role performed by each of the accused stood established and, therefore, there was intention to murder and, consequently, the High Court was right in convicting the accused under Section 307 read with Section 149 IPC. (Para 18). *Asharam* v. *State of M.P.*, (2007) 11 SCC 164: AIR 2007 SC 2594: (2007) 56 AIC 180 (SC).

Bench Strength **2**. Coram: **S.H. Kapadia** and *B. Sudershan Reddy*, JJ. [Date of decision: 25-4-2007]

(vi) Other issues

[8273] — S. 307 — Conviction under, whether on facts could be based exclusively on statement of witness under S. 6 Evidence Act — *Hearing the alarm raised by the injured, PW reaching the spot and at that point of time the injured falling down and the assailant making good his escape* — S *prosecuted under S. 307 IPC — During pendency of prosecution the victim dying and the cause and time of his death remaining unknown — According to PW the injured told him that* S *had fired upon him — However, in cross-examination PW admitting that he and* S *were inimical to each other and that the injured had spoken to PW in the presence of a large number of persons (20 in this case) — Prosecution examining none of the said persons — In such circumstances, statement of PW, although admissible in evidence under S. 6, could not be exclusively relied on to convict* S *— Hence, in absence of any corroborative evidence, conviction of* S *under S. 307, held, bad — Evidence Act, 1872, S. 6*

According to the prosecution there was enmity between *N* and his nephew *S* on account of a dispute in respect of agricultural land and the agricultural produce therefrom. On the date of occurrence, *S* fired a pistol shot at *N*. *N* raised an alarm on account of which PWs 1 and 2 reached the spot and at that point of time *N* fell down and *S* made good his escape. PWs 1 and 2 brought *N* to police station whereupon *N*'s statement was recorded and treating the same as FIR the police started investigation and sent up *S* for trial. During the pendency of trial *N* died but the cause and time of death was not known. During the trial PWs 1 and 2 merely stating as to what they heard from the injured at the relevant point of time and according to PW 2, the injured had told him that *S* had fired upon him. The trial court convicted *S* under Section 307 and the High Court dismissed his appeal. Before the Supreme Court, the appellant-accused contended that the evidence of PW 2 was not admissible under Section 6 of the Evidence Act inasmuch as what the injured told the witness and the factum of alleged shooting by the accused at the injured could not be said to have formed part of the same transaction as according to him by the time he reached the scene of occurrence, several people had gathered there. The appellant accused further contended that even otherwise the evidence was unreliable and could not sustain the conviction. Rejecting the former contention but upholding the latter and allowing the appeal,

Held :

Admittedly appellant *S* and PW 2 were inimical to each other since long before and by the time PW 2 reached the scene of occurrence, more than 20 persons had gathered next to *N* and yet none of them has been examined by the prosecution to corroborate PW 2 as to what was told to him by the injured. Therefore, the evidence of PW 2 cannot be held to be of such an unimpeachable character on which the conviction can be based without any corroboration. On the other hand, the witness being inimical to the accused and on account of what has been elicited in his cross-examination, his evidence requires corroboration before being accepted. Admittedly there is not an iota of corroboration either from any oral evidence or from any other circumstances. Hence, the conviction of the appellant on the unreliable and shaky evidence of PW 2 without any corroboration, cannot be sustained. (Para 11). *Sukhar* v. *State of U.P.*, (1999) 9 SCC 507: 2000 SCC (Cri) 419: AIR 1999 SC 3883.

Bench Strength **3**. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *N. Santosh Hegde*, JJ. [Date of decision: 1-10-1999]

[8274] — Ss. 307, 149, 147, 427 and 324 — Transfer of one of the cross-cases, by Sessions Court to CJM — Legality — *Case and counter-case both committed to Sessions Court — Sessions Court finding that in one case no charge for an offence triable exclusively by Sessions Court could be framed while such a charge could be framed in the other case — In such circumstances, transfer of the former case by Sessions Court to CJM for trial under S. 228(1), CrPC, held, improper — Sessions Court should have rather itself tried it in the manner indicated in* Naithani Lal case, *1990 Supp SCC 145 — CrPC, 1973, Ss. 228, 227 and 26 — CrPC, 1973, Ss. 408(1), 228(1), 227 and 26(a)(ii)*

A Sessions Judge has the power to try any offence under IPC. It is not necessary for the Sessions Court that the offence should be one exclusively triable by a Court of Session. This power of the Sessions Court can be discerned from a reading of Section 26 CrPC. Therefore, when a case involving offence not exclusively triable by such court is committed to the Court of Session, the Sessions Judge has to exercise a discretion regarding the case which he has to continue for trial in his court and the case which he has to transfer to the CJM. In Section 228(1) CrPC, the employment of the word "may" at one place and the word "shall" at another place in the same sub-section unmistakably indicates that when the offence is not triable exclusively by the Sessions Court it is not mandatory that he should order transfer of the case to the CJM after framing a charge. In situations where it is advisable for him to try such offence in his court there is no legal obligation to transfer the case to the CJM. (Para 16)

In the present case, the Sessions Judge ought not to have transferred the second case to the CJM as he did, but he himself should have tried it in the manner indicated in *Nathi Lal*. (Para 17). *Sudhir* v. *State of M.P.*, (2001) 2 SCC 688: 2001 SCC (Cri) 387: AIR 2001 SC 826.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 2-2-2001]

Goriparthi Krishtamma, In re, 1929 MWN 881; Krishna Pannadi v. Emperor, AIR 1930 Mad 190: 31 Cri LJ 461, impliedly approved on this point

Nathi Lal v. State of U.P., 1990 Supp SCC 145: 1990 SCC (Cri) 638, followed

[8275] — Ss. 307 and 326 — Sanction for prosecution of police officer — Police Officer allegedly committed offences under Ss. 307 and 326 — Some others also committed in a cross case in connection with the same transaction — *Necessity of sanction for prosecution of the police officer not prima facie established by the committal officer in the cross case — CrPC, 1898, S. 132*

The commitment of the other accused is on the basis of the case in which they are accused and cannot be legally taken into consideration to decide the question raised in the case against the police officer. The question whether sanction under S. 132, Code of Criminal Procedure, is necessary is to be decided on the evidence in the latter case and not on the basis

(4)(vi) Other issues *(contd.)*

of the evidence and inferences drawn in the other case. The contention that the mere fact that some of the persons alleged to have framed part of unlawful assembly were prosecuted by the State and have also been committed by the Magistrate to the Sessions Court for trial prima facie establishes that the police officer's contention about the necessity of sanction under S. 132 of the Code has no force. *Nagraj* v. *State of Mysore*, AIR 1964 SC 269: (1964) 3 SCR 671: (1964) 1 Cri LJ 161.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 8-5-1963]

[8276] — S. 307 r/w Ss. 34 and 109 — Retracted confession — Corroboration — *Admission by the accused that he accepted money for engaging terrorists to commit murder of the complainant and for creating terrorism and bringing disharmony between Hindus and Sikhs — Part of money paid for engaging terrorists recovered from their houses — Recovery of letterpad with print "Bhindranwala Tiger Force" and motor cycle used by the terrorists from the place of occurrence — Held, in the circumstances of the case, conviction of the appellant under S. 3(3) is justified — TADA Act, 1987, Ss. 15 and 3(3). Baba Peer Paras Nath* v. *State of Haryana*, (1996) 10 SCC 500: 1996 SCC (Cri) 1370: AIR 1996 SC 2818.

Bench Strength **2**. Coram: *G.N. Ray* and *B.L. Hansaria*, JJ. [Date of decision: 21-8-1996]

[8277] — Ss. 307/34 — Delay of 7 days in sending copy of the FIR to the Magistrate — Delay not explained by the IO — *Defence plea that the witnesses could not identify the assailants and only after recovery of the alleged pistol they were named as assailants in the FIR — Considering the defence of the accused in the light of evidence on record and previous enmity between the parties, held, prosecution failed to establish guilt of the accused beyond reasonable doubt — CrPC, 1973, Ss. 154 and 157. Chhotu* v. *State of Haryana*, 1996 SCC (Cri) 1161.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 20-8-1996]

(vii) Witnesses

[8278] — S. 307 — Testimony of Police officers — Evidentiary value — Failure to examine any independent witness — Effect — *Whether the police officers concerned had seen the accused chasing, firing at, and injuring the victim at a place outside the village at about 7.30 a.m. and whether he had a desi katta with him when arrested — In absence of any material on record to show that any independent witness was available near the place of incident, the evidence of such police officers since the same was found credible, held, could not be discarded merely on the ground of non-examination of any independent witness by the prosecution — That the injured witness had not supported the prosecution case, ignored as the accused was his cousin — Since the circumstances under which the injury was caused clearly indicated the intention of the accused, his conviction under S. 307 upheld — Moreover, since the accused had no licence for the pistol found in his possession, his conviction under S. 5 of TADA Act and S. 27 of Arms Act also upheld — TADA Act, 1987, S. 5 — Arms Act, 1959, S. 27* (Paras 2 and 3). *Ram Kumar* v. *State (NCT of Delhi)*, (1999) 9 SCC 149: 1999 SCC (Cri) 574: AIR 1999 SC 2259: 1999 Cri LJ 3522.

Bench Strength **2**. Coram: **G.T. Nanavati** and *N. Santosh Hegde*, JJ. [Date of decision: 28-4-1999]

[8279] — Ss. 307 and 34 — Testimony of Solitary witness — Evidentiary value — Offences under S. 25 of Arms Act and Ss. 307/34 — *All the prosecution witnesses except one turning hostile — The solitary witness deposing that at about 11.00 p.m. the accused along with his two associates came to his hotel and when he protested against taking of liquor by the accused at the hotel, the accused went to his tractor, brought the gun in question and fired at him — The solitary witness also testifying that the gun, empty cartridge and live cartridge were seized by the IO, who was a formal witness — Cross-examined at great length but no material coming out to discredit him — His testimony fully corroborated by the IO and also by the forensic expert's report — In such circumstances, conviction under S. 25 of the Arms Act as well as under Ss. 307/34 of IPC on the basis of the evidence of the solitary witness, upheld — Arms Act, 1959, S. 25. Parveen* v. *State of Haryana*, (1996) 11 SCC 365: 1997 SCC (Cri) 63: AIR 1997 SC 310.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 24-10-1996]

(5) Sentence/Fine/Compensation/Other punishment/relief

[8280] — S. 307 — Attempt to commit murder — Sentence — *Appellants and the injured close relatives — Lapse of 18 years since the incident and during this period the appellants not involved in any offence — Appellants remaining in jail for a substantial period — In the circumstances of the case sentence of imprisonment reduced to the* *period already undergone but imposed a fine of Rs 10,000 to be paid to the injured. Tarak Nath Singh* v. *State of W.B.*, 1998 SCC (Cri) 587.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 4-12-1997]

[8281] — S. 307 — Attempt to murder — Sentence — Quantum of — *Accused chasing, firing with a desi katta at, and injuring, the victim within the sight of police officers — However, the injured not supporting the prosecution case which, however, proved by police officers' evidence — Accused and injured were cousin brothers — In such circumstances sentence of 10 years' RI passed by the designated court reduced to 7 years — Moreover, sentence of RI for 5 years with a fine of Rs 1000 and RI for 3 years with a fine of Rs 1000 under S. 5 of TADA and S. 27 of Arms Act respectively, confirmed — TADA Act, 1987, S. 5 — Arms Act, 1959, S. 27* (Para 4). *Ram Kumar* v. *State (NCT of Delhi)*, (1999) 9 SCC 149: 1999 SCC (Cri) 574: AIR 1999 SC 2259: 1999 Cri LJ 3522.

Bench Strength **2**. Coram: **G.T. Nanavati** and *N. Santosh Hegde*, JJ. [Date of decision: 28-4-1999]

[8282] — S. 307 — Commutation — Belated prosecution — Conviction under S. 307 — *In view of prosecution being 14 years after the offence, sentence reduced from 5 years to 2 years' imprisonment. Shanabhai Dhulabhai Parmar* v. *State of Gujarat*, (1977) 1 SCC 454: 1977 SCC (Cri) 112: AIR 1977 SC 1338: 1977 Cri LJ 1007.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *R.S. Sarkaria* and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 2-9-1976]

[8283] — S. 307 — Compounding of non-compoundable offence — Permissibility — Effect on sentence — *On facts, appellant-accused convicted under S. 307 IPC and sentenced to three years' RI with fine and default stipulation — During pendency of appeal before Supreme Court mutual compromise arrived at between accused and complainant victim — Separate affidavits were also filed by both in respect thereof — Joint prayer of parties that accused may be released, treating sentence already undergone as sufficient — Held, offence punishable under S. 307 IPC is not a compoundable offence — S. 320 CrPC expressly states that no offence shall be compounded if it is not compoundable under CrPC — However, Supreme Court may consider compromise between the parties for the purpose of reduction of sentence — Hence, considering the totality of facts and circumstances, conviction maintained but sentence reduced to that already undergone — However, sentence of payment of fine not disturbed — CrPC, 1973, S. 320*

It cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 CrPC expressly states that no offence shall be compounded if it is not compoundable under CrPC. At the same time, however, while dealing with such matters, the Supreme Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence. (Para 12)

It would not be appropriate to order compounding of an offence not compoundable under CrPC, ignoring and keeping aside statutory provisions. However, limited submission of the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind. (Para 14)

In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered. Though he had applied for bail, the prayer was not granted and he was not released on bail. Considering the totality of facts and circumstances, ends of justice would be met if the sentence of imprisonment awarded to the appellant is reduced to the period already undergone. (Para 15). *Ishwar Singh* v. *State of M.P.*, (2008) 15 SCC 667: (2009) 3 SCC (Cri) 1153: AIR 2009 SC 675: (2008) 72 AIC 140 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 17-10-2008]

Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255: (2006) 2 SCC (Cri) 561; Murugesan v. Ganapathy Velar, (2001) 10 SCC 504: 2003 SCC (Cri) 1032; Ishwarlal v. State of M.P., (2008) 15 SCC 671, relied on

[**Ed.**: *See also* in this regard (2008) 1 SCC 184: (2008) 1 SCC (Cri) 161; (1995) 5 SCC 238: 1999 SCC (Cri) 998.]

[8284] — S. 307 — Conviction under — Sentence of ten years' RI — Reduction of — *Though injuries inflicted on victim were of serious nature, considering the background facts and peculiar features of the case, held, five years' RI would meet the ends of justice. Bappa* v. *State of Maharashtra*, (2004) 6 SCC 485: 2004 SCC (Cri) 1794: AIR 2004 SC 4119.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker* JJ. [Date of decision: 5-8-2004]

[8285] — S. 307 — Imposition of sentence under — Two situations under explained: (1) where act of accused is done with intention to kill or knowledge that death will ensue, and (2) where such act causes hurt to any person — In (1) term of imprisonment (RI or SI) may extend to 10 years, and in (2) may extend to 10 years or life imprisonment

Section 307 deals with two situations so far as the sentence is concerned. Firstly, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and secondly if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life or to such punishment as indicated in the first part i.e. 10 years. (Paras 17, 3 and 2). *State of M.P.* v. *Saleem*, (2005) 5 SCC 554: 2005 SCC (Cri) 1329: 2005 Cri LJ 3435.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2005]

[8286] — S. 307 — Sentence — Enhancement of — *Cross-firing between two groups — Trial Court convicting respondent under S. 307 and sentencing him to 5 years' RI and fine of Rs 500 — High Court while upholding the conviction, reducing the sentence of imprisonment to the period of 3½ years already undergone — Held, once High Court held respondent guilty of offence under S. 307, it should not have interfered with the sentence of imprisonment — However, the sentence of imprisonment as reduced by High Court need not be interfered with in the circumstances of the case; instead the sentence of fine be enhanced to Rs 25,000 which would be payable to LRs of the victim. Kulwant Singh* v. *Amarjit Singh*, (2000) 3 SCC 290: 2000 SCC (Cri) 627: AIR 2000 SC 1212: 2000 Cri LJ 1722.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 7-3-2000]

[8287] — S. 307 — Sentence — Plea for reduction of in view of considerable delay and the accused having married and settled, in view of the grave injuries disallowed. *Chinnadurai* v. *State of T.N.*, 1995 Supp (3) SCC 686: 1995 SCC (Cri) 1147: AIR 1996 SC 546.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 11-1-1995]

[8288] — S. 307 — Sentence — Proportionality — Occurrence taking place two decades back — *High Court by impugned judgment while upholding conviction under S. 307, reducing sentence to period already undergone which was about 1 year and three months from sentence of ten years' rigorous imprisonment and fine of Rs 1000 with default stipulation as imposed by trial court, observing that accused at time of commission of offence was aged about 20 years and an uneducated labourer coming from rural area — Held, long passage of time per se is not a ground for reduction in sentence — High Court was not justified in reducing sentence to period already undergone — Respondent-accused sentenced to custodial sentence of three years subject to such remissions as may be available in law and to pay a fine of Rs 10,000 to be paid to victim* (Paras 12 to 15). *State of M.P.* v. *Kedar Yadav*, (2009) 17 SCC 280.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 30-11-2006]

Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Dennis Councle McGautha v. State of California, 28 L Ed 2d 711: 402 US 183 (1970), considered and relied on

[8289] — S. 307 — Sentence — Reduction — Altercations between both parties (accused and complainant) taking place at the time of husking paddy — *No premeditation or planning of attack — Hence, sentence of imprisonment for life reduced to five years* (Para 17). *Hari Mohan Mandal* v. *State of Jharkhand*, (2004) 12 SCC 220: AIR 2004 SC 3687: 2004 Cri LJ 3112.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-3-2004]

[8290] — S. 307 — Sentence — Reduction of — *Substantive sentence of 3 years' RI and fine imposed by trial court reduced to period of 3 months of imprisonment already undergone by enhancing fine by High Court — Held on facts, reduction of sentence not justified*

The record of no previous conviction is of little relevance in reducing the sentence when the conviction is for an offence punishable with imprisonment for life, except for an offence under S. 303, IPC which has been held to be unconstitutional. Therefore, the necessary inference is that the accused assaulted the victims with malice forethought. The fact that no previous conviction was recorded against the appellants is inconsequential.

It is not possible to accept that the occurrence took place suddenly as an assault at night is not ordinarily to be expected unless it is pre-planned. The appellants wielded guns and fired as many as four shots. Looking at all these circumstances it cannot be said that the occurrence took place all of a sudden.

Further, acquittal of some co-accused cannot have any relevance to the question of sentence awarded to the appellants who were convicted.

It is not possible to accept the contention that no useful purpose will be served by sending the appellants to prison again to undergo the unexpired period of their sentence. If someone is enlarged on bail during the pendency of appeal and when the appeal is dismissed sending him back to jail is going to raise qualms of conscience in the Judge, granting of bail pending appeal would be counter-productive.

The appellants also do not deserve the benefit of S. 360 Criminal Procedure Code.

Since the offence under S. 307, Indian Penal Code is punishable with imprisonment for life, the sentence awarded by the High Court i.e. the sentence of three months undergone by the appellants makes a mockery of justice. Enhancement of fine and compensation to the injured would not justify such a sentence. *Sadha Singh* v. *State of Punjab*, (1985) 3 SCC 225: 1985 SCC (Cri) 359: AIR 1985 SC 1130: 1985 Cri LJ 1361.

Bench Strength **3**. Coram: **D.A. Desai**, *V. Balakrishna Eradi* and *V. Khalid*, JJ. [Date of decision: 8-5-1985]

[8291] — S. 307 — Sentence of 10 years' RI — Imposition of, by High Court — If on facts was harsh — *Victim, a colleague and relative of accused police officer — Offence committed over a petty family matter — Considering that a guardian of law took the law into his own hands and fired shot at a public place (guardroom in District Police Headquarters), held, severe punishment required to be imposed — In view of the peculiar circumstances and facts, held, custodial sentence of 5 years would have chastening and deterrent effect on the accused — Sentence reduced accordingly* (Para 15). *Vasant Vithu Jadhav* v. *State of Maharashtra*, (2004) 9 SCC 31: 2004 SCC (Cri) 1323: 2004 Cri LJ 1786.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **Arijit Pasayat**, JJ. [Date of decision: 9-3-2004]

[8292] — S. 307 — Sentence of one year's RI — Mitigating circumstances — *Accused-appellant, a member of BSF, firing a shot from his rifle injuring the leg of a fellow member — Accused otherwise friendly with the victim and incident occurring at the spur of the moment pursuant to a quarrel between them in intoxicated state — Accused stated to have participated in India-China War in 1962 and Indo-Pakistan War in 1971 and to be having a good service record — Accused already suffered detention for about one year as undertrial and also suffered imprisonment in execution of the sentence for about 6 months — In the circumstances held, justice would be met if his sentence reduced to the period already undergone. Union of India* v. *Anand Singh Bisht*, (1996) 10 SCC 153: 1996 SCC (Cri) 1198: AIR 1997 SC 361.

Bench Strength **2**. Coram: *G.N. Ray* and *B.L. Hansaria*, JJ. [Date of decision: 28-8-1996]

[8293] — S. 307 — Sentence to be imposed under — Adequacy of — *Trial court awarding sentence of five years' RI — High Court, while upholding conviction reducing sentence to period already undergone of about two-and-a-half months — Sustainability — Held, said sentence is wholly inadequate looking to nature of the offence — High Court has not assigned any satisfactory reason for reducing sentence — Matter remanded for decision afresh. State of M.P.* v. *Ram Kumar*, (2009) 17 SCC 372: AIR 2006 SC 643: (2005) 35 AIC 61 (SC).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-10-2005]

[8294] — S. 307 — Sentence under — Quantum of — Punishment — Right of private defence — When not available — *Persons coming prepared for a fight armed with deadly weapons (guns and gandasa in this case) and then attacking an unarmed victim held, cannot claim right of private defence on being hit back by the victim or his associates — Where one of the armed assailants unsuccessfully fired at the victim and another of them injured the victim by gandasa and brickbatting and when the associate of the victim retaliated by brickbatting, one of the assailants fired at his arm and the shot ran across his arm, held, the accused persons could not be said to have acted in self-defence — However, taking into account the brickbatting by both the parties causing injuries to each other, 4 years' RI for the offence under S. 307 imposed by the trial court reduced to two years' RI — Penal Code, 1860, Ss. 96, 97, 102 and 307*

Looking to the sequence of events, the trial court was justified in holding that the appellant did not act in the exercise of the right of private defence. Indeed a person has a right of repelling an attack by use of such force as is necessary but he does not have the right to come prepared for a fight and then after attacking an unarmed victim claim the right of private defence on being hit back by the victim or his associates. The right of private defence is not available in such circumstances. From the facts and circumstances, as are established on the record, the appellant did not act in the exercise of the right of self-defence. He was the aggressor and had received the injury by the brickbat after he had fired at the deceased and was in the forces of firing at another person. *Baj Singh* v. *State of Punjab*, (1996) 11 SCC 373: 1997 SCC (Cri) 184: AIR 1995 SC 1953.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 23-2-1995]

[8295] — Ss. 307 and 309 — Accused sentenced to 3 months' imprisonment for offence under S. 307 while released on admonition for offence under S. 309 — *In absence of any valid reason for such distinction, accused must be released on admonition for offence under S. 307 also. Radharani* v. *State of M.P.*, 1981 Supp SCC 84: 1982 SCC (Cri) 470: AIR 1981 SC 1776 (2): 1981 Cri LJ 1705(2).

Bench Strength **2**. Coram: *Y.V. Chandrachud, C.J.* and *E.S. Venkataramiah*, J. [Date of decision: 14-8-1981]

[8296] — Ss. 307 or 324 and 34 — Compounding of offence from S. 307 to one under Ss. 324/34 IPC or release on probation of good conduct — *Counsel contending that parties being close relatives compromising offence under S. 307 IPC — But complainant not having been identified in court but claming to be so and willing to compound — Effect — Instead of compounding the offence, release of offender on terms to be settled by trial court, held, would be proper — Probation of Offenders Act, 1958, S. 4 — CrPC, 1973, S. 320. Gaya Prasad* v. *State of M.P.*, (2009) 17 SCC 757.

Bench Strength **2**. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 10-11-2009]

[8297] — Ss. 307, 324 and 114 — Reduction of sentence to period already undergone, by High Court — Propriety — Relevant aspects — Non-consideration of — *Offences under Ss. 307, 324 and 114 — Accused also involved in nine other cases — During pendency of trial, bail granted to one of the accused was cancelled for breach of conditions imposed by the court for grant of bail — These aspects not considered by High Court while reducing sentence — High Court proceeded on factually erroneous premises without keeping in view the correct principles relating to punishment — In view of the above, held, High Court's judgment not sustainable — Matter remitted to High Court for a fresh hearing on question of sentence — CrPC, 1973, Ss. 28 and 29* (Paras 14 and 15). *Shailesh Jasvantbhai* v. *State of Gujarat*, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499: (2006) 2 Guj LR 1428: 2006 Cri LJ 1132.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-1-2006]

[8298] — Ss. 307, 325 & 326 r/w Ss. 149 and 148 — Attempt to murder by causing grievous injury — Appropriate conviction and sentence — Gruesome nature of offence sufficient to cause death — Chopping off of leg of victim — Reduction of sentence — Sustainability of — *Trial court convicted accused under S. 307 r/w Ss. 149, 148 IPC and imposed rigorous imprisonment of five years with fine and another 6 months for two other offences — High Court altered the conviction to S. 326 holding that chopping off leg from the body cannot be treated as sufficient to cause death and reduced sentence to period already undergone by the accused (ranging from less than four months to two years four months for the various accused persons) — With dismay, held, High Court completely overlooked evidence on record, and the judgment indicates total non-application of mind — Doctor, PW 1, categorically stated that the injury could cause death — PW 14, radiologist clearly stated that the injury was grievous in nature — The victim's evidence vividly showed the gruesome nature of the attack on him and intention of the accused to kill him — Held, logic of High Court to hold that on mere testimony of doctor it could not be assumed that injury was sufficient to cause death, is strange — Further held, High Court's uniform reduction of punishment to the period already undergone was also strange, since there was no similarity of period of sentence suffered by the accused which ranges from as less as 4 months to 2 years 4 months — High Court's judgment set aside as unsustainable restoring trial court's judgment — Evidence Act, 1872, S. 45* (Paras 10, 11 and 14 to 16). *State of M.P.* v. *Kashiram*, (2009) 4 SCC 26: (2009) 2 SCC (Cri) 40: AIR 2009 SC 1642: (2009) 75 AIC 22 (SC): 2009 Cri LJ 1530.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 2-2-2009]

State of M.P. v. Saleem, (2005) 5 SCC 554: 2005 SCC (Cri) 1329, followed

[8299] — Ss. 307 and 326 r/w S. 34 — Prayer for enhancement of sentence — Maintainability — *Object of criminal law, need for imposition of appropriate sentence and duty and role of courts in this regard, effect of awarding inadequate sentence on justice system and society, extent of adherence to principle of proportionality while determination of sentence in practice, requirement of balancing aggravating and mitigating factors and circumstances in which crime was committed and relevant factors to be taken into account while determining proper sentence, restated — High Court, while upholding conviction of respondent-accused under Ss. 307 and 326 r/w S. 34 IPC, reduced the sentence* *from 10 years to 7 years in respect of offence under S. 307 — Challenge to — Appellant complainant contending that victims were mercilessly beaten and large number of injuries were caused to them — That, sentence was reduced without indicating any basis — Tenability — Held, injuries, so far as injured* ***R*** *was concerned, were definitely of very serious nature — High Court did not indicate any reason for reducing sentence from 10 years to 7 years in respect of offence under S. 307 — Injuries on* ***R*** *were attributed to respondent-accused* ***Ra*** *— Therefore, so far as accused* ***Ra*** *was concerned, sentence enhanced from 7 years to 10 years in respect of offence under S. 307 — Regarding other co-accused persons, though no reasons were indicated, considering nature of injuries caused by them, sentence as imposed by High Court does not appear to be on lower side* (Paras 6 to 9). *Sahdev* v. *Jaibar*, (2009) 11 SCC 798: (2009) 1 APLJ 206 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 27-2-2009]

State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13: 2003 SCC (Cri) 1935, relied on

[8300] — Ss. 307 and 330 — Appropriate sentence under — Gravity of offences under — *Trial court imposing sentences of 5 and 4 years' RI under Ss. 307 and 330 respectively — High Court's reduction of said sentences to period already undergone (six months and 23 days) on grounds that appellants were illiterate persons belonging to lower income group and were only 23 years old at the time of commission of the offence, held, not proper — Anguish expressed at High Court's casual and mechanical manner of disposal of question of sentence, without application of mind, oblivious to consequences of awarding inappropriate sentences — However, matter not disposed of finally and remitted to High Court instead, since it had not considered certain other alleged mitigating factors put forward by the respondents — Constitution of India — Art. 136*

The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". (Para 10)

This is another sad example where a learned Single Judge, Madhya Pradesh High Court, totally oblivious of the consequences has passed an order directing reduction of the custodial sentence to the period already undergone. We have come across a large number of such cases which have been disposed of in very casual and mechanical manner with no trace of application of mind regarding the question of sentence. Unfortunately, the High Court has not kept these features in view in reducing sentences of five and four years' RI respectively, imposed by trial court, to period of custody undergone of merely six months and twenty three days. The High Court found that the accused persons are illiterate persons belonging to lower-income group and on consideration of the fact that at the time of commission of offence they were of 23 years of age, reduced the sentence of imprisonment to the period already undergone. (Paras 17, 3 and 2)

The matter is remitted to the High Court to hear the matter only relating to sentence. Normally, in view of the established law on the subject the matter would have been finally disposed of, but the accused submitted that the High Court has not noted several other mitigating factors which were placed for consideration and granted relief on only some of the grounds. The High Court shall consider factors to be placed for consideration and decide the question of sentence keeping in view the principles indicated above. (Para 18). *State of M.P.* v. *Saleem*, (2005) 5 SCC 554: 2005 SCC (Cri) 1329: 2005 Cri LJ 3435.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2005]

[8301] — Ss. 307 and 341 — Sentence to be imposed under — Adequacy of — *Trial court awarding sentence of seven years' RI — High Court, while upholding conviction reducing sentence to period already undergone of about five months — Sustainability — Held, said sentence is wholly inadequate looking to nature of the offence — High Court has not assigned any satisfactory reason for reducing sentence to about five months — Matter remanded for decision afresh. State of M.P.* v. *Badri*, (2009) 17 SCC 367: AIR 2006 SC 571: (2005) 36 AIC 357 (SC).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-10-2005]

[8302] — Ss. 307 and 452 — Sentence — Single injury dangerous to life caused to the victim — *Considering young age of the accused (below 17 years) at the time of commission of the offence, circumstances in which offence committed and harm* *caused to the victim, sentence reduced to the period already undergone (one year and nine months) by the accused. Munna* v. *State of Rajasthan*, (1982) 3 SCC 380: 1983 SCC (Cri) 55: AIR 1982 SC 1465: 1982 Cri LJ 1945.

Bench Strength **2**. Coram: *D.A. Desai* and *V. Balakrishna Eradi*, JJ. [Date of decision: 30-8-1982]

[8303] — S. 307 r/w S. 34 — Joint petition of compromise — Filing of, in a non-compoundable offence i.e. offence under S. 307 — Relief — *Held, compromise cannot be recorded in such a case — But, while awarding sentence the effect of compromise can be taken into consideration — Thus, on facts, sentence of imprisonment reduced by High Court to six years was further reduced to period already undergone i.e. about 14 months — CrPC, 1973, S. 320* (Para 4). *Badrilal* v. *State of M.P.*, (2005) 7 SCC 55: 2005 SCC (Cri) 1597.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 11-7-2005]

Distinguished in Dhananjay v. State of Bihar, (2007) 14 SCC 768

[8304] — S. 307 r/w S. 34 — Sentence — *Conviction under, on charge of firing of gunshots on tenant's refusal to vacate the premises upheld — But in view of the trigger-happy tendency of the accused persons, their plea for remission of substantive sentence of 3 years' RI disallowed — But having regard to the totality of the circumstances including accused's old age, their act in the heat of the moment and their being on bail for the last 10 years accused directed to undergo 1½ years' RI and to pay Rs 2500 i.e. Rs 5000 in all to the victims by way of compensation. Rajendra Prasad* v. *State of Bihar*, (1987) 1 SCC 64: 1987 SCC (Cri) 31: AIR 1987 SC 1335: 1987 Cri LJ 1069.

Bench Strength **2**. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 12-9-1986]

[8305] — S. 307 r/w S. 34 — Sentence — *Having regard to peculiar circumstances of the case, 20 years' age of the accused-appellant 2 at the time of occurrence and lapse of 12 years, sentence reduced to the period already undergone. Mohinder Singh* v. *State of Punjab*, 1987 Supp SCC 65: 1987 SCC (Cri) 631.

Bench Strength **2**. Coram: *G.L. Oza* and *M.M. Dutt*, JJ. [Date of decision: 22-1-1987]

[8306] — S. 307 r/w S. 34 — Sentence to be imposed under — Adequacy of — *Trial court awarding sentence of seven years' RI — High Court, while upholding conviction reducing sentence to period already undergone of ten months and five days — Sustainability — Held, said sentence is wholly inadequate looking to nature of the offence — High Court has not assigned any satisfactory reason for reducing sentence to less than one year — Matter remanded for decision afresh. State of M.P.* v. *Sangram*, (2009) 17 SCC 370: AIR 2006 SC 48: 2005 Cri LJ 4642: (2005) 36 AIC 443 (SC).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 20-10-2005]

[8307] — S. 307 r/w S. 149 — Sentence — *Accused striking the victim with a bhala in stomach — High Court by a curious process of reasoning reducing sentence of ten years' R.I. to period already undergone with fine of Rs 500 — Sentence passed by High Court set aside and case sent back to High Court with direction to impose appropriate sentence commensurate with seriousness of offence after hearing the parties. Hirdai Singh* v. *State of Bihar*, 1990 Supp SCC 636.

Bench Strength **2**. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 11-4-1988]

[8308] — Ss. 307/34 — First appellant firing at the victim while the second appellant firing at a police constable but missing the shot — Conviction under, upheld — *But in the peculiar circumstances of the case and especially having regard to the nature of injury received by the victim, sentence reduced from 10 years' RI to 5 years' RI in case of the first appellant and from 7 years' RI to 4 years' RI in case of the second appellant — Appellants would be entitled to the benefit of S. 428, Criminal Procedure Code. Prabhu Rashu Machhi* v. *State of Gujarat*, 1980 Supp SCC 11: 1980 SCC (Cri) 439: AIR 1980 SC 1758.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 23-1-1980]

[8309] — Ss. 307/34 and 387/511 — Quantum of sentence — *In the peculiar circumstances of the case, sentence of 10 years' RI under Ss. 307/34 and 5 years' RI under Ss. 387/511, held, excessive — Reduced to 4 years' under both charges and directed to run concurrently*

On receiving an information that some persons were demanding ransom by writing threatening letters and were operating in the area of a particular Gurdwara, Constable *M* was sent to the Gurdwara while uniformed police remained at some distance. Three Sikh youths came from the Gurdwara and demanded money from *M*. Two of them were nabbed while the third one fired at, and injured, *M* and thereafter he absconded. Upon a search of the persons of the other two accused, a photocopy of the poster (letter) was recovered from the right pocket of the pants of one and a photocopy of another poster (letter) was recovered from the other. The said two persons, appellants herein, were tried and convicted and sentenced under Section 3(1) of TADA. They were also convicted and sentenced to 10 years' rigorous imprisonment and a fine of Rs 500 each under Sections 307/34 IPC and five years' rigorous imprisonment and a fine of Rs 200 each under Sections 387/511 IPC. The charge under Section 3(1) stated that the accused committed extortion from the public and attempted to commit extortion from *M*. Setting aside the conviction under TADA and on evidence upholding the conviction under other provisions but reducing the sentence thereunder,

Held :

The injury received by *M* has been ascribed to the absconding accused. The complicity of the appellants has been brought in only with the aid of Section 34 IPC insofar as the offence under Section 307 IPC is concerned. Similarly, they are only alleged to have attempted to commit the offence under Section 387 IPC. Hence, the sentence of 10 years' rigorous imprisonment for the offence under Sections 307/34 IPC and 5 years' RI for the offence under Sections 387/511 IPC appears to be excessive. While maintaining the conviction of the appellants for the offence under Sections 307/34 IPC the period of imprisonment is, therefore, being reduced to four years' rigorous imprisonment while maintaining the sentence of fine and the imprisonment in default thereof. So far as the offence under Sections 387/511 IPC is concerned, the substantive sentence is being reduced to four years' rigorous imprisonment while maintaining the sentence of fine and the imprisonment in default thereof. Both the substantive sentences are, however, directed to run concurrently. *Gurdev Singh* v. *State of Punjab*, 1998 SCC (Cri) 560.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 26-4-1995]

[8310] — Ss. 307/149 — Sentence — *Clash between two groups — Assailants who had not received injuries escaping punishment and conviction clamped down on those who sustained injuries in course of clash — Case pending for 10 years and accused in jail for some time — Held, ends of justice would be met by reducing the sentence. Khem Karan* v. *State of U.P.*, (1974) 4 SCC 603: 1974 SCC (Cri) 639: AIR 1974 SC 1567: (1974) 3 SCR 863: 1974 Cri LJ 1033: (1974) 2 ACC 307.

Bench Strength **3**. Coram: *M.H. Beg*, *Y.V. Chandrachud* and **V.R. Krishna Iyer**, JJ. [Date of decision: 8-4-1974]

— S. 308 *See also* Ss. 299 and 304, 308

See also Ss. 302/34 to S. 326

See also Ss. 376, 366, 363 and 308

[8311] — S. 308 — Appellants' conviction under S. 308 maintained but sentence reduced to the period already undergone adding it with a fine of Rs 12,500 each — Out of the fine two sums of Rs 10,000 to be paid over to complainant as compensation and the remaining amount to go to the State coffers. *Abrar Ali* v. *State of U.P.*, 1992 Supp (2) SCC 163: 1992 SCC (Cri) 666.

Bench Strength **2**. Coram: *M.M. Punchhi* and *G.N. Ray*, JJ. [Date of decision: 4-12-1991]

[8312] — Ss. 308, 320 Seventhly and 324 — Reduction of sentence — When not warranted — *Accused causing dislocation of bone by hitting on PW 3's head with a lathi due to past enmity — Medical evidence and statement of witnesses corroborating injury and intention of crime — Conviction under S. 308 and sentence of two years' RI, held, justified*

The accused was aggrieved with PW 1 as PW 1 had lodged a complaint against the accused and others that they had reaped hay from his fields. Therefore, the accused attacked PW 3 (son of PW 1) with a lathi and injured his head.

Dismissing the appeal of the accused,

Held :

There is no ground for reduction of sentence as claimed by the appellant. There is proof regarding enmity, intention and grievous hurt. The trial court as well as the High Court, taking note of the enmity and intention of the accused and the nature of injuries, evidence of both oral and documentary and medical evidence, concluded and awarded punishment under Section 308 IPC. The prosecution has established its case beyond doubt that the accused hit on the head of PW 3 with a lathi and injured him. It is established and proved from the statement of the injured PW 3 and his wife PW 2. Therefore, award of two years' rigorous imprisonment is quite reasonable and acceptable. (Paras 21, 20, 17 and 11)

In view of strong medical evidence the injuries sustained by the injured PW 3 comes under clause "Seventhly" of Section 320 IPC i.e. fracture or dislocation of a bone. It is clear from the medical report evidence of doctor PW 5 that injury was inflicted on the left side of the head i.e. 7 cm above the left eyebrow. There was a fracture of the left parietal bone. Voluntarily causing hurt by dangerous weapons or means has been explained in Section 324 and punishment for voluntarily causing grievous hurt is with imprisonment which may extend to seven years and shall also be liable to fine. (Paras 19, 18 and 20). *Jameel* v. *State of U.P.*, (2010) 12 SCC 532: 2010 Cri LJ 2106: (2010) 1 CTC 448 (SC): (2010) 1 ECrN 618 (SC): (2009) 84 AIC 86 (SC).

Bench Strength **2**. Coram: **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 6-11-2009]

Gurmukh Singh v. State of Haryana, (2009) 15 SCC 635: (2010) 2 SCC (Cri) 711, relied on

[8313] — Ss. 308 and 323 — Anticipatory bail — Grant of — *Considering that offence was under Ss. 308 and 323 IPC and the accused was a student, held on facts, accused should be enlarged on anticipatory bail — CrPC, 1973, S. 438* (Para 3). *Harpreet Singh* v. *Govt. (NCT of Delhi)*, (2005) 11 SCC 551.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 4-4-2005]

[8314] — Ss. 308/34 and 323/34 — Conviction under Ss. 308/34 by High Court, on facts held, proper. *Jai Ram* v. *State of U.P.*, (1976) 2 SCC 191: 1976 SCC (Cri) 246: AIR 1976 SC 1005: 1976 Cri LJ 725.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, *V.R. Krishna Iyer* and **A.C. Gupta**, JJ. [Date of decision: 25-2-1976]

[8315] — Ss. 308/34, 323/34, 324, 325 and 326 — Attempt to commit culpable homicide not amounting to murder — What amounts to — *Whether injury caused to the victim was grievous or simple not decisive — Attempt need not result in hurt — In the circumstances and facts of the case the High Court erred in bringing down the offence to be under Ss. 323/34 and then quashing the proceedings on ground that the offence was investigated without permission of the magistrate*

Offence punishable under Section 308 IPC postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under Section 308 IPC whereas punishment for simple hurts can be meted out under Sections 323 and 324 and for grievous hurts under Sections 325 and 326 IPC. Qualitatively, these offences are different. The High Court thus was not well advised to bring down the offence to be under Sections 323/34 IPC and then in turn to hold that since that offence was investigated by the police without permission of the magistrate, the proceedings under that provision be quashed. Thus, the entire order of the High Court deserves to be and is hereby quashed. *Sunil Kumar* v. *NCT of Delhi*, (1998) 8 SCC 557: 1998 SCC (Cri) 1522.

Bench Strength **2**. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 12-12-1997]

[8316] — Ss. 308/149 — Attempt to commit culpable homicide — Ingredients of — Proof, to sustain conviction — *Six accused alleged to have assaulted the informant with lathis with intention to kill him and taken Rs 400 from his pocket, because of enmity — FIR also stating that all the six accused had earlier threatened to kill him, and also burnt his hut — Offences recorded under Ss. 147 & 323 IPC, but charge-sheet filed under S. 308 — Trial court solely relying upon the allegations made in FIR and testimonies of eyewitnesses to convict accused under Ss. 308/149 — Appeal filed thereagainst dismissed by High Court — Held, before an accused can be held guilty under S. 308 IPC finding that the ingredients thereof, namely, requisite intention or knowledge was existing need to be established — In the instant case, although overt act had been attributed against each of the accused who were having lathis, only seven injuries had been caused and out of them only one of them was grievous, being a fracture of the arm, which was not on the vital part of the body — Hence, conviction under S. 308 unsustainable — Accused therefore convicted under Ss. 323 and 325* (Paras 7 to 12). *Bishan Singh* v. *State*, (2007) 13 SCC 65: AIR 2008 SC 131: (2007) 6 All LJ 656: (2007) 59 AIC 270 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 9-10-2007]

[8317] — Ss. 308/149 and 324/149 — Revisional power — Proper mode of exercise of, by High Court — Revision preferred by private complainant (State or accused not preferring appeal) — Scope of interference — *Sessions Court convicting appellants under Ss. 324/149 IPC and directing their release on probation of good conduct — High Court in revision after reappreciation of evidence holding that appellants not guilty under Ss. 324/149 IPC but under Ss. 308/149 IPC and directing Sessions Court to pass order of conviction accordingly — Legality — Held, High Court exercised its revisional jurisdiction illegally — When the said jurisdiction was invoked by a private complainant High Court should not have exercised it lightly — High Court should have considered that: (1) S. 401(3) CrPC prohibits conversion of a finding of acquittal into one of conviction, (2) that in such cases retrial or rehearing of the appeal might be ordered, and (3) that it could* *not have directed acquittal in respect of conviction under Ss. 324/149 IPC when the accused had not preferred an appeal — Judgment of Sessions Court restored — CrPC, 1973, Ss. 401 and 360*

The Sessions Court held that the appellant-accused were guilty of offences under Sections 324/149 IPC and released the appellants on probation of good conduct. However, the High Court while entertaining a private complainant's appeal (State not having preferred appeal) directed conviction of the appellants under Section 308 and acquittal of the appellants under Section 324 IPC.

Allowing the appeal of the accused persons,

Held :

On the facts and in the circumstances of the case, the High Court exercised revisional jurisdiction with material illegality and irregularity resulting into miscarriage of justice to the appellants. The revisional jurisdiction under Section 401 CrPC, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar nature, retrial or rehearing of the appeal may be ordered. Section 401(3) CrPC prohibits conversion of a finding of acquittal into one of conviction. (Paras 17, 13, 12 and 16)

After discussing the medical evidence and evidence of the injured witness in great detail the High Court prima facie came to the conclusion that a case under Section 308 IPC is made out against the appellants. Such a conclusion could have been recorded only in a properly constituted appeal, filed by the State Government. The High Court further concluded that no offence punishable under Section 324 IPC is committed by the appellants. This finding could have been recorded only in an appeal filed by the appellants. (Paras 14 and 15)

In the face of prohibition contained in Section 401(3) CrPC, it was all the more incumbent upon the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method. On remand the trial court was left with no judicial discretion but to convict the appellants under Section 308 read with Section 149 IPC and impose punishment on them as directed by the High Court in exercise of its power of revision under Section 401 CrPC. After recording guilt of an accused under a particular provision of IPC, the matter could not have been remitted to the Sessions Court for passing an appropriate order of conviction and punishment. (Paras 15 and 16)

The earlier judgment of the Sessions Judge is restored. (Para 19). *Sheetala Prasad* v. *Sri Kant*, (2010) 2 SCC 190.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 17-12-2009]

— S. 309 *See also* Ss. 84, 302 and 309
See also Ss. 300 Exception 5, 302 and 309
See also Ss. 302, 304, 306 and 309
See also Ss. 302, 306 and 309
See also Ss. 302 and 309
See also Ss. 302, 316 and 309
See also Ss. 302, 392 and 309
See also Ss. 302/34 to S. 326
See also Ss. 304 Pt. II and 309
See also Ss. 306 and 309
See also Ss. 307 and 309

[8318] — S. 309 — Attempt to commit suicide — *Fast unto death — Allegation in FIR that the petitioner undertook a fast unto death — Constitutionality of the provision having been upheld in Gian Kaur case challenge to the registration of FIR not maintainable. Banwarilal Sharma (Dr.)* v. *State of U.P.*, (1998) 3 SCC 604: 1998 SCC (Cri) 885.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *S.S.M. Quadri*, JJ. [Date of decision: 5-12-1997]

Gian Kaur v. State of Punjab, (1996) 2 SCC 648: 1996 SCC (Cri) 374, followed

[8319] — S. 309 — Attempt to commit suicide — Proof — *Offence not only proved but also admitted by the accused that he tried to bite a cyanide capsule when police tried to take him into custody — Acquittal set aside. State of T.N.* v. *Sivarasan*, (1997) 1 SCC 682: 1997 SCC (Cri) 362.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 31-10-1996]

Gian Kaur v. State of Punjab, (1996) 2 SCC 648: 1996 SCC (Cri) 374, followed

[8320] — S. 309 — Attempt to commit suicide — Sentence — Accused, a police constable, found to be mentally disbalanced due to an accident — Occurrence taking place more than 11 years ago *— Held, in the circumstances of the case, even if the prosecution case is proved beyond reasonable doubt the accused deserves a very lenient sentence of nominal fine — In order to do complete justice criminal case against the accused quashed — Constitution of India, Art. 136*

Considering the serious ailments which the respondent was suffering from, it appears to us that it will not be desirable to proceed further with the trial of the said criminal case initiated against the accused for the alleged offence to commit suicide after such a long lapse of time. In the facts of the case, even if he is found guilty after the completion of trial, the respondent deserves to be treated very sympathetically in the matter of awarding punishment for the said offence alleged against him. In the special facts of the case, the respondent does not deserve to be subjected to trial for the aforesaid offence after such a distant time when even if the prosecution case is proved beyond reasonable doubt, the accused deserves a very lenient sentence of nominal fine. In order to do complete justice, in the facts of the case, the Court directed quashing of the said criminal case against the respondent. *State of Maharashtra* v. *Maruti Shripati Dubal*, (1996) 6 SCC 42: 1996 SCC (Cri) 1116: AIR 1997 SC 411.

Bench Strength **2**. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 29-8-1996]

[8321] — S. 309 — Attempt to commit suicide — Whether ought to be decriminalised — *Held, though S. 309 has been declared constitutionally valid, yet time has come that it should be deleted by Parliament because provision has become anachronistic — A person attempts suicide in depression and hence needs help, rather than punishment* (Para 103). *Aruna Ramachandra Shanbaug* v. *Union of India*, (2011) 4 SCC 454.

Bench Strength **2**. Coram: **Markandey Katju** and *Gyan Sudha Misra*, JJ. [Date of decision: 7-3-2011]

[8322] — S. 309 — Decision of the High Court declaring S. 309 to be ultra vires Arts. 14 and 21 of the Constitution expressly overruled by a Constitution Bench of the Supreme Court upholding the vires of the section — *Decision of the High Court therefore set aside. State of Maharashtra* v. *Maruti Shripati Dubal*, (1996) 6 SCC 42: 1996 SCC (Cri) 1116: AIR 1997 SC 411.

Bench Strength **2**. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 29-8-1996]

Maruti Shripati Dubal v. State of Maharashtra, 1986 Mah LJ 913: 1987 Cri LJ 743: (1986) 3 Crimes 517, reversed

Gian Kaur v. State of Punjab, (1996) 2 SCC 648: 1996 SCC (Cri) 374, followed

[8323] — S. 309 — Drowning — Suicide by drowning — *Stomach not filled with water nor bloated and no froth coming out of the mouth — Held, suicide by drowning ruled out on the facts of the case. Kodali Purnachandra Rao* v. *Public Prosecutor*, (1975) 2 SCC 570: 1975 SCC (Cri) 678: AIR 1975 SC 1925: 1975 Cri LJ 1671.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 2-9-1975]

[8324] — S. 309 — Held, not violative of Art. 14 on grounds of attempt to suicide being undefined and unguided and of treating all attempts to commit suicide by the same measure

Challenge to S. 309 IPC on ground of being violative of Art. 14 is not sustainable. The submission that want of plausible definition of attempt to suicide and even guidelines in that regard rendered S. 309 IPC arbitrary and violative of Art. 14 is not sound, for, whatever differences there may be as to what constitutes suicide, there is no doubt that suicide is intentional taking of one's life. Further, on a prosecution being launched it is always open to an accused to take the plea that his act did not constitute suicide whereupon the court would decide this aspect also. Section 309 cannot also be held to be violative of Art. 14 on ground that it treats different attempts to commit suicide by the same measure without referring to the circumstances in which attempts are made. The nature, gravity and extent of attempt may be taken care of by tailoring the sentence appropriately. Section 309 has only provided the maximum sentence which is up to one year. It provides for imposition of fine only as a punishment. In certain cases even Probation of Offenders Act can be pressed into service, whose S. 12 enables the court to ensure that no stigma or disqualification is attached to such a person. *P. Rathinam* v. *Union of India*, (1994) 3 SCC 394: 1994 SCC (Cri) 740: AIR 1994 SC 1844: 1994 Cri LJ 1605.

Bench Strength **2**. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 26-4-1994]

[8325] — S. 309 — Medical evidence — Homicide or suicide — *Fact that the body with a ligature mark around the neck was found on the cot and not hanging completely demolishes the theory of suicide — Evidence Act, 1872, S. 45. Ram Kumar Madhusudan Pathak* v. *State of Gujarat*, (1998) 7 SCC 702: AIR 1998 SC 2732.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *D.P. Wadhwa*, JJ. [Date of decision: 19-8-1998]

[8326] — S. 309 — Punishment for attempt to commit suicide — *Held, not violative of Art. 21 as right guaranteed under Art. 21 does not comprehend right to die — Nor is it violative of Art. 14 on ground of being barbaric and arbitrary as S. 309 confers a wide discretion in the matter of sentencing without prescribing any minimum punishment and without making sentence of imprisonment compulsory — Accordingly, Supreme Court's earlier decision in* P. Rathinam *v.* Union of India *overruled*

There is no ground to hold that Section 309 IPC is constitutionally invalid. The contrary view taken in *P. Rathinam* on the basis of the construction made of Article 21 to include therein the "right to die" cannot be accepted to be correct. That decision cannot be supported even on the basis of Article 14. It follows that Section 309 IPC is not to be treated as unconstitutional for any reason. *Gian Kaur* v. *State of Punjab*, (1996) 2 SCC 648: 1996 SCC (Cri) 374: AIR 1996 SC 946.

Bench Strength 5. Coram: **J.S. Verma**, *G.N. Ray*, *N.P. Singh*, *Faizan Uddin* and *G.T. Nanavati*, JJ. [Date of decision: 21-3-1996]

P. Rathinam v. Union of India, (1994) 3 SCC 394: 1994 SCC (Cri) 740; Maruti Shripati Dubal v. State of Maharashtra, 1987 Cri LJ 743: (1986) 3 Crimes 517: 1986 Mah LJ 913, ***overruled***

Chenna Jagadeeswar v. State of A.P., 1988 Cri LJ 549: (1988) 1 Crimes 357: (1987) 2 Andh LT 263; Naresh Marotrao Sakhre v. Union of India, 1995 Cri LJ 96 (Bom), approved

[8327] — S. 309 — Punishment for attempt to commit suicide — Held, provision void being violative of Art. 21 — *It is a cruel and irrational provision as it provides punishment again to the person who is already afflicted and needs psychiatric counselling and caused no harm to others — Attempt to commit suicide not against morality, religion, society or public policy of preservation of human life and apprehension that invalidating S. 309 would affect monopolistic power of State to take life and would permit 'constitutional cannibalism' unfounded — S. 306 however, stands on a different footing*

Section 309 of the Penal Code deserves to be effaced from the statute book to humanise our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Then an act of suicide cannot be said to be against religion, morality or public policy, and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the persons concerned is not called for.

It must therefore, be held that S. 309 violates Art. 21, and so, it is void. This view would advance not only the cause of humanisation, which is a need of the day, but of globalisation also, as by effacing S. 309, this part of the criminal law would be attuned to the global wavelength. This view is also in consonance with the recommendation of the Law Commission of India in the 42nd Report (1971). This view has been taken on the basis of an attempt to "search for the social dynamics of criminal law, the functional theory of sentencing and the therapeutic reach of punitive arts, to catch up with social sciences relevant to criminal justice and to link up prison jurisprudence with constitutional roots".

There is no justification for the apprehension that if the negative aspect of right to life, i.e., to destroy it can be read in Art. 21, the State can "easily embark upon a policy to encourage genocide on the plea that proper management of resources are vital and necessary for the upkeep of life with vigour and dignity in the wake of geometrical progression of population growth". The argument of 'constitutional cannibalism' based on such apprehension has no basis as there is a gulf of difference between taking of one's own life and allowing the State to go in for genocide.

If a person takes his life, he is taking his *own* life, and not the life of anybody else; and so, the argument that State's monopolistic power of taking life is taken away by the person who attempts to commit suicide has no legs to stand on. Nobody can claim to have monopoly over a human life. It is God alone who can claim such a power.

Law has many promises to keep including granting of so much of liberty as would not jeopardise the interest of another or would affect him adversely. For this purpose, law may have "miles to go". Then, law cannot be cruel, which it would be if persons attempting suicide are treated as criminals and are prosecuted to get them punished, whereas what they need is psychiatric treatment, because suicide basically is a "call for help". A law which is cruel violates Art. 21 of the Constitution.

As regards the question as to whether infliction of punishment can be said to have a direct relation with the reduction of criminal propensity, it is doubtful whether imposition of even death sentence has been able to reduce the number of murders. Sentencing has been regarded as a subtle art of healing. Moreover, a person attempting to commit suicide does get punished. The agony undergone by him and the ignominy to be undergone is definitely a punishment, though not a corporal punishment; but then, S. 309 has provided for a sentence of fine also. Agony and ignominy undergone would be far more painful and deterrent than a fine which too may not come to be realised if the person concerned were to be released on probation.

Persons who attempt to commit suicide do not deserve prosecution. Suicide is a psychiatric problem and not a manifestation of criminal instinct. Suicide is really a 'call for help' and there is no 'call for punishment'. So what is needed to take care of suicide-prone persons are soft words and wise counselling (of a psychiatrist) and not stony dealing by a jailor following harsh treatment meted out by a heartless prosecutor. Let us humanise our laws. It is never late to do so.

Suicide knows no barriers of race, religion, caste, age or sex. There is "secularisation of suicide" in our country also. There has been great increase in the number of commission of suicides.

There is no non-religiosity in the act of suicide so far as our social ethos is concerned and it is this ethos, this social mores, which our law has to reflect and respect.

It is the sanctity of human life which is said to be defaced when one commits suicide and the question of morality, therefore, arises. Law and morals often intersect. Historically at least law and morals were closely related and in many areas the law continues to look upon its function as the enforcement of morals, the reinforcement of moral standards in society, and the punishment of moral depravity. However, morality has no defined contours and it would be too hazardous to make a bold and bald statement that commission of suicide is per se an immoral act. If human beings can be treated inhumanly, as a very large segment of our population is, which in a significant measure may be due to wrong (immoral) acts of others, charge of immorality cannot be, and in any case should not be levied, if such human beings or like of them, feel and think that it would be better to end the wretched life instead of allowing further humiliation or torture. Those who demand virtue must do virtue and should see that others too do the same.

Though suicide may bring in miseries to the family members and thus it was urged that suicide has adverse effects on the social set-up, but then, it is a matter of extreme doubt whether by booking a person who had attempted to commit suicide to trial, suicides can be taken care of. Even imposition of death sentences has not been able to take care of commission of murders. Further, such adverse sociological effects are caused by the *death* of the person concerned, and not by one who had *tried* to commit suicide. Indeed, those who fail in their attempts become available to be more or less as useful to the family as they were. So the person to be punished is one who had committed suicide; but, he is beyond the reach of law and cannot be punished. This can provide no reason to punish a person who should not be punished.

One of the objects of punishment to be inflicted when an offence is committed is protection of society from the depredations of dangerous persons, one of the interests of the State being preservation of human life. But insofar as suicide is concerned, this object does not get attracted because there is no question of protection of the society from depredation of dangerous persons, who by the very nature of things have to be those who cause harm to others and not to themselves. It cannot, therefore, be said with any degree of definiteness that commission of suicide is against public policy; and, as such, a person attempting to commit it acts against public policy.

As regards the persons aiding and/or abetting suicide, the law can be entirely different. It is not possible to accept the view that if S. 309 were to be held bad, it is highly doubtful whether S. 306 could survive, as self-killing is conceptually different from abetting others to kill themselves. They stand on different footing, because in one case a person takes his *own* life, and in the other a third person is abetted to take his life. *P. Rathinam* v. *Union of India*, (1994) 3 SCC 394: 1994 SCC (Cri) 740: AIR 1994 SC 1844: 1994 Cri LJ 1605.

Bench Strength **2**. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 26-4-1994]

State v. Sanjay Kumar Bhatia, 1985 Cri LJ 931: (1985) 2 DMC 153 (Del); Maruti Shripati Dubal v. State of Maharashtra, 1987 Cri LJ 743: (1986) 88 Bom LR 589: 1986 Mah LJ 913 (Bom); Court on its own Motion v. Yogesh Sharma, Registered as Crl. Revision No. 230 of 1985, approved

*Chenna Jagadeeswar v. State of A.P., 1988 Cri LJ 549: (1987) 2 Andh LT 263: 1987 APLJ (Cri) 110 (AP), **overruled***

See case comment — B.B. Pande: Right to Life or Death ?: For Bharat both cannot be 'Right', (1994) 4 SCC (Jour) 19

*But **overruled** in Gian Kaur v. State of Punjab, (1996) 2 SCC 648: 1996 SCC (Cri) 374*

[8328] — S. 309 — Suicide and attempt to commit suicide — Position regarding suicide in English and Indian criminal law, stated — *Held, in India, while suicide in itself is not an offence, considering that successful offender is beyond the reach of law, attempt to commit suicide is an offence under S. 309* (Paras 8 and 9). *Gangula Mohan Reddy* v. *State of A.P.*, (2010) 1 SCC 750.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 5-1-2010]

[8329] — Ss. 309 and 302 — Suicidal injuries on the throat — *Held are generally marked by tentative cuts at the beginning of the main wound — On facts held that single deep long injury on the lower level of the neck disproved suicide. Vasant Laxman More* v. *State of Maharashtra*, (1974) 4 SCC 778: 1974 SCC (Cri) 688: AIR 1974 SC 1697: 1974 Cri LJ 1166.

Bench Strength **2**. Coram: *H.R. Khanna* and **Y.V. Chandrachud**, JJ. [Date of decision: 19-7-1974]

— **S. 310** *See also* Ss. 302, 310 and 390

See also Ss. 302/34 to S. 326

— **S. 311** *See also* Ss. 302/34 to S. 326

— **S. 312** *See also* Ss. 52-A, 136, 312 and 157

See also Ss. 302/34 to S. 326

See also Ss. 376, 302, 304, 120-B, 354, 312, 343, 201, 506, 109 and 34

— **S. 313** *See also* Ss. 302/34 to S. 326

[8330] — S. 313 — Non-compoundable offence — Compromise — Relevance of — *Held, factor of compromise cannot be recorded in such a case but the effect of compromise can be taken into consideration for reducing the sentence — Appellants convicted under S. 313 r/w S. 34 IPC i.e. offence of causing miscarriage without woman's consent and sentenced to 5 years' RI and fine of Rs 7000 — Sentence reduced by the High Court to 3 years' RI and fine of Rs 5000 — Appellant Hasi Mohan having an affair with the complainant and due to intimate relationship the complainant becoming pregnant — Appellant's refusal to marry the complainant and causing miscarriage despite her protest — During the pendency of the case complainant marrying the appellant and filing an affidavit to this effect in the Court that she has entered into a compromise with the appellants and wants the criminal case to be withdrawn as they are living peacefully — Supreme Court reducing the sentence of appellants to the one already undergone i.e. about 10 months — However, conviction of appellants under S. 313 IPC maintained — CrPC, 1973, S. 320. Hasi Mohan Barman* v. *State of Assam*, (2008) 1 SCC 184: (2008) 1 SCC (Cri) 161: AIR 2008 SC 388.

Bench Strength **2**. Coram: **G.P. Mathur** and *Altamas Kabir*, JJ. [Date of decision: 13-11-2007]

Ram Pujan v. State of U.P., (1973) 2 SCC 456: 1973 SCC (Cri) 870; Surendra Nath Mohanty v. State of Orissa, (1999) 5 SCC 238: 1999 SCC (Cri) 998, followed

Bankat v. State of Maharashtra, (2005) 1 SCC 343: 2005 SCC (Cri) 316; Badrilal v. State of M.P., (2005) 7 SCC 55: 2005 SCC (Cri) 1597; Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255: (2006) 2 SCC (Cri) 561, relied on

— **S. 314** *See also* Ss. 302/34 to S. 326

[8331] — S. 314 — Causing death of the woman while causing miscarriage with consent — Quack (Homeopathic doctor) while performing surgical operation for abortion of a pregnant lady with her consent causing perforation of her uterus which resulted in her death — Case not covered by any exception under S. 3 of Medical Termination of Pregnancy Act, 1971 — *On facts, conviction under S. 314 upheld — But sentence of four years' RI imposed by High Court reduced to two months' imprisonment already undergone and instead fine of Rs 5000 awarded by it (out of which Rs 4000 was to be paid to the deceased's minor son) enhanced to Rs 1 lakh — Amount of fine directed to be deposited in the name of deceased's son in a nationalised bank which would allow the child's guardian to withdraw the interest for the child's maintenance till the child becomes major — Sentence thus modified having regard to the purposes of punishment — Prayer for release on probation refused having regard to nature of the offence and character and conduct of the accused*

Section 314 has not visualised the sentence of imprisonment only, but permits imposition of fine also. The High Court has imposed a fine of Rs 5000. The fine is required to be enhanced considerably, because of what has been provided in S. 357 of the Code of Criminal Procedure which has a message of its own in this regard. The power of imposing fine is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is to some extent a constructive approach to crimes and a step forward in a criminal justice system. It is because of this that it was recommended that all criminal courts should exercise this power liberally so as to meet the ends of justice, by cautioning that the amount of compensation to be awarded must be reasonable. What is reasonable has to depend upon the facts and circumstances of each case.

The present case was concerned with the death of a woman deserted by a husband and desiring to abort. She had a son born to her earlier and that son must have become a destitute with no one to look after. The appellant, on the other hand seems to have had a roaring practice as would appear, inter alia, from the photographs of his clinic put on record. The building is an RCC one and is three-storeyed and presents a good look. If a child has to be nursed in these days and nursed reasonably, a sum of Rs 1000 per month would definitely be necessary. Therefore, the fine to be imposed should be Rs one lakh. Therefore, sentence awarded by the High Court is modified by reducing the substantive sentence of imprisonment to the one already undergone and by enhancing the fine to a sum of Rs one lakh. Six months' time is granted to the appellant for depositing this amount. On this amount being deposited with the Registry of the Supreme Court, steps would be taken to deposit the same in a nationalised bank in the name of the son of the deceased after ascertaining the same from the appropriate authority. The bank would allow the guardian of the aforesaid son to withdraw the interest on the aforesaid amount till the son becomes major. On the son becoming major, it would be for him to decide as how to use the money and the bank would therefore act in accordance with the decision taken by the son. If the fine as enhanced, would not be paid within six months from the date of this judgment, the sentence as awarded by the High Court would get revived and the appellant would undergo the remaining part of imprisonment. To enable the High Court to monitor the matter, the appellant would inform the High Court also about the fact of his depositing the sum of Rs one lakh.

This judgment may not be understood to have expressed any opinion on the right of the deceased or for that matter of any woman of this country to go for abortion, as this question has not arisen directly in this case. No opinion is expressed whether such a right can be read in Art. 21 of the Constitution; and if so, to what extent. *Jacob George (Dr.)* v. *State of Kerala*, (1994) 3 SCC 430: 1994 SCC (Cri) 774: (1994) 2 An LT (Cri) 1: (1994) 1 KLT 872: (1994) 2 Crimes 100.

Bench Strength **2**. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 13-4-1994]

[8332] — S. 314 — Death of woman in doctor's clinic after abortion — Appreciation of evidence *— Defence story that deceased's condition had become serious because of attempt made by her near relation to abort the pregnancy by crude method belied in view of the accused's failure to inform the police of the medico-legal situation — Conviction can be based principally on evidence of the near relation who had played a vital role in the case — Fact that the nurses of the doctor's clinic had turned hostile would not weaken the prosecution case when evidence of the related witness was corroborated by other evidence.* *Jacob George (Dr.)* v. *State of Kerala*, (1994) 3 SCC 430: 1994 SCC (Cri) 774: (1994) 2 An LT (Cri) 1: (1994) 1 KLT 872: (1994) 2 Crimes 100.

Bench Strength **2**. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 13-4-1994]

[8333] — S. 314 — To be read subservient to S. 3 of Medical Termination of Pregnancy Act, 1971

After the enactment of the Medical Termination of Pregnancy Act, 1971, the provisions of the Penal Code relating to miscarriage have become subservient to this Act because of the non obstante clause in S. 3, which *permits* abortion/miscarriage by a registered practitioner under certain circumstances. This permission can be granted on three grounds. Concern for even unborn child was evinced by the legislature, not to speak of hazard to the life of the woman concerned. *Jacob George (Dr.)* v. *State of Kerala*, (1994) 3 SCC 430: 1994 SCC (Cri) 774: (1994) 2 An LT (Cri) 1: (1994) 1 KLT 872: (1994) 2 Crimes 100.

Bench Strength **2**. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 13-4-1994]

[8334] — S. 314 r/w S. 109 *— Abatement to cause miscarriage — Conviction based on uncommunicated letter by deceased and evidence of solitary witness — Legality*

That exhibit P-4 is a letter said to have been written by the deceased some time before her death intending to send the same to the appellant which in fact was not sent. The contents of the letter do not in any manner support the prosecution case that the appellant instigated the deceased to cause miscarriage. No portion of that letter indicated that the appellant was in any manner responsible for the steps taken by the deceased for causing miscarriage. No other evidence has been relied upon either by the trial court or by the High Court in support of the finding that the appellant was guilty of (the offence of) abetting the deceased to cause miscarriage. There is no legal basis for the conviction of the appellant. *Madan Raj Bhandari* v. *State of Rajasthan*, (1969) 2 SCC 385: AIR 1970 SC 436: 1970 Cri LJ 519: 1970 MLJ (Cri) 98.

Bench Strength **3**. Coram: *S.M. Sikri, G.K. Mitter* and **K.S. Hegde**, JJ. [Date of decision: 29-7-1969]

[8335] — Ss. 314/34 — Common intention to cause miscarriage which resulted in death — Accused having illicit relations with deceased *— Accused taking deceased to clinic of a doctor with the intention to cause her miscarriage — Doctor was not qualified for terminating pregnancy nor was his clinic equipped and approved by Govt. as required under R. 4 of Medical Termination of Pregnancy Rules — Deceased died in the clinic either due to shock or due to non-application of anaesthesia while undergoing abortion — Held, accused rightly convicted under Ss. 314/34 — But in the circumstances, sentence of 7 years' RI being on the higher side, the same reduced to 1½ years' RI and instead fine of Rs 10,000 awarded by courts below enhanced to Rs 25,000 payable to deceased's mother — Medical Termination of Pregnancy Rules, R. 4*

The deceased, an unmarried girl of 24 years age, told her mother that she along with the appellant was going to the clinic of a doctor *S*. Later in the same day both the appellant and *S* came to the deceased's mother and told her that the deceased was in a serious condition. When the deceased's mother reached the clinic of *S* she found her daughter lying dead on the table inside the clinic. When asked what was the reason of the treatment and death of her daughter, the appellant told her that he was having illicit relations with the deceased as a result of which she was carrying pregnancy of two or three months. He also told her that he got the deceased admitted in the hospital of *S* for abortion and during the treatment the deceased's condition became serious causing her death. The Professor of Forensic Medicines in Medical College, in his deposition opined that the deceased was carrying pregnancy of three months. He did not find any injury in the uterus or vagina. He said it was possible that the abortion was caused without applying anaesthesia to the deceased causing her death or her death could be due to fear. He found that the uterus was enlarged containing blood clots. In his cross-examination he said that shock also takes place during the state of fear. It has come to record that the doctor *S* was having a degree of Bachelor of Medicine in Electrohomoeopathy from the Board of Electrohomoeopathic Systems of Medicines, Jabalpur (M.P.). This entitled him to practise in Electrohomoeopathic systems of medicines. He also possessed a Diploma of Bachelor of Medicine and Surgery in Ayurved. Thus he was not a medical practitioner, who possesses any recognised medical qualification as defined in clause (*h*) of Section 2 of the Indian Medical Council Act, 1956, whose name has been entered in a State Medical Register and who had any experience or training in gynaecology and obstetrics. During the course of investigation the police also recovered some instruments from the dicky of the scooter of *S* which were allegedly used for causing abortion. One Hindi book containing the literature on abortion, contraceptives and one Hindi book containing an illustrative abortion guide were seized from the clinic of *S*. When the Investigating Officer stated that he recovered the instruments from the dicky of the scooter of *S* on his disclosure statement, he had not been cross-examined. The appellant and *S* were tried together. While *S* was convicted under Section 314 IPC, the appellant was convicted under Sections 314/34 IPC. Both were sentenced to seven years' RI and a fine of Rs 10,000 and in default of payment of fine further two years' RI. Both filed appeal in the Madhya Pradesh High Court. Their conviction and sentence were upheld and their appeal dismissed. Both sought leave to appeal to the Supreme Court under Article 136 of the Constitution against the judgment of the High Court. *S* was refused leave but the present appellant was granted leave. Two questions have been raised before the Supreme Court for consideration: (1) whether the extra-judicial confession of the appellant made to the deceased's mother could be solely made the basis for conviction and (2) whether the appellant shared any common intention with *S* to cause the death of the deceased. Upholding the conviction of the appellant but reducing the sentence,

Held :

There is no reason for not taking into consideration the extra-judicial confession of the appellant made to the deceased's mother to base his conviction. It was quite natural in the circumstances. It is not possible to believe the defence version that the deceased just died lying on the table in the clinic of *S*. She was a normal girl. No explanation is forthcoming either from the appellant or *S* as to in what circumstances the deceased died. It was something within their knowledge. The court in normal circumstance does accept the explanation of the accused consistent with his innocence even though he has not been able to prove his defence by positive evidence. But when the explanation offered by the accused or the defence set up by him is not only inconsistent with his conduct but is palpably false, it cannot be worth consideration. When examined under Section 313 CrPC, the appellant as well as *S* were asked if they wanted to say anything in their defence, but the defence set up by them were not true and had to be rejected. (Para 7)

It is not possible to accept the contention that the appellant could not be convicted with the aid of Section 34 IPC. (Para 11)

There is a concurrent finding that *S* with the intent to cause the miscarriage of the deceased with child by his act caused her death and the act was done in furtherance of the common intention of the appellant. He has thus been rightly convicted under Sections 314/34 IPC. (Para 12)

Moreover, having regard to the provisions of the Medical Termination of Pregnancy Act and Rules, *S* was certainly not competent to terminate the pregnancy of the deceased nor his clinic had the approval of the Government. Even the basic facilities for abortion were not available in his clinic. The appellant took the deceased to the clinic of *S* with the intent to cause her miscarriage and then her death was caused by *S* while causing abortion, which act was done by *S* in furtherance of the common intention of both *S* and the appellant. There is no escape from the conclusion that the appellant had been rightly convicted under Sections 314/34 IPC. (Para 15)

However, the sentence awarded to the appellant is rather on the higher side. Therefore, the sentence of imprisonment is reduced to 1½ years' (18 months') RI. But the fine is enhanced to Rs 25,000 and in default of payment of the fine the appellant would undergo a further one year's RI. In case fine is realised the same shall be payable to the mother of the deceased. (Para 16). *Surendra Chauhan* v. *State of M.P.*, (2000) 4 SCC 110: 2000 SCC (Cri) 772: AIR 2000 SC 1436: 2000 Cri LJ 1789.

Bench Strength **2**. Coram: **D.P. Wadhwa** and *Ruma Pal*, JJ. [Date of decision: 27-3-2000]

[8336] — **Ss. 314/107 — Death caused while attempting to cause miscarriage** — *Appellant taking H to house of P for termination of pregnancy — Attempt to cause miscarriage by P, resulting in death of H — P convicted under S. 314 IPC and appellant under Ss. 314/107 and sentenced to four years' RI and to pay a fine of Rs 500 — In appeal by appellant to SC, held, the appellant only tried to help H and took her to P whose efforts resulted in the death of H — In that sense the appellant had abetted the offence — Taking the circumstances into consideration, sentence on appellant reduced to two years. Jangir Kaur* v. *State of Punjab*, 1994 Supp (2) SCC 397: 1994 SCC (Cri) 1479.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 28-9-1993]

— S. 315 *See also* Ss. 302/34 to S. 326

See also Ss. 304-B and 315

See also Ss. 498-A, 406, 420 and 315

— S. 316 *See also* Ss. 302, 316 and 309

See also Ss. 302/34 to S. 326

See also Ss. 304-B/34, 302/120-B, 201/34, 498-A/34 and 316

— Ss. 317 to 319 *See also* Ss. 302/34 to S. 326

— S. 320 *See also* Ss. 34 and 320

See also Ss. 302/34 to S. 326

See also Ss. 324, 307 and 320

See also Ss. 326 and 320

See also Ss. 376 and 320

— S. 320 Seventhly *See also* Ss. 308, 320 Seventhly and 324

4 [8337] — **S. 320 — Clauses of, should be strictly construed** (Paras 14 and 15). *Mathai* v. *State of Kerala*, (2005) 3 SCC 260: 2005 SCC (Cri) 695: AIR 2005 SC 710: 2005 Cri LJ 898.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-1-2005]

[8338] — **Ss. 320 and 148 — Supreme Court can interfere with concurrent judgment of criminal courts where interest of justice requires** — *Where incident of double murder took place as a result of acute faction between two groups of persons, prosecution witnesses were partisan and highly interested and prosecution story full of infirmities and appeared to be fabricated, held, Supreme Court would be justified in interfering with the High Court's order of confirmation of conviction and sentences recorded by the trial court as such confirmation would result in injustice — Constitution of India, Art. 136. Lala Ram* v. *State of U.P.*, (1990) 2 SCC 113: 1990 SCC (Cri) 276: AIR 1990 SC 1185: 1990 ALJ 269: 1990 Cri LJ 1205.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 7-2-1990]

[8339] — **Ss. 320 and 326** — *"Fracture" — Meaning of — Grievous hurt — Proof — Concurrent finding — Interference*

It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of cl. 7 of S. 320. The nature of the injuries, as spoken to by the doctor in his evidence discloses the length, breadth and depth of each injury. The doctor in his evidence said that these injuries are grievous. The nature of the injuries considered with the evidence of the doctor would undoubtedly establish that all the aforesaid injuries were grievous. These injuries were inflicted by *kantas* which are dangerous weapons and hence the conviction under S. 326 is fully justified. *Hori Lal* v. *State of U.P.*, (1970) 1 SCC 8: AIR 1970 SC 1969: (1970) 2 SCR 237: 1970 Cri LJ 1665.

Bench Strength **3**. Coram: *S.M. Sikri*, *G.K. Mitter* and **P. Jaganmohan Reddy**, JJ. [Date of decision: 8-9-1969]

[8340] — **Ss. 320, 326 and 324 — Inquiry caused with a sharp-edged instrument cutting tender muscle nerve** — *Held, not a grievous injury but a simple one. State of Karnataka* v. *Siddegowda*, 1995 Supp (3) SCC 404: 1995 SCC (Cri) 931.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 9-3-1995]

— S. 320 Secondly *See also* Ss. 326 and 320 Secondly and Eighthly

— S. 320 Seventhly *See also* Ss. 308, 320 Seventhly and 324

[8341] — S. 320 Seventhly — 'Fracture'

It is true that 'fracture' has not been defined in the Penal Code. It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of cl. 7 of S. 320. What we have to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them. *Hori Lal* v. *State of U.P.*, (1970) 1 SCC 8: AIR 1970 SC 1969: (1970) 2 SCR 237: 1970 Cri LJ 1665.

Bench Strength **3**. Coram: *S.M. Sikri*, *G.K. Mitter* and **P. Jaganmohan Reddy**, JJ. [Date of decision: 8-9-1969]

[8342] — S. 320 Seventhly — Fracture — Meaning of

Fracture in common parlance means breaking through, but it is not necessary that, in order that there should be a fracture, the entire depth of the bone need be broken. When a portion of the bone is sliced off, it necessarily changes the nature of the bone and its quantity is reduced. When any portion of the bone is broken off and there is a cleft or a rupture, nobody would deny that there is a fracture, but when a part of the bone itself is dismembered, it axiomatically follows that a fracture has taken place. The break-up of the bone into two fragments or pieces must necessarily connote a fracture, and that being the case, when a portion is sliced off, one cannot say that there is no fracture if the injury is something more serious than a mere break. *Labh Singh* v. *State of Punjab*, Criminal Appeal No. 141 of 1956.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 4-9-1957]

[8343] — Ss. 320 Seventhly, 326 and 324 — Fracture — Partial cut of skull vault — *Held, amounted to fracture within the meaning of clause Seventhly of S. 320 and therefore, punishable under S. 326*

The question in such cases would be whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them i.e. there is a rupture or fissure in it. There can be no doubt from the X-ray report that there was a partial cut of the skull vault. The opinion of the radiologist that there was a deep cut involving the whole of the outer table and reaching up to the inner table is borne out by the white line appearing in the X-ray plate. There is no basis for the inference that there was possibility of a wire being placed before exposing the film to the X-ray equipment; nor is there warrant for the view that a partial cut of the skull vault is seldom so prominent except when excessive force is used in inflicting the injury. It appears that the force of the impact of the blow was saved by the turban. In the circumstances, there was a fracture within the meaning of clause Seventhly of S. 320. The High Court was therefore justified in altering the conviction of the appellant from that under S. 324 to one under S. 326. *Naib Singh* v. *State of Punjab*, (1986) 4 SCC 401: 1986 SCC (Cri) 475: AIR 1986 SC 2192: 1986 Cri LJ 2061.

Bench Strength **2**. Coram: **A.P. Sen** and *B.C. Ray*, JJ. [Date of decision: 23-9-1986]

Hori Lal v. State of U.P., (1970) 1 SCC 8: (1970) 2 SCR 237: AIR 1970 SC 1969, relied on

Maung Po Yi v. Ma E Tin, AIR 1937 Rang 253: 38 Cri LJ 960 and Mutukdhari Singh v. Emperor, AIR 1942 Pat 376: 43 Cri LJ 511, disapproved

(1978) 80 Punj LR 326, affirmed

— S. 320 Eighthly *See also* Ss. 96, 97, 103, 99 Fourthly

See also S. 300 Thirdly, 302 or 320 Eighthly and 325

See also S. 320 Eighthly and Ss. 326/322

See also Ss. 326 and 320 Secondly and Eighthly.

[8344] — Ss. 320 Eighthly and 326 — Injury by a cutting instrument like sickle on the abdomen endangering life — *Is a grievous hurt under S. 320 — Accused charged under S. 302 can legally be punished under S. 326, IPC*

Appellant hit the deceased on the abdomen with a sickle causing an oblique, boat shaped incised wound 6"x3"x3" deep leading to abdominal cavity. The injury endangered life. It was a grievous hurt of the nature mentioned in the last clause of S. 320 (Eighthly), IPC. For this individual act of assault the accused is undoubtedly guilty of an offence under S. 326, IPC. There was a substantive charge under S. 302, IPC and there can be no legal difficulty in convicting him of the lesser offence of causing grievous hurt under S. 326, IPC. *Chikkarange Gowda* v. *State of Mysore*, AIR 1956 SC 731: ILR 1956 Mys 377: 1957 Ker LJ 25: 1956 Cri LJ 1365, 1369.

Bench Strength **3**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati* and **S.K. Das**, JJ. [Date of decision: 9-5-1956]

[8345] — Ss. 320 Eighthly and 326/34 or 302 — *Tying deceased to an electric pole and beating to teach him a lesson for having spread scandalous information about the accused-appellants — Nature of injuries sustained by deceased such as to endanger human life covered by definition under*

S. 320 Eighthly — Deceased in a drunken state at the time of occurrence — In absence of any definite evidence attributing specific overt act to any of the appellants in the backdrop of the totality of the circumstances of the case, held, it would be unsafe to draw any conclusion that appellants had intended to cause death of the deceased and committed the offence of murder — Hence conviction of appellants 1 and 2 under Ss. 302/34 and sentence of life imprisonment altered to conviction under S. 326/34 and sentence of 5 years' RI — However, appellant 3 entitled to acquittal in absence of sufficient evidence against him. Formina Sebastio Azardeo v. *State of Goa, Daman and Diu*, 1992 Supp (2) SCC 218: 1992 SCC (Cri) 671: AIR 1992 SC 133: 1992 Cri LJ 109.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *M. Fathima Beevi*, JJ. [Date of decision: 3-10-1991]

[8346] — **Ss. 320/34 — Common intention** — *Prosecution case that appellants inflicted lathi blows while their co-accused inflicted knife blows — Inquest report prepared by police confirming presence of some contusions on the dead body apart from the penetrating wounds — But post-mortem report revealing that the deceased only sustained the penetrating wounds which could be caused by knives and abrasions which might be the result of a fall — In case of such discrepancy between the inquest and post-mortem reports, benefit of the discrepancy must be given to the appellants — In the circumstances held, the prosecution failed to prove beyond doubt that the appellants assaulted the deceased with lathis or shared the intention of the co-accused to kill the deceased. Maula Bux* v. *State of Rajasthan*, (1983) 1 SCC 379: 1983 SCC (Cri) 199.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 15-2-1980]

— **S. 321** *See also* Ss. 302/34 to S. 326

[8347] — **Ss. 321, 322, 324 & 326 — Ingredients and applicability of Ss. 324 and 326** — *Accused must commit an act with the knowledge that thereby he was likely to cause hurt or grievous hurt to the victim*

For applicability of Sections 324 and 326 IPC, the material relied upon by the prosecution in support of such charges must show that the accused concerned had committed the act complained of at least with the knowledge that by such act he was likely to cause hurt or grievous hurt to the victim. *Keshub Mahindra* v. *State of M.P.*, (1996) 6 SCC 129: 1996 SCC (Cri) 1124.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and **S.B. Majmudar**, J. [Date of decision: 13-9-1996]

— **S. 322** *See also* Ss. 302/34 to S. 326

See also Ss. 321, 322, 324 and 326

— **Ss. 322/34** *See also* Ss. 302/34, 307/34 or 326, 324/34 and 322/34

— **S. 323** *See also under* S. 34

See also Ss. 96, 100, 147, 353, 447 and 307 r/w S. 149

See also Ss. 96, 302/149 and 147

See also Ss. 97, 100, 302, 302/149, 323 and 323/149

See also Ss. 97 and 147, 148, 302, 307, 323, 324

See also Ss. 114 and 323

See also Ss. 143, 147, 148, 341, 323, 324 and 302 r/w S. 149

See also under S. 147

See also Ss. 147, 323 and 302

See also Ss. 148, 147, 307, 307/149, 324, 324/149, 323 and 323/149

See also Ss. 148, 302, 323, 324, 395 and 396

See also Ss. 148 and 323

See also Ss. 148, 365, 342, 323, 324 and 302/149

See also Ss. 149 and 147, 148, 34 and Ss. 302 and 323

See also Ss. 149, 147, 323, 325 and 302

See also Ss. 149, 323, 325 and 435

See also S. 149 r/w Ss. 302, 307, 449, 323 to 325 and 148

See also Ss. 218, 323 and 342

See also Ss. 294 and 323

See also under Ss. 299 to 304

See also Ss. 306, 294(b) and 323

See also Ss. 307, 323, 326 and 447

See also Ss. 308 and 323

See also Ss. 324 and 323

See also Ss. 325 and 323

See also S. 326 or S. 307 or Ss. 323 and 324

See also Ss. 326, 323 and 324 r/w S. 149

See also Ss. 332 and 323

See also Ss. 341, 323, 504/34 and 120-B

See also Ss. 354, 323, 504 and 506

See also Ss. 354, 452, 323 and 506 Pt. II r/w S. 34

See also Ss. 364, 324, 323, 149 and 148

See also Ss. 376 and 323

See also Ss. 376, 323, 342 and 506

See also Ss. 376, 375, 148, 452, 149, 342, 323, 366 and 506

See also Ss. 376, 375, 148, 452, 149, 342, 323 and 506

See also Ss. 376/149, 375, 148, 452, 342, 323, 366 and 506

See also Ss. 376(2)(g) and 323

See also Ss. 377, 373, 372, 323 r/w Ss. 109 and 120-B

See also Ss. 376/511 and 323

See also Ss. 420, 467, 471, 323, 506-B and 120-B

See also Ss. 447, 341, 323 and 427

See also Ss. 452, 323, 504, 506 and 420

See also Ss. 452, 354, 323 and 506 Pt. II r/w S. 34

See also Ss. 498-A, 306 and 323

See also Ss. 498-A and 323

See also Ss. 498-A, 323 and 506

See also Ss. 498-A, 406, 323, 506, 148 and 149

See also S. 498-A and Ss. 406, 341, 323 & 120-B

See also S. 498-A and Ss. 406, 341, 323 & 120-B and Ss. 3 & 4, Dowry Prohibition Act, 1961

See also Ss. 498-A, 506 and 323

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C.12. Hurt, grievous or not, with or without dangerous weapons or means (Ss. 319 to 338)', in Vol. 2

[8348] — S. 323 — Accused beating the victim in the back and shoulder with sticks causing simple injuries in the nature of abrasions — *Conviction must be under S. 323 — But sentence of 3 years' RI reduced to the period already undergone and in lieu of the sentence remitted, a fine of Rs 500 and in default one month's RI imposed. Mariadasan* v. *State of T.N.*, (1980) 3 SCC 68: 1980 SCC (Cri) 523: AIR 1980 SC 573: 1980 Cri LJ 412.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision: 17-1-1980]

[8349] — S. 323 — Appreciation of evidence — *Held, the appellant had been convicted on the sole ground that PW 4 had deposed that a stone hurled by the appellant from a procession had caused injuries on his leg — Admittedly, a procession was taken out and nearly 200-300 persons were in the procession — In such a situation the identification of the appellant by PW 4 as one who hurled the stone could not be accepted — Hence conviction of appellant by High Court for causing hurt and the sentence therefor set aside. Ramdas Narayan Patil* v. *State of Maharashtra*, 1994 SCC (Cri) 274.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 23-9-1992]

[8350] — S. 323 — Conviction under — *Assault with lathi on back — Accused convicted under S. 323 and sentenced to one year's RI — On facts held, no interference called for* (Para 17). *Malhu Yadav* v. *State of Bihar*, (2002) 5 SCC 724: 2002 SCC (Cri) 1190: AIR 2002 SC 2137: 2002 Cri LJ 2819.

Bench Strength **2**. Coram: *R.P. Sethi* and **Doraiswamy Raju**, JJ. [Date of decision: 1-5-2002]

[8351] — S. 323 — Long passage of time and sentence imposed — *Appellants 2 and 3 convicted under S. 323 IPC and sentenced to RI for one year — However, considering the long passage of time and period of sentence imposed, benefit of S. 360 CrPC granted to them on entering the stipulated bond* (Para 7). *Nasiruddin Khan* v. *State of Bihar*, (2008) 12 SCC 129.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 29-7-2008]

[8352] — S. 323 — Release of offender on probation — Grounds — Offence under S. 323 IPC — Injuries caused to victims simple in nature — Petitioner, a teacher who might lose his job due to conviction — *No clear evidence that apart from being a member of the mob, the petitioner specifically assaulted anyone — Having regard to the facts and circumstances of the case, held, petitioner should be given benefit under the 1958 Act and be released on probation assuring good conduct for a period of six months — However, direction made to petitioner to pay a sum of Rs 500 each to the four victims — CrPC, 1973, S. 360 — Probation of Offenders Act, 1958, S. 4* (Para 6). *Jamal Haq* v. *State of Tripura*, (2006) 9 SCC 757.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 9-1-2006]

[8353] — S. 323 — Sentence — Conviction of A-1 altered from S. 302 to S. 323 — A-1 aged about 82 years, suffering from asthma and other old-age ailments, had already undergone one year and seven months' imprisonment — *Held, period undergone was sufficient to serve ends of justice* (Para 21). *Jagat Singh* v. *State of H.P.*, (2011) 2 SCC 234.

Bench Strength **3**. Coram: *H.S. Bedi*, **P. Sathasivam** and *C.K. Prasad*, JJ. [Date of decision: 3-1-2011]

[8354] — S. 323 — Sentence of nine months' RI for superficial simple injuries not justified — *Reduced to the month and a half already undergone. Raman Kalia* v. *State of Gujarat*, (1979) 4 SCC 641: 1980 SCC (Cri) 153: AIR 1979 SC 1261: 1979 Cri LJ 1074.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 31-1-1979]

[8355] — S. 323 — Special leave granted for compounding offence under S. 323, IPC in the circumstances of the case — *Court also taking a compassionate approach in respect of the other offence having regard to facts particularly that they had acted in a moment of aberration due to loss of self control and accordingly sentence reduced to the period already undergone — CrPC, 1973, S. 320. Madhusudan Sahu* v. *State of Orissa*, 1987 Supp SCC 80: 1987 SCC (Cri) 626.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 17-2-1987]

[8356] — S. 323 — Stick blow inflicted by accused aged 60 years on PW who was accompanying the deceased — *Conviction altered to that under S. 323 and sentence reduced to the period already undergone. Hari Singh* v. *State of Haryana*, (1993) 3 SCC 114: 1993 SCC (Cri) 631.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 13-4-1993]

[8357] — S. 323 — Voluntarily causing hurt — Role played by appellant in the crime along with other accused — *Trial court as well as High Court found some overt acts on the part of appellant — Held, it is not of much significance as to what exact role was played by appellant as his presence was not disbelieved* (Para 20). *Subhash Maruti Avasare* v. *State of Maharashtra*, (2006) 10 SCC 631: (2007) 1 SCC (Cri) 54.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[8358] — S. 323 — Where the injury caused by the particular accused assailant was not by itself sufficient in the ordinary course of nature to cause death, held, his conviction should be under S. 323 instead — *In the absence of doctor's categorical finding, Court cannot substitute its own opinion and benefit must go to the accused. Chilamakur Nagireddy* v. *State of A.P.*, (1977) 3 SCC 560: 1977 SCC (Cri) 562: AIR 1977 SC 1998: 1977 Cri LJ 1602.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 22-7-1977]

[8359] — Ss. 323 and 34 — On facts, common intention not proved — *Hence conviction of appellants reversed. Mitter Sen* v. *State of U.P.*, (1976) 1 SCC 723: 1976 SCC (Cri) 190: AIR 1976 SC 1156: 1976 Cri LJ 857.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 4-9-1975]

[8360] — Ss. 323, 34, 387, 498-A and 506 — Amendment by Bihar Act 4 of 1976 requiring sanction of appropriate authority before taking cognizance of offence under Dowry Prohibition Act — *Prosecution without sanction launched after commencement of such amendment is not permissible — However, cognizance of offences under Penal Code is not without jurisdiction — Dowry Prohibition Act, 1961, Ss. 3 and 4. Rajesh Kumar Kejriwal* v. *State of Bihar*, (1997) 10 SCC 524: 1997 SCC (Cri) 874.

Bench Strength **2**. Coram: *G.N. Ray* and *B.L. Hansaria*, JJ. [Date of decision: 1-11-1996]

[8361] — Ss. 323 and 96 — On facts held, defence version that the accused caused only one injury in exercise of his right of private defence getting probabilised — Accused acquitted. *Mehar Singh* v. *State of Punjab*, 1997 SCC (Cri) 752: 1995 Cri LJ 3635.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 9-3-1995]

[8362] — Ss. 323, 304 Pt. I, 34 and 149 — Ingredients of S. 34 and essentials to prove common intention, restated — Culpable homicide — Alteration of conviction on erroneous appreciation of evidence — Impropriety of — *On facts, A-1 to A-8 facing trial out of which only A-2 and A-4 (appellant herein) convicted while rest acquitted by trial court — Appellant found guilty under S. 323 for his individual act and sentenced to fine of Rs 500 with default stipulation of one month's simple imprisonment — No appeal filed by appellant against his conviction — However, appeal filed by State before High Court, contending that true parameters of S. 149 not kept in view — High Court accepting the stand, holding appellant guilty under S. 304 Pt. I r/w S. 34 and sentencing him to 7 years' imprisonment — Sustainability — Before Supreme Court appellant submitting that High Court having noted that there was no common object, the question of convicting appellant under S. 304 Pt. I r/w S. 34 did not arise — Tenability — Held, there was no evidence that appellant caused any injury on person of the deceased — Evidence of PWs 7 and 9 (father and brother of deceased respectively) was also held not acceptable — High Court erroneously came to the conclusion about role of appellant — It was erroneously held that appellant had caused injury on person of the deceased — Both the courts below had categorically held that there was no common object and in any event the appellant was not a member of any unlawful assembly — Hence, held, High Court ought not to have altered conviction as recorded by trial court — Accordingly, order* *of trial court vis-à-vis appellant, restored and that of High Court vis-à-vis appellant, quashed* (Paras 2 to 4, 10 to 12 and 14 to 17). *Komal* v. *State of M.P.*, (2009) 11 SCC 55: (2009) 3 SCC (Cri) 1232: AIR 2009 SC 1958.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 9-2-2009]

State of M.P. v. Deshraj, (2004) 13 SCC 199, relied on

[**Ed.**: See *Mahbub Shah* v. *Emperor*, (1944-45) 72 IA 148: AIR 1945 PC 118: 46 Cri LJ 689.]

[8363] — Ss. 323, 324 and 34 — Compounding of offence — How and by whom offence to be compounded — Occurrence took place a long time back and in the meantime one of the injured died — *Appellant stood convicted under Ss. 324 and 323 r/w S. 34 IPC — Complainant volunteered to compound the case — Reasons for compounding offences found sufficient and genuine — Hence, compounding of offences granted — CrPC, 1973, S. 320*

The appellants stood convicted under Section 324 read with Section 34 and Section 323 read with Section 34 IPC.

Disposing of the appeal,

Held :

An application has been filed by the complainant and the accused persons stating that the occurrence took place nearly 25 years back and the parties are related to each other and therefore, they may be permitted to compound the offences. Complainant has volunteered to compound the offences with the appellants for sufficient and genuine reasons as stated in the affidavits and such compounding would be proper. So far as the offence under Section 323 is concerned, it is compoundable with the consent of the injured. So far as the offence under Section 324 is concerned, it is compoundable by the person to whom hurt is caused with the permission of the court, in terms of sub-section (2) of Section 320. (Paras 2 and 4). *Mathura Singh* v. *State of U.P.*, (2009) 13 SCC 420.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 27-4-2009]

Manoj v. State of M.P., (2008) 9 SCC 116: (2008) 3 SCC (Cri) 699, relied on

[8364] — Ss. 323, 324, 326, 342, 452, 506, 148 and 34 — Interpretation of Ss. 173 and 190 CrPC — Exercise of power by High Court under S. 482 CrPC, to quash criminal proceedings at interlocutory stage — Impropriety of — *Dispute related to erecting walls on plot of land, led to appellant and respondent parties allegedly attacking each other, resulting in injuries to both — Case registered by them against each other and criminal proceedings initiated against both — But further investigation recommended dropping of criminal proceedings against respondents — However, before Judicial Magistrate could apply his mind and take a decision on original challan under S. 173(2) CrPC against respondents and on report of further investigation under S. 173(8) CrPC recommending dropping of criminal proceedings against them, respondents filed petition under S. 482 CrPC, and High Court, after considering such further report, quashed criminal proceedings against respondents, but directed that proceedings against appellant shall not be affected — Sustainability — Held, where police report forwarded to Magistrate under S. 173(2) CrPC states that a person has committed offence, but after further investigation, further report under S. 173(8) CrPC states that the person has not committed offence, it is for Magistrate to form opinion, whether facts set out in two reports, make out an offence committed by the person — Herein, it was for Magistrate to apply judicial mind to facts stated in reports submitted under Ss. 173(2) and (8) CrPC, and to form an opinion, whether to take cognizance or not to take cognizance against respondents, after considering objections, if any, of complainant, namely, appellant — However, since Magistrate had not applied his mind to merits of reports filed under S. 173 CrPC, hence, exercise of power by High Court under S. 482 CrPC was at an interlocutory stage, therefore, not warranted — Therefore, impugned order of High Court, set aside and proceedings before Magistrate, restored — CrPC, 1973, Ss. 482, 173 and 190*

In the instant case, the police in its report submitted to the Judicial Magistrate, had filed two challans, one against the appellant, his father *M* and one *B*, stating that they had committed offences under Sections 452, 323, 326, 506 read with Section 34 IPC and the other challan against Respondents 1 and 2 and some others, stating that they had committed offences under Sections 342, 323, 324 and 148 IPC. (Para 20)

Pursuant to subsequent permission granted by the Magistrate for further investigation, a further report was made by the Superintendent of Police, stating that Respondent 1, for his self-defence, had caused injuries to the appellant and others and hence the cross-case against Respondent 1 is required to be cancelled. This further report was to be forwarded to the Magistrate and it was for the Magistrate to apply judicial mind to the facts stated in the reports submitted under sub-sections (2) and (8) respectively of Section 173 CrPC, and to form an opinion, whether to take cognizance or not to take cognizance against Respondent 1, after considering the objections, if any, of the complainant, namely, the appellant. (Paras 15 to 19 and 21)

However, as the Magistrate had not applied his mind to the merits of the reports filed under Section 173 CrPC, the exercise of power by the High Court under Section 482 CrPC, was at an interlocutory stage and was not warranted in the facts of this case. (Para 24)

Hence, the impugned order is set aside. The police will forward the further report of the Superintendent of Police to the Magistrate concerned and the Magistrate will apply his mind to the police report already forwarded to him and the further report of further investigation forwarded to him and take a final decision in accordance with law, after considering the objections, if any, of the appellant, against the further report of further investigation. (Para 25). *Dharmatma Singh* v. *Harminder Singh*, (2011) 6 SCC 102.

Bench Strength **2**. Coram: *R.V. Raveendran* and **A.K. Patnaik**, JJ. [Date of decision : 10-5-2011]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: 1968 Cri LJ 97; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, relied on

[**Ed.**: *See also* CrPC, S. 482, '2.(ii) Nature and scope of inherent power — S. 482 and other provisions of CrPC', pp. 238 et seq. in **Vol. 18**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

[8365] — Ss. 323 and 325 — Sustainability — *High Court reducing substantive sentence to a month and a half — Appellant undergoing and remaining in custody for about fifteen days — Moreover, appellant on bail — Hence, held, directing appellant to surrender for undergoing remaining sentence is inappropriate, 10 years having passed from date of incident — Sentence already undergone, held, sufficient and adequate in the facts and circumstances of the case — However, appellant directed to pay additional amount of Rs 10,000 as compensation to the injured complainant over and above the amount of fine and compensation ordered to be paid by courts below — CrPC, 1973, S. 357(1)(b)*

The appellant-accused voluntarily caused simple hurt to complainant and also assaulted the complainant with a stone resulting in grievous injuries to him. Moreover, the appellant-accused intentionally insulted the complainant by abusing him in filthy language thereby giving him provocation knowing fully well that such provocation would make the complainant to break public peace or to commit other offences. A complaint was filed and after usual investigation, charge was framed against the accused for offences punishable under Sections 323, 325 and 504 IPC. The trial court held that the accused caused simple as well as grievous hurt to the complainant, and thereby, he had committed offences punishable under Sections 323 and 325 IPC. Regarding the third charge, however, according to the court, the prosecution was not able to establish it and the accused was ordered to be acquitted. The trial court sentenced him with simple imprisonment and fine with default stipulation, under both sections, accordingly. Compensation of Rs 2000 was also ordered to be paid to the complainant under Section 357(1)(*b*) CrPC, out of the fine amount received.

In an appeal preferred by him, he was acquitted for the offence punishable under Section 323 IPC. However, conviction under Section 325 IPC was confirmed. The appellate court, however, was of the view that it was a fit case to reduce sentence of simple imprisonment from one year to six months. The appellate court also directed the accused to pay compensation of Rs 3000 to the complainant independently of what the trial court awarded. The sentence of fine and compensation passed by the trial court was confirmed.

The appellant challenged even that order passed by the appellate court in revision before the High Court which confirmed the order of conviction while partly allowing the revision by reducing sentence and ordering the appellant to undergo simple imprisonment for 1½ months and to pay fine of Rs 1000 in addition to what was ordered by the courts below. Present appeal is against the said order of the High Court.

Allowing the appeal partly,

Held :

The High Court has reduced the substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, he is on bail. Hence, even though in the facts and circumstances of the case, provisions of Section 360 read with Section 361 CrPC are not attracted and *Om Prakash case*, (2001) 10 SCC 477, does not help the appellant, it would not be appropriate to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed. (Para 14)

The sentence already undergone by the appellant is held sufficient and adequate in the facts and circumstances of the case. It is, however, ordered that the appellant will pay an additional amount of Rs 10,000 to the injured complainant over and above the amount of fine and compensation ordered to be paid by the courts below. (Para 16). *Manjappa* v. *State of Karnataka*, (2007) 6 SCC 231: (2007) 3 SCC (Cri) 76: 2007 Cri LJ 3220.

Bench Strength 2. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 18-5-2007]

Om Prakash v. State of Haryana, (2001) 10 SCC 477: 2003 SCC (Cri) 799, distinguished

[8366] — Ss. 323, 325 & 435 — Offences under committed by accused persons individually being not inspired by any unlawful object but in assertion of their legal customary right which the victims were trying to infringe — *Sentences reduced to the period already undergone. Hathi Singh* v. *State of Rajasthan*, (1979) 4 SCC 340: 1979 SCC (Cri) 976.

Bench Strength 2. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 9-1-1979]

[8367] — Ss. 323 and 326 — Sentence — Age — *Offender only 14 years of age but not entitled to benefit of Probation of Offenders Act or S. 562 CrPC, 1898 — Evidence showing that he joined in a moment of excitement and provocation — Sentence reduced to that already undergone. Bashista Kumar* v. *State of Bihar*, (1969) 2 SCWR 91.

[8368] — Ss. 323 and 342 — Custodial violence/Illegal detention — Co-accused not filing appeal against his conviction — Effect of, on the appeal filed by other co-accused — Custodial violence/Illegal detention — *Respondent complainant filing a private complaint against A-1, Sub-Inspector of Police and present appellant A-2, Head Constable on the allegation that he was detained in the police station for about four days illegally and was beaten up — Conviction of accused persons as recorded by Judicial Magistrate set aside by the first appellate court — In appeal by respondent, High Court finding that both accused persons were guilty of offences punishable under Ss. 323 and 342 and acquittal as recorded by first appellate court set aside — Only one co-accused preferring appeal before Supreme Court — On scrutiny, acquittal recorded by first appellate court found to be correct — Order of conviction passed by High Court set aside — Held, if a co-accused has not preferred any appeal against his conviction, there may be many reasons for doing so — However, no prejudice is caused to the appeal preferred by a co-accused — Appellant acquitted* (Paras 13 to 15). *Vadamalai* v. *Syed Thastha Keer*, (2009) 3 SCC 454: (2009) 2 SCC (Cri) 142: AIR 2009 SC 1956: (2009) 2 ECrN 767 (SC): (2009) 77 AIC 142 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-2-2009]

[8369] — Ss. 323, 382, 420, 465, 468, 471, 120-B, 506 and 34 — Revisional powers of High Court — Exercise of in absence of accused — Sustainability — *Respondent 1, a registered company filing a complaint petition before Metropolitan Magistrate alleging commission of offences purported to be under Ss. 323, 382, 420, 465, 468, 471, 120-B, 506 and 34 IPC accompanied by an application under S. 156(3) CrPC — Metropolitan Magistrate refusing to direct investigation in terms of S. 156(3) CrPC and complainant asked to lead pre-summoning evidence — However, High Court in revision application filed thereagainst wherein only State was impleaded, without hearing accused setting aside said order and directing Metropolitan Magistrate to examine matter afresh after calling report from police authorities — Held, one of the questions which arises for consideration is as to whether the learned Magistrate has taken cognizance of the offence — Indisputably, if he had taken cognizance of the offence and merely issuance of summons upon the accused persons had been postponed, in a criminal revision filed on behalf of the complainant, the accused was entitled to be heard before the High Court — S. 401(2) CrPC refers not only to an accused but also to any person and if he is prejudiced, he is required to be heard — An order was passed partially in his favour as Metropolitan Magistrate had refused to exercise its jurisdiction under S. 156(3) CrPC — Had an opportunity of hearing been given to the appellant, he could have shown that no revision application was maintainable and/or even otherwise, no case has been made out for interference with the impugned judgment — Besides, in the instant case learned Magistrate had taken cognizance — He had applied his mind and refused to exercise his jurisdiction under S. 156(3) CrPC — He arrived at a conclusion that the dispute is a private dispute in relation to an immovable property and, thus, police investigation is not necessary — It was only with that intent in view, he directed examination of the complainant and his witnesses — Hence, impugned judgment cannot be sustained and is accordingly set aside — CrPC, 1973, Ss. 397 & 401 and Ss. 156(3) & 200* (Paras 4 to 6, 11 to 14 and 19 to 23). *Raghu Raj Singh Rousha* v. *Shivam Sundaram Promoters (P) Ltd.*, (2009) 2 SCC 363: (2009) 1 SCC (Cri) 801: (2009) 77 AIC 210 (SC): (2009) 2 ECrN 277 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 17-12-2008]

Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460, distinguished on facts

Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430; Makkapati Nagaswara Sastri v. S.S. Satyanarayan, (1981) 1 SCC 62: 1981 SCC (Cri) 111; P. Sundarrajan v. R. Vidhya Sekar, (2004) 13 SCC 472: (2006) 1 SCC (Cri) 345;

Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar, AIR 1960 SC 1113; Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9, considered

[8370] — Ss. 323, 384, 504 r/w S. 34 — Compounding of — Compounding of offence — Compromise between the parties — Sustainability of — *On an FIR, charge-sheet filed after investigation against the appellant for an offence under Ss. 323, 384, 504 r/w S. 34 IPC — Prior business relations between informant and accused — An application for discharge filed by the appellant under S. 239 CrPC, inter alia, on the ground that the dispute between the parties has been settled, rejected by the Judicial Magistrate on the ground that S. 384 IPC being non-compoundable, the said application was not sustainable — Application filed under S. 482 CrPC before the High Court also dismissed — Held, there was no allegation that money was paid by the informant having been put in fear of injury or putting him in such fear by the appellant was intentional — First informant, admittedly, had also not delivered any property or valuable security to the appellant — Hence, held, no case under S. 384 IPC was made out for proceeding against the appellant — Therefore, there was no reason to reject the settlement arrived at between the parties, as the same would not come within the purview of S. 320(9) CrPC — Hence, held, charge framed under S. 384 IPC quashed with the direction to the Magistrate to consider the maintainability of the compromise petition between the parties — CrPC, 1973, Ss. 320, 239 and 482*

A written report was lodged by the second respondent alleging that some unknown persons came to his room and asked him to make payment of Rs 1500 due from him. On his reply that he would make the payment only of the amount due from him as per settled accounts, abusive language was used and he was slapped by one *G*. A sum of Rs 1580 was said to have been taken away from his upper pocket. An FIR was lodged on the basis of the report. However, the parties arrived at an amicable settlement of their dispute. A charge-sheet was filed on completion of investigation against the appellant for an offence under Sections 323, 384, 504 read with Section 34 IPC. Application filed by the appellant for discharge under Section 239 CrPC, inter alia, on the premise that the disputes between the parties had been settled, was rejected by the Judicial Magistrate on the ground that Section 384 IPC being non-compoundable, the said application was not sustainable. An application filed by the appellant under Section 482 CrPC before the High Court was dismissed by reason of the impugned judgment. Hence this present appeal.

Allowing the appeal,

Held :

No case has been made out for proceeding against the appellant under Section 384 IPC. In that view of the matter, there was absolutely no reason as to why the settlement arrived at by and between the parties could not have been accepted, as the same would not come within the purview of sub-section (9) of Section 320 CrPC. (Para 16)

For the reasons aforementioned, while quashing the charge framed under Section 384 IPC, the learned Magistrate is directed to proceed to consider the question in regard to the maintainability of the compromise petition between the parties in accordance with law. (Para 17). *Dhananjay* v. *State of Bihar*, (2007) 14 SCC 768: (2007) 51 AIC 54 (SC): 2007 Cri LJ 1440: (2007) 2 KLJ 294 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 2-2-2007]

Bankat v. State of Maharashtra, (2005) 1 SCC 343: 2005 SCC (Cri) 316; Badrilal v. State of M.P., (2005) 7 SCC 55: 2005 SCC (Cri) 1597, distinguished

[8371] — Ss. 323, 406 and 498-A — Scope — Supplementary list of witnesses — Power of Magistrate to entertain — *Held, power of Magistrate should not be fettered either under S. 244 or S. 246(6) CrPC and full latitude should be given to the Magistrate to exercise discretion to entertain supplementary list of witnesses — However, while accepting supplementary list, Magistrate shall exercise his discretion judiciously for advancement of the cause of justice and not to give a handle to the complainant to harass the accused — Also, discretion conferred on Magistrate should only be used in appropriate cases for reasons to be recorded — Dowry Prohibition Act, 1961, Ss. 3 and 4 — CrPC, 1973, Ss. 246(6) and 244*

The question was whether a supplementary list of witnesses could be furnished by the complainant and the Magistrate could summon those witnesses to be examined. The question was whatever witnesses who had been examined under Section 244 CrPC, whether the Magistrate could not entertain any further list of witnesses to be examined by the complainant to substantiate his allegation in the complaint. It is true that under Section 244 CrPC, if the charge is framed, then the prosecution has to examine the evidence produced by it in support of its case. After that the accused will have the right to cross-examine and the matter will proceed to be decided under Section 246 CrPC. But before the matter is decided and during the pendency of the trial could the Magistrate entertain any petition filed by the prosecution for examining additional evidence in support of its case. (Para 9)

The discretion of the Magistrate is nowhere fettered by any of the provisions contained in CrPC. In Section 244(1) CrPC, the expression used is, "the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution". Similarly, in Section 246(6) CrPC, the expression used is, "the evidence of any remaining witnesses for the prosecution shall next be taken". Therefore, the Magistrate has discretion, before he closes the trial, to summon the witnesses if it advances the cause of justice. However, there is a word of caution that the discretion which has been conferred on the Magistrate under Section 244(2) and Section 246(6) CrPC should only be used in appropriate cases for reasons to be recorded. The discretion should not be used fancifully and for a mala fide purpose to harass the accused. It is quite possible that sometimes when the complainant fails to substantiate the allegation, he may resort to dilatory tactics and thereby harass the accused by giving supplementary list to prolong the continuance of the case. This should be checked but in case it is found that in fact the application for summoning the additional witnesses is made for bona fide purpose and to substantiate the allegations made in the complaint, then the Magistrate may exercise such power in appropriate case. (Para 11)

The power of the Magistrate should not be fettered either under Section 244 or under Section 246(6) CrPC and full latitude should be given to the Magistrate to exercise the discretion to entertain a supplementary list of witnesses. But while accepting the supplementary list, the Magistrate shall exercise his discretion judiciously for the advancement of the cause of justice and not to give a handle to the complainant to harass the accused. (Para 19). *Sayeeda Farhana Shamim* v. *State of Bihar*, (2008) 8 SCC 218: (2008) 3 SCC (Cri) 449: AIR 2008 SC 2373: (2008) 2 KLT 1011: (2008) 67 AIC 60 (SC).

Bench Strength 2. Coram: **A.K. Mathur** and *Aftab Alam*, JJ. [Date of decision: 16-5-2008]

Jamuna Rani v. S. Krishna Kumar, 1993 Cri LJ 32; Nawal Kishore Shukla v. State of U.P., 1992 Cri LJ 1554; S. Vivekananthan v. R. Viswanathan, 1977 Cri LJ 425; V. Ratna Shenoy v. S.A. Prabhu, AIR 1967 Ker 233; State of Bombay v. Janardhan, AIR 1960 Bom 513; K. Somasundaram v. Gopal, AIR 1958 Mad 341, approved

Hari Pada Banerjee v. Hem Kanta Sen, AIR 1969 Cal 421, overruled

[8372] — **Ss. 323, 504, 506, 117, 366-A & 373 — Bail — Grant of — Propriety of — Gravity of the offence ignored — Instead mitigating factors considered — Matter treated in a cursory manner — Cancellation of bail — Effect of long passage of time** — *31 minor girls rescued from houses of some of respondent-accused — Bail granted to respondent-accused by impugned judgment on ground that: (i) no specific role was assigned to them, nor was there any description of their activities in statements of witnesses recorded under S. 161 CrPC, (ii) statements of witnesses were not recorded under S. 164 CrPC which would have given weight to their testimony, and (iii) there was no specific evidence regarding inducing or taking a specific person for the sake of prostitution — Held, High Court was not correct in dealing with the matter in such a cursory manner — Further held, recording of statements of girls under S. 164 CrPC was not necessary — However, considering the fact that respondent-accused had been granted bail long time back, and in some cases trials also had been concluded, cancellation of bail not ordered — Immoral Traffic (Prevention) Act, 1956, Ss. 3, 5, 6, 7 & 9 — CrPC, 1973, Ss. 437 and 439. Guria, Swayam Sevi Sansthan* v. *State of U.P.*, (2009) 15 SCC 75.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 31-7-2009]

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124, relied on

[8373] — **Ss. 323, 506, 427, 354 and 452 — Transfer petition** — *In order to alleviate the hardships of all the parties, the case pending in the Court of CJM, Muzaffarnagar transferred to the Court of CJM, Sirsa (Haryana), where the other case was pending — Having regard to the difficulty of complainant in attending the court proceedings, permission granted to her for being present in the court through her counsel — CrPC, 1973, S. 406. Kanta Rani* v. *Savitri Devi*, (2001) 10 SCC 32.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 7-8-2000]

[8374] — Ss. 323, 506, 498-A, 307 and 504 — What is binding — "Law declared by Supreme Court" — Reliance on judgment of Supreme Court, on facts, if was proper — *High Court while dismissing the application for quashing the prosecution, relying on* Bodhisattwa Gautam case, *(1996) 1 SCC 490 and directing that the accused shall not be arrested in the said case till conclusion of the trial, provided an amount of compensation is paid to the wife @ Rs 4000 per month — Held, the said case had no application to the present case since no such direction that upon payment of such a compensation, the accused shall not be arrested was given — Hence, High Court's order set aside — Constitution of India, Art. 141* (Paras 3 and 4). *Pushpraj Sachdeva* v. *State of U.P.*, (2006) 9 SCC 758.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 7-11-2005]

Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490: 1996 SCC (Cri) 133, explained and distinguished

— S. 323 r/w S. 34 *See also* Ss. 302, 307 r/w 34 or 326, 324 and 323 r/w 34

See also S. 302 r/w S. 34 and S. 323 r/w S. 34

See also Ss. 302 and 323 r/w S. 34

See also Ss. 302, 325, 324 and 323 r/w S. 34

See also Ss. 304 Pt. II and 323 r/w S. 34

See also Ss. 325 and 323 r/w S. 34

See also Ss. 364, 302 and 323 r/w S. 34

See also Ss. 452 and 323 r/w S. 34

See also Ss. 452/302 and 323 r/w S. 34

— S. 323 r/w S. 109 *See* Ss. 377, 373, 372, 323 r/w Ss. 109 and 120-B

— S. 323 r/w S. 120-B *See* Ss. 302, 364 and 323 r/w 120-B

See also Ss. 364, 302 and 323 r/w 120-B

See also Ss. 377, 373, 372, 323 r/w Ss. 109 and 120-B

— S. 323 r/w S. 149 *See also* Ss. 147, 427 r/w 149 and 323 r/w 149

See also Ss. 148, 302, 149, 325 r/w S. 149 and S. 323 r/w S. 149

See also Ss. 148, 302 r/w 149 and 323 r/w 149

See also Ss. 302, 325, 323 r/w S. 149, Ss. 147 and 148

See also Ss. 302 r/w S. 149 and Ss. 147, 148 and 323 r/w S. 149

— Ss. 323/34 *See also* Ss. 34, 302, 304 Pt. II/34 and 323/34

See also S. 34 [Ss. 304 Pt. II/34 and Ss. 323/34]

See also Ss. 34/304 Pt. II, 323/34 and 149

See also Ss. 97, 99, 304 Pt. II/34 and Ss. 323/34

See also Ss. 285 and 323/34

See also under Ss. 299 to 304

See also Ss. 308/34 and 323/34

See also Ss. 308/34, 323/34, 324, 325 and 326

See also Ss. 326, 325/34 and Ss. 323/34

See also Ss. 376(2)(g), 452/34 and 323/34

See also Ss. 436/34, 304, Pt. II/34 and 323/34

[8375] — Ss. 323/34 — Injuries not proved — Injured persons not testifying — *Conviction cannot stand. Shyam Niranjan Dubey* v. *State of U.P.*, (1974) 3 SCC 771: 1974 SCC (Cri) 247: AIR 1974 SC 541: 1974 Cri LJ 475.

Bench Strength 2. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 18-12-1973]

— Ss. 323/120-B *See also* Ss. 307, 427, 323/120-B, 148 and 149

— Ss. 323/149 *See also* Ss. 97, 100, 302, 302/149, 323 and 323/149

See also Ss. 148, 147, 307, 307/149, 324, 324/149, 323 and 323/149

See also Ss. 148, 147, 323/149 and 324/149

See also Ss. 148, 323/149 and 304 Pt. II/34

See also under S. 149

See also under Ss. 299 to 304

See also Ss. 324/149, 323/149 and 148

See also Ss. 325/149, 323/149 and 147

See also Ss. 376, 147, 323/149, 342, 458 and 366

[8376] — Ss. 323/324/34 and 148/149/307/325 — Arrest and custody — What are — Voluntary appearance of accused before Magistrate and obtaining bail, if amounts to — Precondition for applying for bail — *Constitution of India, Arts. 20 and 21 — CrPC, 1973, Ss. 439 and 46(1) & (2)*

D, the respondent in first of the present two appeals and *L* and *B*, the appellants in the other appeal applied for appointment as Constable-Drivers under Haryana Police. The application forms contained a query as to whether the applicant had ever been arrested. *D* answered the said question in the negative. On verification it was found that *D* had been arrested in connection with a case arising out of an FIR registered under Sections 323/324/34 IPC. In that case, he was ultimately acquitted by the Magistrate. Moreover, he had not surrendered to the police but had voluntarily appeared before the Magistrate and had prayed for bail and was released on bail. The Department took the view that in answering the said question in the application form in the negative *D* had concealed the said facts. Accordingly, *D* was denied appointment.

D then approached the High Court contending that since in the said case, he had been granted bail without having been actually arrested he could not be said to have suppressed any information by replying in the negative the said question. Upholding his contention, the High Court directed the Department to issue an appointment letter to *D*. The Department then filed one of the present appeals by special leave.

In the other appeal, *L* and *B* had been involved in a criminal case registered with the police under Sections 148/149/307/325/323 IPC but they had been subsequently acquitted of the said charges. In regard to another FIR under Sections 323/324/34, they appeared before the Magistrate and were released on their personal bonds without being placed under arrest or being taken into custody. They were also denied appointment. A coordinate Bench of the same High Court dismissed their writ petitions without examining the question as to whether they had actually been arrested or not. It held that *L* and *B* had withheld important information regarding their prosecution in a criminal case though ultimately they were acquitted. *L* and *B* then filed the second of the present two appeals by special leave.

The common question arising in both the appeals before the Supreme Court was whether the appearance of the applicants before the Magistrate in the said manner and their release without being taken into formal custody, could amount to "arrest".

The Department contended that when the persons concerned appeared before the Magistrates and prayed for bail, it must be understood that they had surrendered to the custody of the court, as otherwise, the provisions of Section 439 of the Code would not have had application. That it did not matter as to whether the accused persons had been arrested and detained in custody by the police or not.

On the other hand, *D* and *L* and *B* contended that although technically the appearance of the accused before the Magistrate might amount to surrender to judicial custody, it was on a layman's understanding of the principle of "arrest" and "custody" that prompted them to mention that they had never been arrested.

Upholding the contentions raised by the Department, but in the peculiar circumstances of the case, dismissing the Department's appeal and allowing the appeal of the applicants, the Supreme Court

Held :

The expression "arrest" has neither been defined in CrPC nor in IPC or any other enactment dealing with criminal offences. However, from Sections 46(1) & (2) CrPC this much is clear that in order to make an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be submission to the custody by word or action. Similarly, the expression "custody" has also not been defined in CrPC. (Paras 13 to 15)

The Department is right in its submission that unless a person accused of an offence is in custody, he cannot move the court for bail under Section 439 CrPC, which provides for release on bail of any person accused of an offence and *in custody*. The precondition, therefore, for applying the provisions of Section 439 CrPC is that a person who is an accused must be in custody and his movements must have been restricted before he can move for bail. (Para 25)

In the instant case the accused persons had appeared before the Magistrates concerned and on applying for bail were granted bail without being taken into formal custody, which appears to have swayed one of the Benches of the High Court to take a liberal view and to hold that no arrest had actually been effected. The said view is incorrect as it goes against the very grain of Sections 46 and 439 CrPC. (Para 26)

Sections 107 and 108 of the Customs Act do not contemplate immediate arrest of a person being summoned in connection with an enquiry, but only contemplate surrendering to the custody of the Customs Officer which could subsequently lead to arrest and detention. In such context the Full Bench of the Madras High Court returned a finding in *Roshan Beevi case*, 1984 Cri LJ 134, that "custody" and "arrest" are not synonymous terms and observed that it is true that in every arrest there is a custody but not vice versa. A custody may amount to "arrest" in certain cases, but not in all cases. The interpretation of "arrest" and "custody" rendered by the Full Bench in *Roshan Beevi case* may be relevant in the context of Sections 107 and 108 of the Customs Act where summons in respect of an enquiry may amount to "custody" but not to "arrest", but such custody could subsequently materialise into arrest. The position is different as far as proceedings in the court are concerned in relation to enquiry into offences under the Penal Code and other criminal enactments. In the latter set of cases, in order to obtain the benefit of bail an accused has to surrender to the custody of the court or the police authorities before he can be granted the benefit thereunder. (Paras 24, 20 and 27)

It is, therefore, held that the views expressed by the High Court in *D*'s writ petition regarding arrest were incorrect, while the views expressed in the writ petitions filed by *L* & *B* correctly interpreted the meaning of the expressions "arrest" and "custody". However, how far the same would apply in the ultimate analysis relating to their answer in their application forms is another matter altogether. (Para 30)

The reasoning given in *D*'s case in that context is a possible view and does not call for interference under Article 136 of the Constitution. Conversely, the decision rendered in the writ petitions filed by *L* and *B* has to be reversed to be in line with the decision in *D*'s case. When the question as to what constitutes "arrest" has for long engaged the attention of different High Courts as also the Supreme

Court, it may not be altogether unreasonable to expect a layman to construe that he had never been arrested on his appearing before the court and being granted bail immediately. The position would have been different, had the person concerned not been released on bail. In the facts of the present cases, the benefit of a mistaken impression, rather than that of deliberate and wilful misrepresentation and concealment of facts, has to be given to the appellants in the second of the two appeals as well. (Paras 31 and 32). *State of Haryana* v. *Dinesh Kumar*, (2008) 3 SCC 222: (2008) 1 SCC (Cri) 722: AIR 2008 SC 1083: (2008) 63 AIC 265 (SC): (2008) 2 SLR 331: (2008) 2 LLN 120.

Bench Strength 2. Coram: *C.K. Thakker* and **Altamas Kabir**, JJ. [Date of decision: 8-1-2008]

Roshan Beevi v. Jt. Secy. to the Govt. of T.N., 1984 Cri LJ 134 (Mad), limited

Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508, affirmed

State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125, relied on

Halsbury's Laws of England (4th Edn.), Vol. 11, para 99, referred to

[8377] — Ss. 323/343/355 and 365 — Reduction of sentence due to compromise between the parties — Offences under Ss. 323/343/355 and 365 IPC — Compromise between the parties — *Maintaining the conviction of appellants under the said sections, sentence reduced to the period already undergone — Sentence of fine and imprisonment in default of payment of fine not interfered with — Out of the fine paid, Rs 25,000 directed to be paid to each of the two injured persons — CrPC, 1973, Ss. 320 and 357. Murugesan* v. *Ganapathy Velar*, (2001) 10 SCC 504.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and *Brijesh Kumar*, JJ. [Date of decision: 13-11-2000]

— S. 324 *See also* S. 34 and Ss. 302, 307, 326, 324, 148 r/w S. 34

See also Ss. 34 and 302, 324 and 323

See also Ss. 34 and 324

See also Ss. 34, 324 and 302/149

See also Ss. 84, 302 and 324

See also Ss. 96, 100, 103, 304 Pt. I, 326 and 324

See also Ss. 96, 100, 104, 304 Pt. I, 324 and 148

See also Ss. 96, 104, 304 Pt. I, 324 and 148

See also Ss. 96 and 147, 148, 302, 307, 323 and 324

See also Ss. 96 and 302/34, 326, 324, 452

See also Ss. 97, 100, 104, 304 Pt. I, 324 and 148

See also Ss. 97, 104, 304 Pt. I, 324 and 148

See also Ss. 97 and 147, 148, 302, 307, 323, 324

See also Ss. 97, 304 Pt. I, 324 and 148

See also Ss. 103, 100, 304 Pt. I, 326 and 324

See also Ss. 143, 147, 148, 341, 323, 324 and 302 r/w S. 149

See also S. 147

See also Ss. 147, 148, 341, 504, 506, 324, 326 r/w S. 149

See also S. 148

See also Ss. 148, 365, 342, 323, 324 and 302/149

See also Ss. 149, 148, 324 and 326

See also S. 149 r/w Ss. 302, 307, 449, 323 to 325 and 148

See also S. 149 r/w Ss. 302 and 324, 143, 144, 147

See also Ss. 153-A, 201, 302, 326, 324, 419 and 436

See also under Ss. 299 to 304

See also S. 302 and Ss. 147, 148, 324, 326, 307 and 302 r/w S. 149

See also Ss. 302 and 324 r/w S. 149

See also Ss. 304-B, 498-A, 306 and 324

See also Ss. 307, 149, 147, 427 and 324

See also Ss. 307 and 324

See also Ss. 307, 324 and 114

See also Ss. 307, 324 and 498-A

See also Ss. 308, 320 Seventhly and 324

See also Ss. 308/34, 323/34, 324, 325 and 326

See also Ss. 320, 326 and 324

See also Ss. 320 Seventhly 326 and 324

See also Ss. 321, 322, 324 and 326

See also Ss. 323, 324 and 34

See also S. 326 or S. 307 or Ss. 323 and 324

See also Ss. 326 and 324

See also Ss. 326, 324 and 307

See also Ss. 326, 325 and 324

See also Ss. 341, 326, 504 and 506 r/w S. 34 and Ss. 324 and 325 r/w S. 34

See also Ss. 364, 324, 323, 149 and 148

See also Ss. 376(1) r/w S. 511 and Ss. 324 and 452

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C.12. Hurt, grievous or not, with or without dangerous weapons or means (Ss. 319 to 338)', in Vol. 2

[8378] — S. 324 — Accused causing lacerated wound by a pharsa

The accused was responsible for the injury on the head which he had given with a pharsa. The injury is described by the doctor as a lacerated wound on the left side of the head on the parietal region. It is also described as a simple injury. It is obvious that though a pharsa has been used, the sharp edge of the pharsa might not have been used. But since this injury was caused by an instrument, which used as a weapon of offence, is likely to cause death, the offence would be one under S. 324, IPC. *Jai Narain Mishra* v. *State of Bihar*, (1971) 3 SCC 762: 1972 SCC (Cri) 40: AIR 1972 SC 1764: 1972 Cri LJ 469.

Bench Strength **2**. Coram: *A.N. Ray* and **D.G. Palekar**, JJ. [Date of decision: 3-11-1971]

[8379] — S. 324 — Amendment not applicable to offences committed prior to 23-6-2006 — *Offence under S. 324 IPC, committed on 23-7-1986 i.e. prior to coming into effect of Amendment Act, 2005, held, compoundable with permission of court — CrPC (Amendment) Act, 2005, S. 28(a) — CrPC, 1973, Ss. 320(2) [prior to coming into force of CrPC (Amendment) Act, 2005 w.e.f. 23-6-2006] and (8)* (Paras 5 to 7). *Hirabhai Jhaverbhai* v. *State of Gujarat*, (2010) 6 SCC 688.

Bench Strength **2**. Coram: *J.M. Panchal* and *S.S. Nijjar*, JJ. [Date of decision: 9-4-2010]

[8380] — S. 324 — Application for extension of time for the payment of fine imposed by the court — *Where the first application for the said relief was rejected, filing of two more applications for extension of time, which also stood dismissed, held, was not proper — However, even though the accused was ill-advised to file so many applications after each rejection, appeal allowed granting one month's time to make the deposit of fine — CrPC, 1973, S. 482. Mahendra Singh* v. *State of Bihar*, (2002) 10 SCC 678: 2004 SCC (Cri) 1158: AIR 2002 SC 387.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 16-2-2001]

[8381] — S. 324 — Blow inflicted by blunt side of axe on thigh of the victim — *Held, conviction should be under S. 324 instead of S. 326 or 307 — Sentence of 2 years' RI imposed by High Court under Ss. 326/34 reduced to four months' imprisonment already undergone — But sentence of fine raised from Rs 1000 to Rs 3000 and in case of default 6 months' SI imposed. Bishna* v. *State of Haryana*, 1987 Supp SCC 184: 1988 SCC (Cri) 48.

Bench Strength **2**. Coram: *Ranganath Misra* and *M.M. Dutt*, JJ. [Date of decision: 7-1-1987]

[8382] — S. 324 — Boy of 20 years going unarmed in a cobbler's shop and after a heated discussion picking up rambi lying in the shop and inflicting blows with it on the shopkeeper on spur of the moment — *Whether the blows resulted in injuries on eyebrow and palm of the victim disputed — In the circumstances conviction under S. 324 maintained — But having regard to age of the accused at the time of occurrence benefit of S. 6 of Probation of Offenders Act, 1958 granted by releasing him on bond — Probation of Offenders Act, 1958, S. 6. Ram Lal* v. *State of Punjab*, 1989 Supp (1) SCC 21: 1989 SCC (Cri) 123.

Bench Strength **3**. Coram: *G.L. Oza*, *B.C. Ray* and *K. Jagannatha Shetty*, JJ. [Date of decision: 14-1-1988]

[8383] — S. 324 — Causing burn injuries by pouring kerosene and lighting it — *Evidence of prosecutrix corroborated by medical evidence — No motive on part of the prosecutrix to falsely implicate the accused — Her evidence found to be reliable and truthful — On facts non-examination of any neighbour inconsequential — Judgment of trial court convicting the accused under S. 324 IPC restored. State of Karnataka* v. *Ganapathy*, 1994 SCC (Cri) 1165, 116.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 17-2-1993]

[8384] — S. 324 — Circumstantial evidence — *Deceased having sustained knife assault, hospitalised and discharged the next day but dying 5 days after the assault — Nothing to connect his death with the assault — Accused only seen running away from the place of occurrence with knife in his hand having no blood-stains thereon — Proved circumstances, held, cannot be said to be incompatible with the innocence of the accused — Hence, conviction under S. 324, Indian Penal Code set aside. Jagdish Prashad* v. *State*, (1980) 1 SCC 609: 1980 SCC (Cri) 311: AIR 1979 SC 1510: 1979 Cri LJ 1125.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 8-2-1979]

[8385] — S. 324 — Compounding of offence committed under S. 324 IPC — Application for — *Complainant having no objection to it — Offence permitted to be compounded — Conviction and sentence set aside — CrPC, 1973, S. 320* (Paras 7 and 8). *Avinash Shetty* v. *State of Karnataka*, (2004) 13 SCC 375.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 13-9-2004]

[8386] — S. 324 — Compounding of offence under — Matters to be considered by court — Offence under S. 324 IPC (voluntarily causing hurt by dangerous weapon) — Compoundability

of — Matters to be considered by court — *Held, amendment made in the Table under S. 320 CrPC, by means of the CrPC (Amendment) Act, 2005, against S. 324 IPC, has not yet been brought into force — Offence under S. 324 IPC is therefore still compoundable with court's permission — In present case compounding of offence found to be complainant's voluntary act inasmuch as the complainant and appellants were residents of the same village and compromise was brought about by intervention of village panchayat — The complainant and appellants categorically stating in their affidavits filed in the Supreme Court that after the incident, they had developed family relations and wished to live peacefully in the village without any kind of disruption in their future lives — Compounding allowed by the Supreme Court — Conviction set aside and appellants who were in prison, set free — CrPC, 1973, S. 320* (Paras 14 to 17). *Manoj* v. *State of M.P.*, (2008) 9 SCC 116: (2008) 3 SCC (Cri) 699.

Bench Strength **2**. Coram: *R.V. Raveendran* and **L.S. Panta**, JJ. [Date of decision: 25-9-2008]

[8387] — S. 324 — Compounding of offences — Voluntarily causing hurt by dangerous weapons or means (Penal Code, 1860, S. 324) — *Offence committed on 15-6-1995 i.e. prior to the date (23-6-2006) when offence made non-compoundable — Offence allowed to compounded and held, appellants entitled to acquittal under S. 320(8) — CrPC (Amendment) Act, 2005 — CrPC, 1973, Ss. 320(1), Table and 320(8)* (Paras 16 to 19). *Mohd. Abdul Sufan Laskar* v. *State of Assam*, (2008) 9 SCC 333: (2008) 3 SCC (Cri) 770: (2008) 70 AIC 129 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Dalveer Bhandari*, JJ. [Date of decision: 25-8-2008]

Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd., (2008) 2 SCC 305: (2008) 1 SCC (Cri) 351, relied on

[8388] — S. 324 — Conviction under — *Assault with bhala on right elbow by A-2 and assault with farsa on head as well as on both hands by A-6 causing incised wounds — Conviction of the accused under S. 324 and sentence of 3 years' RI by courts below — Held, no interference called for* (Para 17). *Malhu Yadav* v. *State of Bihar*, (2002) 5 SCC 724: 2002 SCC (Cri) 1190: AIR 2002 SC 2137: 2002 Cri LJ 2819.

Bench Strength **2**. Coram: *R.P. Sethi* and **Doraiswamy Raju**, JJ. [Date of decision: 1-5-2002]

[8389] — S. 324 — Expression "any instrument which, used as a weapon of offence, is likely to cause death" — Meaning of — *Held, when read in the light of marginal note to S. 324 means dangerous weapon which if used by the offender is likely to cause death* (Para 13). *Anwarul Haq* v. *State of U.P.*, (2005) 10 SCC 581: 2005 SCC (Cri) 1629: AIR 2005 SC 2382: 2005 Cri LJ 2602.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 26-4-2005]

[8390] — S. 324 — Expression "any instrument, which used as a weapon of offence, is likely to cause death" — Mode of construction of — *Held, should be construed with reference to the nature of the instrument and not the manner of its use* (Para 12). *Anwarul Haq* v. *State of U.P.*, (2005) 10 SCC 581: 2005 SCC (Cri) 1629: AIR 2005 SC 2382: 2005 Cri LJ 2602.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 26-4-2005]

[8391] — S. 324 — Knife injuries caused to the complainant — *Absence of evidence to show that the said injuries were caused with the intention as envisaged under S. 3(1), TADA — Held, in facts and circumstances of the case recourse to S. 3(1) is a clear misuse of the provisions of the Act — Conviction under S. 3(1), TADA set aside — However, conviction under S. 324 IPC maintained — TADA, 1987, S. 3(1). Mohd. Saleem* v. *State of Gujarat*, (1994) 5 SCC 369: 1994 SCC (Cri) 1501.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 19-7-1994]

Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602, followed

[8392] — S. 324 — Lathi injuries caused one on forearm and the other on shoulder of deceased — *Who among the two accused (Appellants 3 and 4) caused the forearm injury not clear from the testimony of eyewitnesses — But the shoulder injury was caused by Appellant 4 was clear from evidence — Held, Appellant 4 liable to be convicted under S. 324 and sentenced to two years' RI and fine of Rs 500 — But Appellant 3 entitled to be acquitted* (Paras 9 and 10). *Mukati Prasad Rai* v. *State of Bihar*, (2004) 13 SCC 144: 2005 SCC (Cri) 69: AIR 2005 SC 1271: 2005 Cri LJ 681.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *P.P. Naolekar*, JJ. [Date of decision: 12-10-2004]

[8393] — S. 324 — Offence under — Parties compounded the offence at appellate stage — Permission to compound offence granted

The offence under S. 324, Indian Penal Code is compoundable with the permission of the Court. Where the parties have amicably settled the matter, it would be in the fitness of things if permission to compound the offence is granted. *Bhim Singh* v.

State of U.P., (1974) 4 SCC 97: 1974 SCC (Cri) 354: AIR 1974 SC 1744: 1974 Cri LJ 1285: 1973 (10) ACC 352.

Bench Strength **2**. Coram: **H.R. Khanna** and *A. Alagiriswami*, JJ. [Date of decision: 23-7-1973]

[8394] — S. 324 — Offence under — Proof — *Held, prosecution to establish that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in S. 324* (Para 12). *Anwarul Haq* v. *State of U.P.*, (2005) 10 SCC 581: 2005 SCC (Cri) 1629: AIR 2005 SC 2382: 2005 Cri LJ 2602.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 26-4-2005]

[8395] — S. 324 — Offence under S. 324, IPC — *Application for permission to compound the offence on terms already agreed upon with complainant — Complainant not present before Supreme Court — Trial court directed to verify genuineness of compromise and accord permission after recording its satisfaction — Fine imposed upon petitioner directed to be paid to complainant — CrPC, 1973, S. 320. Tanveer Aquil* v. *State of M.P.*, 1990 Supp SCC 63: 1990 SCC (Cri) 618.

Bench Strength **2**. Coram: *K. Jagannatha Shetty* and *A.M. Ahmadi*, JJ. [Date of decision: 1-2-1989]

[8396] — S. 324 — Reasons for prescribing a severe punishment in relation to offence under — *Observations made by authors of IPC in this regard, taken note of* (Para 14). *Anwarul Haq* v. *State of U.P.*, (2005) 10 SCC 581: 2005 SCC (Cri) 1629: AIR 2005 SC 2382: 2005 Cri LJ 2602.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 26-4-2005]

[8397] — S. 324 — Sentence — Mitigating circumstances — *Causing burn injuries by pouring kerosene and lighting it — Occurrence taking place more than 12 years ago and respondent being on bail all through — In view of present trend in the field of penology sentence of 2 years' RI reduced to a fine of Rs 2000 to be paid to the prosecutrix by way of compensation for injuries sustained by her — CrPC, 1973, S. 357. State of Karnataka* v. *Ganapathy*, 1994 SCC (Cri) 1165.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 17-2-1993]

[8398] — S. 324 — Sentence — Serious injury caused in abdomen with a razor — *No justification for reaching the sentence of 1 year's RI. Abadhraj Dukharam Pande* v. *State of Maharashtra*, (1980) 1 SCC 80: 1980 SCC (Cri) 154: AIR 1979 SC 1703: 1979 Cri LJ 1388.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision: 7-2-1979]

[8399] — S. 324 — Sentence of one-year rigorous imprisonment imposed in relation to offence under S. 324 IPC — Plea to reduce the sentence to period already undergone i.e. 10 months — *Considering the facts of the case, held, it would not be proper to show any leniency — Plea as to reduction of sentence rejected* (Para 16). *Anwarul Haq* v. *State of U.P.*, (2005) 10 SCC 581: 2005 SCC (Cri) 1629: AIR 2005 SC 2382: 2005 Cri LJ 2602.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 26-4-2005]

[8400] — S. 324 — TADA, 1985 — S. 6 — Arms Act, 1959 — S. 27 — Bullet injuries caused to the complainant's left toe and calf by the accused — *Evidence of injured complainant found reliable — Recovery of revolver pursuant to disclosure statement made by the accused — Report of ballistic expert indicating that the empty cartridge (seized from the place of occurrence) could be fired from the revolver in question and not from any other weapon — Held, in the circumstances of the case the accused rightly convicted under S. 324 IPC and also under S. 6 TADA Act, 1985 read with S. 27, Arms Act — Having regard to the facts and circumstances of the case reduction in sentence not called for. Ved Parkash* v. *State of Haryana*, 1996 SCC (Cri) 1182: AIR 1996 SC 2795.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 20-8-1996]

[8401] — S. 324 — Voluntarily causing hurt by dangerous weapons or means — Accused causing serious injuries on right hand of PW 1 by giving knife-blows — Conviction — Propriety — *Failure of prosecution to recover crime weapon, not fatal — Plea that weapon used was not a dangerous weapon, not raised before the courts below — Held, trial court analysed the evidence in great detail — Evidence of eyewitnesses found reliable — There was no scope for interference — Conviction and sentence upheld — Constitution of India, Art. 136* (Paras 11, 15 and 16). *Anwarul Haq* v. *State of U.P.*, (2005) 10 SCC 581: 2005 SCC (Cri) 1629: AIR 2005 SC 2382: 2005 Cri LJ 2602.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 26-4-2005]

[8402] — Ss. 324 and 188 — Applicability — *Appellant catching hold of the complainant's collar from behind and, demanding of him as to why he was moving during curfew, assaulting the complainant with a razor causing thereby an injury on the cheek — Allegation by the complainant at the trial that the injury was caused after enquiring the name of the complainant and thereby identifying his community, not substantiated from record — In* *such circumstances the offence committed by the appellant, held, not covered by Ss. 3(1) and 3(2)(ii) of TADA — However, conviction of the appellant under Ss. 324/188 IPC and S. 135 of Bombay Police Act, held, proper — Bombay Police Act, 1951 (22 of 1951), S. 135(1) — TADA, 1987, Ss. 3(1) & 3(2)(ii)*

In the complaint filed by the complainant no allegation whatsoever was made by him which could even remotely attract the provisions of Section 3(1) of TADA. All that the complainant disclosed in the complaint is that the appellant had caught hold of his shirt collar from behind and warned him as to why he was moving about during the curfew and then assaulted him with the razor, which he had taken out from the pocket of his pants and caused an injury on his left cheek. Thus, in the complaint a simple case of causing an injury by a sharp-edged weapon was projected. At the trial, indeed, an effort was made by the complainant to improve his version and say that the assailant had before assaulting him, enquired of his name also and so soon as he had disclosed his name, the assailant took out the razor from his pocket and gave him an injury on his cheek. The Designed Court read into this evidence a streak of communal violence and opined that attack was made by the appellant, a Muslim, on learning that the victim was a Hindu. However, there is not even an iota of evidence on the record from which such an inference could be justified. In the established facts and circumstances of the case, recourse to Section 3(1) of TADA was clearly misplaced and unwarranted. There is no evidence available on the record to show that the injury was caused to the complainant with the intention as envisaged by Section 3(1) of TADA to achieve the objective as detailed in the said section. Recourse to the provisions of Section 3(1) of TADA in the established facts and circumstances of this case, appears to be clear misuse rather abuse of the provisions of TADA. The conviction and sentence of the appellant for the offence under Section 3(1) of TADA punishable under Section 3(2)(*ii*) of TADA, is not at all sustainable and is liable to be set aside. However, the conviction and sentence of the appellant for the offences under Sections 324/188 IPC and 135(1) of the Bombay Police Act as recorded by the Designated Court are maintained. *Hajimiya Sodumiya Sayyad* v. *State of Gujarat*, 1998 SCC (Cri) 565.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 26-4-1995]

Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602: 1994 SCC (Cri) 1087, followed

[8403] — **Ss. 324, 302 & 32 — Appellant's causing fatal injury not proved beyond reasonable doubt** — *Co-accused convicted for causing simple injury — Held, appellant could be convicted for causing simple injury and not for the fatal one. Ashok Kumar* v. *State of Punjab*, (1977) 1 SCC 746: 1977 SCC (Cri) 177: AIR 1977 SC 109: 1977 Cri LJ 164.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *V.R. Krishna Iyer* and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 21-9-1976]

[8404] — S. 324 and S. 302 r/w S. 34 — Takwa blow inflicted on ear of the victim causing simple injuries — *In absence of any pre-concert and meeting of minds between the accused-appellant and his colleague who inflicted the fatal blow, conviction under S. 324 instead of that under S. 302 read with S. 34 proper — Sentence reduced to two and a half years' imprisonment already undergone. Jarnail Singh* v. *State of Punjab*, (1982) 3 SCC 221: 1982 SCC (Cri) 701: AIR 1982 SC 70: 1982 Cri LJ 386.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *A. Varadarajan*, JJ. [Date of decision: 15-4-1981]

[8405] — Ss. 324 and 307 — Gunshots fired by accused in the courtyard of the victims causing simple injuries — *Intention to cause injuries within the meaning of S. 307 thus lacking — Conviction under S. 324 not under S. 307 proper — Sentence reduced to 16 months' imprisonment already undergone. Kundan Singh* v. *State of Punjab*, (1982) 3 SCC 213: 1982 SCC (Cri) 700(1): AIR 1982 SC 62: 1982 Cri LJ 626(2).

Bench Strength **2**. Coram: **P.N. Bhagwati** and *A. Varadarajan*, JJ. [Date of decision: 20-4-1981]

[8406] — Ss. 324 and 307 — On facts, conviction under S. 307 altered to one under S. 324 and sentence reduced to one year's R.I. — *No law point laid down. Dharma Pal* v. *State of Punjab*, AIR 1993 SC 2484: 1993 Cri LJ 2856.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 5-5-1993]

[8407] — S. 324 or 307 — Gunshot fired causing only superficial pellet injuries to the victim — *Injuries not being such as likely to cause death, conviction altered from S. 307 to S. 324 with sentence of one year's RI. Ved Pal* v. *State of U.P.*, 1987 Supp SCC 596: 1988 SCC (Cri) 131.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 31-3-1987]

[8408] — Ss. 324, 307 and 320 — Assault with sword on vital part of the body like neck but inflicting simple injuries not likely to cause death — *In the circumstances conviction under S. 307 altered to that under S. 324 — Parties having compromised, the offence under S. 324 allowed to* *be compounded subject to payment of Rs 3000 as compensation to the victim. Narendra Kumar* v. *State of Rajasthan*, 1988 Supp SCC 536: 1988 SCC (Cri) 884.

Bench Strength **2**. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 19-8-1987]

[8409] — S. 324 or Ss. 307/34 — Single injury inflicted in the back of neck — Conviction under S. 307/34 converted to that under S. 324 — *Sentence of imprisonment reduced to the period already undergone — Fine of Rs 3000 to be paid to complainant. Ramesh* v. *State of U.P.*, (1992) 1 SCC 318: 1992 SCC (Cri) 183: AIR 1992 SC 664: 1992 Cri LJ 609.

Bench Strength **2**. Coram: *Kuldip Singh* and **R.M. Sahai**, JJ. [Date of decision: 29-11-1991]

[8410] — Ss. 324 and 323 — Conviction under — Reduction of sentence — Appreciation of evidence therefor — *Trial court convicting Appellant 1 under S. 324, sentencing him to 3 years' RI with fine and Appellants 2 and 3 under S. 323, sentencing them to 1 year RI with fine, which affirmed by High Court — Sustainability — Considering facts and circumstances and appreciating evidence on record, held, sentence awarded to Appellant 1 be reduced to 1 years' RI and that of Appellants 2 and 3, be reduced to the period already undergone (almost 7 months' RI)* (Para 4). *Ramji Jiranga Pawar* v. *State of Maharashtra*, (2008) 17 SCC 472: (2008) 67 AIC 13 (SC).

Bench Strength **2**. Coram: *P.P. Naolekar* and *V.S. Sirpurkar*, JJ. [Date of decision: 13-5-2008]

[8411] — Ss. 324 and 325 — *Supreme Court under Art. 136 allowing compounding of the offences where the parties were closely related — Conviction and order of sentence set aside and accused acquitted — Constitution of India — Art. 136 — CrPC, 1973, S. 320. Hindu Singh* v. *State of U.P.*, (1982) 3 SCC 368(2): 1983 SCC (Cri) 49(2).

Bench Strength **2**. Coram: *Y.V. Chandrachud, C.J.* and *V.D. Tulzapurkar*, J. [Date of decision: 29-1-1981]

[8412] — Ss. 324 and 325 — Compounding of offences allowed by Supreme Court under — *CrPC, 1973, S. 320 — Constitution of India, Art. 136. Hindu Singh* v. *State of U.P.*, (1982) 3 SCC 368(2): 1983 SCC (Cri) 49(2).

Bench Strength **2**. Coram: *Y.V. Chandrachud, C.J.* and *V.D. Tulzapurkar*, J. [Date of decision: 29-1-1981]

[8413] — Ss. 324, 325 and 326 — Sentence reduced on accused agreeing to pay fine — *Fine amount directed to be paid to the victims. Nain Ram* v. *State of U.P.*, (1982) 3 SCC 197: 1982 SCC (Cri) 685.

Bench Strength **3**. Coram: *Y.V. Chandrachud, C.J.* and *V.R. Krishna Iyer* and *A.D. Koshal*, JJ. [Date of decision: 16-9-1980]

[8414] — Ss. 324 and 326 — No grievous injury sustained by the victim on any vital part — *Nor any fracture of a serious nature found — Conviction under S. 326 altered to that under S. 324 & fine of Rs 2000 substituted for the prison term — Fine to be paid to victim as compensation. Kailash Prasad Kanodia* v. *State of Bihar*, 1980 Supp SCC 372: 1981 SCC (Cri) 285: AIR 1980 SC 106: 1980 Cri LJ 190.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision: 25-4-1979]

[8415] — Ss. 324 and 326 — Sentence — Mitigating factors — *Two years' and 5 years' RI and fine of Rs 2500 imposed on appellant under, for throwing acid on the face of a young girl — Though such a crime deserves no leniency, but the appellant, being a student and having already undergone 14 months' RI, the sentence reduced to the period already undergone and instead fine enhanced to Rs 7500 to be paid to the victim, but in the event of failure to pay the fine the original sentence to be restored. Anil Kumar Pandey* v. *State of U.P.*, (1982) 2 SCC 395: 1982 SCC (Cri) 443.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *E.S. Venkataramiah*, JJ. [Date of decision: 11-1-1982]

[8416] — Ss. 324, 326, 328 and 34 — Illicit or spurious liquor business — Hooch tragedy wherein 31 persons dying, 6 going blind and 500 suffering serious injuries due to consumption of spurious liquor — Persons liable for — Mixing or permitting to mix noxious substance with liquor — Wide scope of expression "whoever mixes or permits to be mixed" in S. 57-A(1) of Kerala Act, and liability thereunder — Need, if any, for personal physical involvement in mixing to attract liability under S. 57-A of Kerala Act — Extent of knowledge/mens rea required to be proved — *Poisonous substance, methyl alcohol (also known chemically as methanol), added to ethyl alcohol (also known chemically as ethanol) — Mixing not done properly resulting in death, blindness and other ailments to several persons — Criminal liability of Hooch King (A-7) and his two brothers who were involved in business of spurious liquor which had led to tragedy in question — Held, A-7 who was kingpin of business, was punishable under S. 57-A(1) because business of spurious liquor was being carried out under his overall control even though mixing was not being done personally by him — His brother, A-8, who was actively participating in the business, particularly* *in clandestine transporting of spurious liquor, was also liable under the expression "permits to be mixed" — Traces of methyl alcohol found in vehicle under control of A-8 — Inference therefore drawn that A-8 was aware that methyl alcohol was being added to ethyl alcohol — Third brother, A-4, who too was involved in this business was also liable on same count — Hence conviction of A-7, A-8 and A-4 under S. 57-A(1)(ii) r/w S. 120-B IPC and sentence of life imprisonment and fine of Rs 50,000 imposed thereunder, maintained — Kerala Abkari Act, 1077 ME (1 of 1077), S. 57-A(1) (as introduced vide 1984 amendment)*

As many as 31 persons had lost their lives, 6 persons had suffered total blindness in Kollam District whereas more than 500 persons suffered serious injuries on account of drinking of illicit liquor. On the law being set into motion all the appellant-accused stood convicted by the Sessions Judge for various offences punishable under Sections 120-B, 302, 307, 326, 328 and 201 read with Section 34 of the Penal Code, 1860 (IPC) as also under Sections 55(*a*), (*g*), (*h*), (*i*), 57-A and 58 of the Kerala Abkari Act, 1077 ME. Practically all of them were convicted for the offences under Section 302 IPC and Section 57-A(1)(*iii*) of the Abkari Act. The accused persons under those sections were sentenced to suffer rigorous imprisonment for life. They were also awarded lesser sentences and were slapped with heavy fines. They appealed against this verdict before the High Court which set aside the conviction for the offences under Sections 302 and 307 IPC, however, maintained the convictions of most of the appellants for the offence under Section 57-A(1)(*ii*) under the Abkari Act along with convictions under Sections 324, 326, 328 and 201 IPC as also other sections like Sections 55(*h*) and (*i*) and 58 of the Abkari Act. In short, most of the accused persons were directed to suffer rigorous imprisonment for life and, as the case may be, rigorous imprisonment for 10 years along with fine.

A-8 was convicted for the offences under Sections 324, 326 and 328 IPC as also for the offence under Section 57-A(1)(*ii*) of the Abkari Act and was sentenced to undergo life imprisonment along with the fine of Rs 50,000. He was also separately convicted under Section 57-A(1)(*i*) as also under Section 55(*a*)(*i*) and Section 58 of the Abkari Act. His conviction under Sections 302 IPC and 57-A(1)(*iii*), Abkari Act was set aside by the High Court. However, the conviction, sentence and fine under Section 57-A(1)(*ii*) was maintained. There was a specific finding in respect of his conviction under Section 120-B IPC. [The precise punishment imposed on A-7 and A-4 is not stated in the judgment, but it seems that it would be on closely similar lines to that of A-8.]

Dismissing the appeals of A-7, A-8 and A-4,

Held :

A plain reading of Section 57-A would mean that now the offence is not limited to the licence-holders, but refers to anybody who mixes or permits to be mixed any noxious substance or any substance which is likely to endanger human life with any liquor. The section, therefore, is extremely general. In addition to the mixing or permitting to be mixed, Section 57-A(2) brings in the dragnet of the offence, a person who omits to take reasonable precaution to prevent the mixing of any noxious substance. It is significant to note that if, as a result of such act of mixing of the liquor with noxious or dangerous substance death is caused, the extreme penalty of death is also provided. (Para 28)

For being convicted under Section 57-A it is not necessary that the person concerned must himself do the mixing. It is obvious that A-7 was the boss. In fact PW 53 describes him as the boss. It is, therefore, obvious that everything was done as per his command and if it was so, then in order to be convicted under Section 57-A, the prosecution is not required to prove that A-7 physically mixed the methyl alcohol or the injurious substance with the spirit. Even if A-7 commanded his servants to mix up, he is equally guilty under Section 57-A(1). Illegally importing ethyl alcohol and mixing the same with methanol was a regular trading activity on the part of A-7. The licences for running the toddy shops was merely a facade. He had put in a very tall bid for those licences and could not have afforded to continue merely on the basis of those 26 toddy shops. He gave his business a complete new turn, that is, instead of selling toddy through those outlets he started selling an alcoholic drink prepared from ethyl alcohol and methanol and illegally imported both and all this was going on with the corrupt cooperation of those who could have checked it. It is a proved position from the evidence of PW 53 that A-7 was the boss of the illegal trade. He got the methanol imported and used his godown which he rightfully possessed on account of his licences for 26 shops. Therefore, his knowledge that methanol was being mixed, the fact that he was running the business along with his hirelings and the further fact that he used to be present at the time of the mixing are properly proved by the prosecution with the aid of the testimony of PW 53 and are enough for a finding about Section 57-A(1)(*ii*). (Paras 56 to 58)

It was not necessary that A-7 had physically mixed the methyl alcohol for his being convicted. It was actually done on his command and within his knowledge. His offence could also come within the definition on account of the other words of Section 57-A(1) "*or permits to be mixed*". While interpreting these words, namely, "*whoever mixes or permits to be mixed*" the real import of the words would have to be taken into consideration and thereby if A-7 directed his servants to mix methanol with ethyl alcohol that would also be covered within the scope of the words "*mixes or permits to be mixed*" in the section. All this mixing was done at the instance of, with the direction of and to the knowledge of A-7. He was the kingpin or the main actor on whom the huge business of liquor trade rested. It cannot, therefore, be said that the conviction of A-7 under Section 57-A(1)(*ii*) was in any manner incorrect. (Para 60)

A-8 is real brother of A-7. Discovery of fake number plates shows that A-8 was neck deep into the business of spurious liquor. He was an active member in carrying the said spurious liquor and the fact that a vehicle under his possession found from his premises had the trace of methanol is sufficient to hold that he had the necessary knowledge that methanol played a major part in the business which was headed by his real brother A-7 and in which he was an active partner. If it is established that A-8 was involved in transporting spurious liquor then his active participation in the business also comes to the forefront. Thereby his knowledge that the liquor was being mixed with methanol has also to be presumed. There was no necessity for keeping the fake unattached number plates in his premises and the whole objective is clear, of shielding the cars by attaching fake number plates to them. (Para 102)

A-8 was engaged in the business of manufacture, storing, sale and supply of illicit liquor along with A-7 which resulted in the liquor tragedy. It is obvious that this accused was well aware of the nature of the business as he was thoroughly into it. Therefore, the offence under Sections 57-A(1)(*i*) and (*ii*) as also the other offences under Sections 324, 326 and 328 read with Section 34 IPC have been rightly held proved against him. Again, his frequent calls to his brother would also show that he was actively involved in the business. It is not necessary that the accused had to mix or permit to be mixed the noxious substance himself. He could be booked on the same basis as A-7 has been booked on the same logic. (Para 104)

It is not possible to accept the argument that A-8 had no idea that methanol is a noxious substance. If a huge business was going on and methanol was being imported along with ethyl alcohol in a huge quantity and if the car which brought the methanol was in his possession and further if the methanol is established to be a noxious substance, it would be a travesty to hold that A-8 did not know that methanol was a noxious substance. It is also well established that this accused could be convicted with the aid of Section 120-B IPC and also independently of the offence under Section 57-A(1)(*ii*) as he was not only the part of the business but had actively taken part in it. That by itself is sufficient to hold that he had the knowledge about the mixing of the ethyl alcohol with the noxious substance like methanol and in spite of it, continued. His offence would be covered fully in the phraseology "*or permits to be mixed*". Conviction of A-8 is therefore also confirmed. (Paras 105 and 107)

A-4 is another brother of A-7. He too was thoroughly in the business like his brothers A-7 and A-8. There was a conspiracy to run a patently illegal business along with his two brothers and others. A-4 was at the helm of the affairs unlike those accused who merely transported the liquor. The case of A-4, therefore, is quite different. It was argued that he himself had not transported the noxious substance which was done by A-15. That may not be so, but he was practically managing the whole show. It has rightly been held by the trial court and the appellate court that A-5 was a worker of A-4 and took active part in the transportation of methanol. Involvement of A-4 in the business is so deep that it was clear that he was a conspirator and it was in pursuance of a conspiracy that the whole liquor business which essentially involved the mixing of methanol with ethyl alcohol was being conducted. The language of Section 57-A(1) is wide enough and A-4 will fit in the broad language. (Paras 111 to 114)

It was argued that Section 57-A(1) does not use the word "knowledge" or "knowingly". It was also argued that the requirement of mens rea has to be read into all offences unless the legislature has expressly or by necessary implications excluded mens rea as the ingredient of the offence. In none of the seven cases relied upon by the accused did the case relate to an offence like Section 57-A(1). The whole discussion on mens rea, therefore, is of no consequence. (Paras 114 and 116)

Reading the language of Section 57-A(1) as it is, it is more than proved that all these accused persons entered into a conspiracy to do the illegal liquor business and in order to succeed in their business, took recourse to mixing methanol with ethyl alcohol and brought out a new type of spurious liquor. In order to increase the potency of the drink and in order to probably give taste, they mixed methanol. Once methyl alcohol/methanol is proved to be a noxious drug, if the accused are found to be mixing or permitting mixing methanol with ethyl alcohol then the offence would be complete whether they had the knowledge regarding the qualities of methanol or not. That is apart from the fact that in this case itself to say that the accused did not know about the properties of methanol would be wrong. If that had been so they would not have been running between Hosur and Kerala to bring methanol in cars which had fake registration numbers and secret chambers. (Para 115)

The whole business itself was a conspiracy. It may not be the conspiracy to mix the noxious substance but the fact of the matter is that in order to succeed in the business which itself was a conspiracy they mixed or allowed to be mixed methanol and used it so freely that ultimately 31 persons lost their lives. The argument regarding knowledge raised by the accused is not convincing. (Para 117). *Chandran* v. *State of Kerala*, (2011) 5 SCC 161.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and *Cyriac Joseph*, JJ. [Date of decision : 4-4-2011]

Lim Chin Aik v. R., 1963 AC 160: (1963) 2 WLR 42: (1963) 1 All ER 223 (PC); State of Maharashtra v. Mayer Hans George, AIR 1965 SC 722: (1965) 1 Cri LJ 641: (1965) 1 SCR 123; Sweet v. Parsley, 1970 AC 132: (1969) 2 WLR 470: (1969) 1 All ER 347 (HL); State of Gujarat v. Acharya D. Pandey, (1970) 3 SCC 183: 1971 SCC (Cri) 1; Sanjay Dutt v. State, (1994) 5 SCC 410: 1994 SCC (Cri) 1433; Kalpnath Rai v. State, (1997) 8 SCC 732: 1998 SCC (Cri) 134; B. (A Minor) v. Director of Public Prosecutions, (2000) 2 AC 428: (2000) 2 WLR 452: (2000) 1 All ER 833 (HL), distinguished

[**Ed.**: Bootleggers generally add methyl alcohol to illicit liquor because methyl alcohol is cheaper than ethyl alcohol but at the same time methyl alcohol also has an intoxicating effect to some extent like ethyl alcohol. Sometimes methyl alcohol is not mixed in proper proportion with ethyl alcohol and this results in death or blindness of persons who consume spurious liquor. According to *Modi's Medical Jurisprudence and Toxicology* (23rd Edn.), "Fatal dose (of methyl alcohol) varies according to susceptibility of individuals from 60 to 240 ml". *Modi* mentions that in some cases, even lesser quantity from 30 to 60 ml has also proved fatal. *Modi* further mentions that "Death has occurred from 90, 120 and 150 ml, and often from 180 to 240 ml, but recovery has followed after larger doses."

It may be added that an excessive dose even of ethyl alcohol can also be fatal. Quoting again from Modi, consumption of 150 to 250 ml of undiluted ethyl alcohol can be fatal to an adult.]

[8417] — Ss. 324, 326 and 452 — Sentence — Reduction of — *Conviction and sentences of three accused-appellants, for offences under Ss. 326, 324 and 452 IPC, confirmed in appeal — In revision sentence reduced to 1½ years' imprisonment in respect of first and third accused under Ss. 326 and 324 respectively while second accused sentenced with fine only — Declining to interfere with the sentences of first and second accused, sentence imposed on third accused under S. 324, being excessive, reduced to the period already undergone. Kuppan* v. *State of T.N.*, 2000 SCC (Cri) 1506: AIR 2000 SC 3510 (1): 2000 Cri LJ 3503.

Bench Strength **2**. Coram: *K.T. Thomas* and *A.P. Misra*, JJ. [Date of decision: 24-1-2000]

[8418] — Ss. 324, 452 r/w S. 34 — Quarrelling and trespass — Accused party, members of one family and neighbours of the complainant, barged into the house of the complainant and manhandled the complainant inside as well as outside the house after dragging her from the house — *Complaint lodged promptly registered as FIR — Doctor, who examined the complainant in hospital, in his report recording four simple injuries on her hands, forehead and chest — Medical certificate issued by the doctor clearly mentioning the date and time of examination on being referred by the police to the hospital — Held, medical certificate, as proved by the doctor, was ample proof of happening of the alleged incident of querrelling with the complainant on that date — Act alleged against accused clearly made out a case of common intention against them in committing the offence of house trespass and causing hurt to complainant — Minor discrepancies or exaggerations in the evidence of PWs would be inconsequential — Defence of false implication of the accused due to an alleged incident which had not taken place in immediate past but had occurred long ago cannot be accepted* (Para 19). *State of Maharashtra* v. *Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659: 2004 SCC (Cri) 2003: AIR 2004 SC 4412: (2004) 172 ELT 19.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **D.M. Dharmadhikari**, JJ. [Date of decision: 27-8-2004]

[8419] — Ss. 324, 504 r/w S. 34 — Benefit of probation — Relevant considerations — *Conviction of appellants (Accused 1 to 4) under Ss. 324/34 IPC, and under Ss. 504/34 IPC — Accused seeking benefit of S. 4 of the Act and S. 360 CrPC — Refusal by Magistrate, on the ground of enmity between the families of accused and complainant, held, improper — Benefit of S. 4 given by the Supreme Court to Accused 3 and 4 who were women, so far as Accused 1 and 2 were concerned, Magistrate directed to secure report of Probation Officer and then pass an appropriate order taking note of S. 4 of the Act — CrPC, 1973, S. 360 —. Probation of Offenders Act, 1958, S. 4* (Para 5). *Halappa* v. *State* *of Karnataka*, (2009) 9 SCC 366: (2009) 3 SCC (Cri) 1068.

Bench Strength 2. Coram: **R.V. Raveendran** and *P. Sathasivam*, JJ. [Date of decision: 13-8-2009]

— S. 324 r/w S. 34 *See also* Ss. 96 and 103, 302, 307 and 324 r/w S. 34

See also S. 302 or S. 304 Pt. II (S. 300 Exception 4), Ss. 323 and 324 r/w S. 34

See also Ss. 302, 323 and 324 r/w S. 34

See also Ss. 302, 364, 324 etc. r/w S. 34

— S. 324 r/w S. 147 *See also* Ss. 302, 323, 324 r/w 149, 147 and 148

— S. 324 r/w S. 148 *See also* Ss. 302, 323 and 324 r/w 148, 149, 363, 366 and 376

See also Ss. 302, 323, 324 r/w 149, 147 and 148

— S. 324 r/w S. 149 *See* Ss. 147, 148, 341, 504, 506, 324, 326 r/w S. 149

See also S. 148 and Ss. 302, 100, 325 and 324 r/w S. 149

See also Ss. 302, 323 and 324 r/w 148, 149, 363, 366 and 376

See also Ss. 302, 323, 324 r/w Ss. 149, 147 and 148

See also Ss. 302 and 324 r/w S. 149

See also Ss. 326, 323 and 324 r/w S. 149

[8420] — S. 324 r/w S. 149 — Sentence — Delay — Reduction to that already undergone — *Sentence of RI for 6 months and fine of Rs 1000 each imposed on Accused 2, 3, 6 and 7 by High Court in appeal against their acquittal — Appellants undergoing more than two months' imprisonment and released on bail in 2003 while admitting appeal — Considering lapse of several years, instead of sending them to jail to serve remaining sentence, sentence reduced to period already undergone, provided fine of Rs 25,000 each was paid within one month — Fine realised directed to be paid to deceased's wife* (Paras 6 to 8). *Basayya Prabhayya Hallur* v. *State of Karnataka*, (2009) 17 SCC 55.

Bench Strength 2. Coram: *Dalveer Bhandari* and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-10-2009]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2); Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60; Surajpal Singh v. State, AIR 1952 SC 52: 1952 Cri LJ 331; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

— S. 324 r/w S. 363 *See also* Ss. 302, 323 and 324, r/w 148, 149, 363, 366 and 376

— S. 324 r/w S. 366 *See also* Ss. 302, 323 and 324, r/w 148, 149, 363, 366 and 376

— S. 324 r/w S. 376 *See also* Ss. 302, 323 and 324, r/w 148, 149, 363, 366 and 376

— Ss. 324/34 *See also* Ss. 97, 103, 302/34 and 324/34

See also Ss. 97, 104 and 324/34

See also Ss. 149, 326/34, 324/34, 427/34, 450 and 392, 395 and 397

See also under Ss. 299 to 304

See also Ss. 307/34 and 324/34

[8421] — Ss. 324/34 — Offences under — Benefit of doubt — Benefit of Acquittal to Co-Accused — When not warranted — *Four accused persons attacking PW 2 informant near their college gate with khukries (a sharp-edged weapon) — PW 2 suffering grievous injuries on head and left hand due to which he became unconscious — Injured informant naming appellant-accused in FIR and specifically deposing about his overt acts — FIR not disclosing names of other three accused — Prosecution not conducting TI parade in respect of other three accused — PW 1 (eyewitness/hostile witness) claiming to have identified other three accused — Undisputedly, PW 1 along with one S carrying PW 2 to hospital — Effect — The analogy of acquitting the three co-accused on the ground of benefit of doubt, held, inapplicable to appellant — Therefore, conviction of appellant, upheld*

PW 2 informant was attacked by the appellant and three others with khukries (a sharp-edged weapon) near his college gate. PW 2 suffered five incised injuries from which blood came out, three injuries on head (two muscle-deep and one skin-deep) and two muscle-deep injuries on the left hand fingers. The trial court convicted all the four accused persons. The High Court by the impugned judgment acquitted three of the co-accused by granting benefit of doubt but convicted the appellant.

Dismissing the appeal,

Held :

Although the High Court extended benefit of doubt to three of the co-accused and acquitted them, it does not mean that on the same analogy, a judgment of acquittal should have been recorded in favour of the appellant also. As the other accused had not been named in the FIR and no test identification parade was held, the High Court thought it fit to extend the benefit of doubt. But the appellant was named in the FIR and specific overt act was attributed to him by PW 2 in his deposition. (Paras 15 and 16)

Keeping in view the place of occurrence, it will not be hazardous to presume that the incident had taken place within a very short time. PW 2 in his evidence stated that three persons came from behind. He might not have been able to remember their names at the time when the FIR was lodged. Though PW 1 eyewitness, claimed to have identified the three co-accused, he turned hostile and undisputedly he and one *S* had brought PW 2 informant to the hospital. (Paras 16 and 7)

The contention that the FIR did not disclose that the appellant was also armed with khukri had not been raised before the courts below. The only suggestion given to the investigating officer was that it was written that all the accused were shown having khukri in their hands and not the appellant alone. (Para 14). *Subhash Kumar* v. *State of Uttarakhand*, (2009) 6 SCC 641: (2009) 3 SCC (Cri) 287.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Subhash Kumar v. State, Criminal Appeal No. 150 of 2003 decided on 27-8-2008, affirmed

[8422] — Ss. 324/34 and 307 — Injury from which murderous assault could be spelt out attributed to L — Other injuries simple in nature — *In the circumstances of the case, it cannot be said that all the four accused had common intention of murderous assault — They had common intention for lesser offence i.e. under S. 324. Babu Singh* v. *State of Haryana*, 1995 Cri LJ 2630.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 14-12-1994]

— Ss. 324/109 *See also* Ss. 302/34 and 324/109

See also Ss. 307/109 and 324/109

— Ss. 324/110 *See also* Ss. 34, 302/34 and 324/110

[8423] — Ss. 324/110 and 302/34 — Appellant *M* exhorting his fellows by saying '*maro sale ko*' — *Thereupon, R* stabbing the deceased which resulted in his death — *Held, even if the words* **'*maro sale ko*'** *were used by 'M' in an abusive way, it could not be said that he exhorted his fellows to kill the deceased — Conviction of 'M' altered from Ss. 302/34 to Ss. 324/110 and sentence reduced to the period already undergone by him — However, considering the young age of the victim and the status of the accused 'M' further sentenced to a fine of Rs 50,000 to be paid to the heirs of the victim under the provisions of the Hindu Succession Act, 1956 — Fine is to be realised even if the convict had undergone imprisonment in default of payment thereof — CrPC, 1973, Ss. 421(1) proviso and 357. Matadin* v. *State of Maharashtra*, (1998) 7 SCC 216: 1998 SCC (Cri) 1569: AIR 1999 SC 138.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 4-8-1998]

[8424] — Ss. 324/114 — Two accused (Appellants 1 and 2) armed with *lathis* trespassed the house of deceased and exhorted other accused persons to beat up the deceased — Deceased succumbed to his injuries — *Held on facts, evidence on record does not support the prosecution case that the two accused-appellants exhorted the other accused with the idea of killing the deceased — But the fact that they were also armed with* **lathis** *when they trespassed into the house of deceased is a positive indicator that they did not enter the house as mere onlookers — They having instigated others to beat up the deceased, it would be appropriate to convict them under S. 324 r/w S. 114 and sentence them to one year's imprisonment and a fine of Rs 500 each* (Para 8). *Mukati Prasad Rai* v. *State of Bihar*, (2004) 13 SCC 144: 2005 SCC (Cri) 69: AIR 2005 SC 1271: 2005 Cri LJ 681.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *P.P. Naolekar*, JJ. [Date of decision: 12-10-2004]

— Ss. 324/149 *See also* Ss. 147, 148, 302/149 and 324/149

See also Ss. 147, 148, 302/149 and 324/149, 326/149

See also Ss. 148, 147, 307, 307/149, 324, 324/149, 323 and 323/149

See also Ss. 148, 147, 323/149 and 324/149

See also Ss. 148 and 324/149

See also Ss. 149 and 141, 302/149 and 324/149

See also Ss. 149, 302/149, 325/149 and 324/149

See also under Ss. 299 to 304

See also Ss. 307/149 and 324/149

See also Ss. 308/149 and 324/149

[8425] — Ss. 324/149 — Injuries received by an eyewitness during the assault caused by the accused — His evidence corroborated from the evidence of the doctor and other eyewitness — *Held, in the circumstances, the accused, who were members of an unlawful assembly caused injuries to the witness and committed an offence under Ss. 324/149. Hardev Singh* v. *Harbhej Singh*, (1997) 1 SCC 80: 1997 SCC (Cri) 5: AIR 1997 SC 1487: 1997 Cri LJ 727.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 20-11-1996]

[8426] — Ss. 324/149, 323/149 and 148 — Conviction and sentence under — Compounding of offence — *Since the incident took place in the year 1979 and subsequently the parties arrived at an amicable settlement, held on facts, it would be a fit case for reducing the sentence to the period already undergone — CrPC, 1973, S. 320 — Compounding of offence — Offences under Ss. 324/149, 323/149, 147 and 148 IPC. Bachhu Singh* v. *State of U.P.*, (2002) 10 SCC 313.

Bench Strength 2. Coram: *M.B. Shah* and *Ruma Pal*, JJ. [Date of decision: 6-12-2000]

— S. 325 *See also* Ss. 34, 325 and 302

See also Ss. 34/302 and 325

See also Ss. 96, 100 Thirdly [96, 97 r/w 100], 375(6), 325

See also S. 147

See also S. 148

See also S. 148 and Ss. 302, 100, 325 and 324 r/w S. 149

See also Ss. 149, 147, 323, 325 and 302

See also Ss. 149, 323, 325 and 435

See also Ss. 149, 326, 325 and 302

See also S. 149 r/w Ss. 302, 307, 449, 323 to 325 and 148

See also under Ss. 299 to 304

See also Ss. 302 and 325

See also Ss. 307, 325 and 326 r/w Ss. 149 and 148

See also Ss. 308/34, 323/34, 324, 325 and 326

See also Ss. 323 and 325

See also Ss. 323, 325 and 435

See also Ss. 324 and 325

See also Ss. 324, 325 and 326

See also Ss. 326, 325 and 149

See also Ss. 326, 325 and 324

See also S. 326 r/w S. 34 and S. 325

See also Ss. 326/149 and 325 and 326

See also Ss. 376, 460, 325 and 506

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C.12. Hurt, grievous or not, with or without dangerous weapons or means (Ss. 319 to 338)', in Vol. 2

[8427] — S. 325 — Absence of charge under, in murder trial — Effect — Conviction under S. 325, if sustainable — *High Court finding that appellant may or may not have given the fatal blow on head of deceased and that his conviction under S. 302 recorded by trial court was incorrect — Having found so, held, High Court erred in taking the view that appellant could be convicted under S. 325 and sentenced to four years' RI when there was no charge thereunder — Introduction of S. 325 by High Court cannot be justified merely on ground that there was a scuffle and deceased sustained head injury — CrPC, 1973, Ss. 216 and 222* (Paras 5 to 7). *Ravinder Kumar* v. *State of H.P.*, (2009) 16 SCC 354: (2010) 3 SCC (Cri) 288.

Bench Strength 2. Coram: *U.C. Banerjee* and *B.N. Agrawal*, JJ. [Date of decision: 10-10-2002]

[8428] — S. 325 — Accused causing grievous hurt to the victim by a stick — *Victim's own statement to that effect fully corroborated by other eyewitnesses and medical evidence — Held, accused rightly convicted under S. 325* (Para 25). *Takhaji Hiraji* v. *Thakore Kubersing Chamansing*, (2001) 6 SCC 145: 2001 SCC (Cri) 1070: AIR 2001 SC 2328.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti**, *Doraiswamy Raju*, JJ. [Date of decision: 2-5-2001]

[8429] — S. 325 — Conviction under — *Release on probation on facts, held, justified — Probation of Offenders Act, 1958, S. 4. Hansa* v. *State of Punjab*, (1977) 3 SCC 575: 1977 SCC (Cri) 550: AIR 1977 SC 1991: 1977 Cri LJ 1601.

Bench Strength 2. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 22-7-1977]

[8430] — S. 325 — Death as a result of multiple injuries — *Co-accused acquitted — Fractures caused by hard and blunt weapons on hands and feet of the deceased — Accused-appellants inflicting lathi blows may be responsible for the fractures and at best could be convicted under S. 325 — Accordingly their conviction under S. 302 altered to that under S. 325 and their sentence to the period of more than 5 years of imprisonment already undergone. Rattan Singh* v. *State of Punjab*, 1988 Supp SCC 456: 1988 SCC (Cri) 708: AIR 1988 SC 2147: 1988 BLJR 459.

Bench Strength 2. Coram: *G.L. Oza* and *K. Jagannatha Shetty*, JJ. [Date of decision: 22-3-1988]

[8431] — S. 325 — Grievous injury caused by pushing the victim against a hard and rough surface resulting in his death — Evidence of wife of the deceased corroborated by the medical evidence — Even hostile witnesses supporting the prosecution case to some extent — *Held, in the circumstances of the case, the High Court was not justified in reversing the conviction of the accused — Fine imposed to be paid to widow — Fine to be paid as compensation to surviving kith and kin — Compensation — Payment of fine as. State of Karnataka* v. *Diwakara Bhat*, (1996) 11 SCC 148: 1997 SCC (Cri) 146.

Bench Strength 2. Coram: *M.K. Mukherjee* and **Faizan Uddin**, JJ. [Date of decision: 23-9-1996]

[8432] — S. 325 — Offence under S. 325, IPC allowed to be compounded on the basis of affidavit of the injured person in that regard — *But conviction and sentence under Ss. 120 and 121, Indian Railways Act, 1890 (9 of 1890) maintained — CrPC, 1973, S. 320(2). Abdul Sattar* v. *State of M.P.*, (1981) 3 SCC 73: 1981 SCC (Cri) 633: AIR 1981 SC 1775 (2): 1981 Cri LJ 1705(1).

Bench Strength 2. Coram: **A.D. Koshal** and *E.S. Venkataramiah*, JJ. [Date of decision: 27-3-1981]

[8433] — S. 325 — Punishment under — Imprisonment and fine — Held (obiter), sentences of imprisonment and fine both are imperative — *Statute providing for imprisonment "and shall also be liable to fine"* (Paras 37 and 38). *Zunjarrao Bhikaji Nagarkar* v. *Union of India*, (1999) 7 SCC 409: 1999 SCC (L&S) 1299: AIR 1999 SC 2881.

Bench Strength 2. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 6-8-1999]

Tetar Gope v. Ganauri Gope, AIR 1968 Pat 287: 1968 Cri LJ 1108, overruled

[8434] — S. 325 — Sentence — *Blow inflicted with the blunt side of gandhali causing fracture of phalanx of finger — Conviction under S. 325 proper — But the accused persons also having sustained injuries in the same occurrence, sentence of 6 month's RI instead of 2½ years' RI would be sufficient. Gurmail Singh* v. *State of Punjab*, (1982) 3 SCC 185: 1982 SCC (Cri) 680: AIR 1982 SC 1466: 1982 Cri LJ 1946.

Bench Strength 2. Coram: *D.A. Desai* and *Baharul Islam*, JJ. [Date of decision: 30-8-1982]

[8435] — S. 325 — Sentence — *Occurrence taking place about 17 years before — Some of the appellants more than 76 years of age and one of them died — Some of the appellants also received injuries — Sentence reduced to the period already undergone with fine of Rs 200 — No law point laid down. Ayub* v. *State of U.P.*, AIR 1994 SC 1064: 1994 Cri LJ 1219: 1994 All LJ 305.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 4-11-1993]

[8436] — S. 325 — Sentence — Appellant out of political rivalry causing grievous injuries — Age not proved to be under 21 years — *Held, not deserving leniency. Sat Kumar* v. *State of Haryana*, (1974) 3 SCC 643: 1974 SCC (Cri) 173: AIR 1974 SC 294: 1974 Cri LJ 345.

Bench Strength 2. Coram: *P. Jaganmohan Reddy* and **P.K. Goswami**, JJ. [Date of decision: 23-11-1973]

[8437] — S. 325 — Sentence — Long lapse of time — *Held, cannot always be a determining factor — Major portion of sentence already undergone — Sentence restricted to the period already undergone*

No hard-and-fast rule can be applied for assessing a proper sentence and a long passage of time cannot always be a determinative factor so far as sentence is concerned. It is not in dispute that a major portion of the sentence awarded has been suffered by the appellant. On the peculiar facts of the case, it is restricted to the period already undergone. (Para 18). *Mathai* v. *State of Kerala*, (2005) 3 SCC 260: 2005 SCC (Cri) 695: AIR 2005 SC 710: 2005 Cri LJ 898.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-1-2005]

[8438] — S. 325 — Sentence under — Mitigating factors — *High Court maintaining the appellant's conviction and sentence of three years' RI — However, Supreme Court releasing him on bail and about eight long years elapsing thereafter — In such circumstances, hoping the wounds of parties to have healed up by then and noting that the victim was the appellant's nephew and that incarceration of the appellant at that stage would serve no purpose, Supreme Court reducing the sentence to the period already undergone. Nakchhed* v. *State of U.P.*, 1998 SCC (Cri) 603.

Bench Strength 2. Coram: *M.M. Punchhi* and *S. Rajendra Babu*, JJ. [Date of decision: 1-10-1997]

[8439] — Ss. 325, 34 & 302 — Attack with intention of grievous hurt resulting in death — *Effect*

Where the assailants attacked the deceased with non-lethal weapons with the common intention of causing grievous hurt and not death and though death resulted owing to fatal blows on the head but it is not certain who gave those fatal blows, the conviction of all the assailants could only have been under S. 325, read with S. 34, IPC. *Ram Lal* v. *Delhi Admn.*, (1973) 3 SCC 466: 1973 SCC (Cri) 366: AIR 1972 SC 2462: 1973 Cri LJ 17.

Bench Strength 3. Coram: *J.M. Shelat*, **D.G. Palekar** and *S.N. Dwivedi*, JJ. [Date of decision: 5-9-1972]

[8440] — Ss. 325, 148 and 149 — Stick blow inflicted on non-vital part of the body — *Common object or common intention not established — Held, accused liable to be convicted under S. 325 and sentenced to 3 years' RI. Hari Singh* v. *State of Haryana*, (1993) 3 SCC 114: 1993 SCC (Cri) 631.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 13-4-1993]

[8441] — Ss. 325 and 149 — Causing 17 injuries to two persons each and 8 injuries to another of which two were grievous — *Sentence of 2 years' R.I. and Rs 300 fine not improper. Surendra* v. *State of U.P.*, (1976) 4 SCC 232: 1976 SCC (Cri) 565: AIR 1977 SC 709: 1977 Cri LJ 351.

Bench Strength 2. Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 19-8-1976]

[8442] — S. 325 or S. 302 or S. 304 Pt. II — Blow inflicted on deceased causing internal injury on forehead found to be fatal — *No external injury on the forehead indicated by medical evidence — Statements given by eyewitnesses to police under S. 161 CrPC and their testimony at the trial in regard to the instrument of assault (lathi or iron rod) and the part of the deceased's body on which assault made (forehead or face and nose) discrepant — Though explanation for the discrepancy acceptable, assault having taken place at night, but general type of evidence led by the prosecution not sufficient to correlate the blow inflicted by the accused with the fatal internal injury sustained by deceased — Hence conviction under S. 325 and not under S. 302 or 304 Pt. II proper — Sentence of four years' RI already undergone adequate on facts. Mohinder Singh* v. *State (Delhi Admn.)*, 1985 Supp SCC 473: 1985 SCC (Cri) 488: AIR 1986 SC 309.

Bench Strength **2**. Coram: *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision: 24-9-1985]

[8443] — Ss. 325 and 304 Pt. I — Alteration of conviction from S. 304 Pt. I to S. 325 — Reduction of sentence from 8 years' RI to 6 months' RI — Propriety of — *Victim receiving as many as 14 injuries on different parts of body — In view of the nature of injuries and taking into account the facts of the case, held, High Court was not justified in awarding sentence of six months only — Hence, confirming the conviction, sentence enhanced to period of 3 years* (Paras 4 and 5). *State of Kerala* v. *Ravi*, (2005) 9 SCC 216.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 20-1-2005]

[8444] — Ss. 325 and 304 Pt. II — Fight between appellants and the deceased party — *Appellants inflicting stick blows on the deceased as well as on the injured witnesses — Deceased sustaining four contusions including one on the head — Head injury proved to be fatal after lapse of one week — Injuries found on the witnesses also of the same nature for which the appellants convicted under S. 325 — Appellants themselves receiving injuries at the hands of the prosecution party — Held, in the circumstances of the case, it cannot be said that the appellants had knowledge that the stick blows were likely to cause death — Hence they are liable to be convicted under S. 325 and not under S. 304 Pt. II. Halke* v. *State of M.P.*, 1998 SCC (Cri) 953: AIR 1994 SC 951: 1994 Cri LJ 1220.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 24-7-1992]

[8445] — S. 325 or S. 304 Pt. II — Incised wound of 3 x ½ x ¼ inches on the right side of the scalp just above the left ear which caused the fracture of left parietal and left temporal bone extending to the frontal and occipital region — *Held, could never be treated as an injury contemplated under S. 325, but should be held to be one that would cause the death of a person*

The trial court found that at least one of the injuries caused on the deceased was severe enough to cause death in the ordinary course of nature. Based on the evidence of the doctor, it was rightly concluded by the courts below that an incised wound of 3 x ½ x ¼ inches on the right side of the scalp just above the left ear which caused the fracture of left parietal and left temporal bone extending to the frontal and occipital region could never be treated as an injury contemplated under Section 325 IPC, but should be held to be one that would cause the death of a person. Therefore, having regard to the said fact, the courts below rightly convicted the appellants for the offence punishable under S. 304 Pt. II IPC. (Para 5). *Tarsem Singh* v. *State of Punjab*, (2002) 2 SCC 673: 2002 SCC (Cri) 465: AIR 2002 SC 760: 2002 Cri LJ 1021.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *Doraiswamy Raju*, JJ. [Date of decision: 29-1-2002]

[8446] — Ss. 325 and 323 — Compounding of offences under — Compounding of offences — Accused charged under Ss. 325 and 323 r/w S. 34 IPC — *Causing simple hurt falling under S. 323 IPC compoundable at the instance of person hurt — Causing grievous hurt under S. 325 IPC compoundable with permission of court — Compromise deed stating that parties were neighbours, their houses adjacent to each other, and that they were living peacefully for last many years and there was no dispute between them; hence to continue sweet relationship and harmony, the complainant side does not want to take any action against the accused — In view of same necessary permission to compound offence granted and consequently accused acquitted — CrPC, 1973, Ss. 320(1), (2) & (8)* (Paras 3, 10, 12, 13 and 15). *Khursheed* v. *State of U.P.*, (2007) 12 SCC 68: (2008) 2 SCC (Cri) 218: (2007) 6 All LJ 625: (2007) 59 AIC 265 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 28-9-2007]

[8447] — Ss. 325 and 323 r/w S. 34 — Proof beyond reasonable doubt — Necessity of — Alleged assault — *Conviction under Ss. 325 and 323 r/w S. 34 IPC — Prosecution not coming with clean hands, making the genesis of the incident doubtful — Considering facts and circumstances in* *their totality, evidence of prosecution witnesses, particularly of witnesses who were "attacked", and had been declared "hostile" (partly or fully), coupled with medical evidence and withholding of report purportedly lodged at police station by PW 6, held, conviction not justified — Benefit of doubt should have been given*

From the evidence it appears that the prosecution has not come with clean hands and the genesis becomes doubtful. The prosecution witnesses and in particular the star witness injured, PW 5, himself was declared "hostile" by the prosecution as it was clear that though initially his case was that over and above four persons who were before the court, three other persons were very much present, but subsequently, he stated that they were not present. Not only that three other persons were present at the scene of offence, but they were armed with weapons, their common object was to beat the witness and in fact they attacked the witness with lathis. The initial case, however, was subsequently totally changed and the witness had gone to the extent that over and above four accused before the court, nobody was present and he was not attacked and beaten by anyone else. (Para 21)

According to PW 5, he had sustained several injuries (28 injuries) but according to the medical evidence, there were only three injuries on the person of PW 5. Further, according to the witness, the injuries were caused by farsa, luhangi and sticks. Medical opinion, on the other hand, goes to show that injuries were possible by "hard" and "blunt" substance and not by any "sharp" weapon. All the three injuries were lacerated wounds and no incised wound was found on the person of PW 5. (Para 22)

Evidence of PW 6 was also shaky. He was not sure as to with which weapon, he was beaten. Moreover, according to him, he lodged a report at the police station on which his signature was taken, but that report is not forthcoming. (Para 23)

PW 9, who had intervened in the scuffle, was also declared "hostile". His evidence also did not go to show that the incident had happened in the manner deposed by the prosecution. (Para 24)

Considering facts and circumstances in their totality, evidence of prosecution witnesses, particularly of the witnesses who were "attacked", and had been declared "hostile" (partly or fully) coupled with the medical evidence, so far as injuries sustained by PW 5 were concerned and withholding of report said to have been lodged by PW 6, this was not a case to reach a finding that the accused had committed the offences with which they were charged. If it is so, obviously the benefit of doubt should be given to them. Accordingly held that it cannot be said "beyond reasonable doubt" that the accused had committed the offences with which they were charged. (Para 25)

The order of conviction and sentence recorded by the trial court and confirmed by the High Court is set aside. (Para 26). *Tulsiram* v. *State of M.P.*, (2008) 17 SCC 13.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 13-5-2008]

[8448] — Ss. 325 & 326 or Ss. 302/149, Ss. 307/149 & 148 — Sentence of conviction imposed by trial court under Ss. 302/149 for causing death of *R*, under Ss. 307/149 for attempting to murder *RW* and Ss. 148/149, set aside by High Court and Respondents 2 to 6 convicted under Ss. 325 and 326 — Sustainability — *Dispute regarding removing of motor from the well culminating in a fight wherein R sustained grievous injuries and was admitted in hospital on 17-9-1992 but was discharged on 25-9-1992 — However, he was again admitted on 28-9-1992 and was operated upon, but he expired on 30-9-1992 — The facts that the well was jointly owned by both the parties, that both sides caused injuries to members of other side and that the well was situated in the land of the respondents', undisputed — Electric motor installed in the well found to be belonging to one of the respondents and prosecution laying false claim thereover — Evidence of doctor suggestive of the fact that it was possible that the deceased may have suffered a head injury after he was discharged from the hospital since no such injury was detected when x-ray was taken on his admission in hospital immediately after occurrence — Held, since the complainants had gone to the respondents' land where the well was situated for no special purpose, High Court was right in holding that respondents had not formed any common intention nor were guilty for causing death of deceased or attempting to murder* ***RW*** *— Hence, interference with impugned judgment not called for* (Paras 22 to 26, 8 and 13). *Umrao* v. *State of Haryana*, (2006) 10 SCC 136: (2006) 3 SCC (Cri) 482: AIR 2006 SC 2152: 2006 Cri LJ 2798.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[8449] — Ss. 325 and 326 r/w S. 34 — *Assertion of pre-emption rights resulting in injuries — Plea of self-infliction whether tenable — Weakness of evidence whether strengthened by clear motive —*

Lower Courts' error in not assessing the case as a whole on the evidence — Appeal dismissed. Ajit Singh v. *State of Punjab*, (1970) 3 SCC 197: 1971 SCC (Cri) 15.

Bench Strength 2. Coram: **S.M. Sikri** and *K.S. Hegde*, JJ. [Date of decision: 29-9-1970]

[8450] — Ss. 325 and 326 r/w S. 34 — Causing grievous injuries — *Whether those injuries resulted in death or cause of death was some other factor could not be conclusively found — On facts, held, trial court rightly convicted accused persons under Ss. 325 and 326 r/w S. 34 instead of under Ss. 302/34 — Sentence of 7 years' RI under Ss. 326/34 and 5 years' RI under Ss. 325/34 imposed by trial court should be reduced to 4 years' RI*

The first doctor who had examined the deceased in the Civil Hospital had deposed in the cross-examination that none of the injuries, either individually or collectively, appeared to be dangerous to life. The doctor who had last attended the injuries in the Medical College had stated that the injured was initially given blood of Group A but subsequently blood of that group went out of stock and, therefore, he was given blood of Group O+. The witness further deposed that he could not say if the patient died because of blood reaction or because of injuries suffered by him but he did depose that there was fear in his mind about blood reaction and, therefore, he gave medicines to prevent it. Under these circumstances, the Sessions Judge concluded that the possibility of the injured having died because of blood reaction cannot be ruled out though the doctor conducting post-mortem had deposed the cause of death as rupture of liver on account of injuries. The view taken by the Sessions Judge is a plausible view and, therefore, it is not possible to accept the contention that the respondents deserved to be convicted for offence under Sections 302/34 IPC. They were rightly convicted for offence under Sections 325 and 326 read with Section 34 IPC by the Sessions Judge. (Para 13)

The ends of justice would be met if each of the respondents are sentenced to rigorous imprisonment for a period of four years instead of seven years and five years as directed by the Sessions Court. (Para 15). *State of Haryana* v. *Mange Ram*, (2003) 1 SCC 637: 2003 SCC (Cri) 401: AIR 2003 SC 558.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *K.G. Balakrishnan*, JJ. [Date of decision: 11-12-2002]

[8451] — Ss. 325 and 452 — Permission to compound offence of S. 325, Indian Penal Code granted by Supreme Court under S. 320(2), CrPC resulting in acquittal of the accused for that offence in view of S. 320(8), CrPC — *Offence under S. 452, IPC being non-compoundable, conviction under that provision maintained but sentence reduced to the period already undergone — CrPC, 1973, Ss. 320(2) & (8) and 386. Rajinder Singh* v. *State (Delhi Admn.)*, 1980 Supp SCC 337: 1981 SCC (Cri) 277: AIR 1980 SC 1200.

Bench Strength 2. Coram: *N.L. Untwalia* and *P.N. Shinghal*, JJ. [Date of decision: 9-5-1980]

— S. 325 r/w S. 34 *See also* S. 307 or S. 325 r/w S. 34

See also Ss. 326 and 325 r/w S. 34

See also Ss. 341, 326, 504, and 506 r/w S. 34 and Ss. 324 and 325 r/w S. 34

[8452] — S. 325 r/w S. 34 — *Scuffle — When common intention arises — Appreciation of evidence*

Special leave is limited to the question of law whether S. 325, IPC can be applied read with S. 34, IPC to all or any of the appellants. Section 34 can be invoked even where evidence shows that the meeting of the accused was at the spur of the moment. *Pandurang* v. *State of Hyderabad,* AIR 1955 SC 216, *referred to*

Held :

Though originally the concerted attack was on Phusa, the common intention on the part of Bhima and Krishna to inflict grievous injuries on Harnarayan can be inferred when they aimed blows on his head, which ultimately resulted in his death. But no such inference can be drawn in respect of the attack on Kalawati as she just came to the scene of the scuffle, when the blows were being exchanged. In her case, the person who hit her alone will be liable under S. 325, IPC It was further held that with reference to the lathi blows inflicted on Ramswarup in the melee when the appellants also were injured, there is no material from which common intention to cause him grievous injury can be inferred, nor was there evidence as to who caused the injury.

Application of S. 34 depends upon the circumstances of each case and the evidence pertaining to the incidents. *Bhima* v. *State of Haryana*, (1969) 1 SCC 64.

Bench Strength 3. Coram: *J.C. Shah, V. Ramaswami* and **A.N. Grover**, JJ. [Date of decision: 20-11-1968]

— S. 325 r/w S. 147 *See also* Ss. 304, 325 r/w Ss. 147 and 149

— S. 325 r/w S. 149 *See also* Ss. 147, 148, 302, 307, 323 and 325 r/w 149

See also Ss. 148, 302, 149, 325 r/w S. 149 and S. 323 r/w S. 149

See also Ss. 302, 148, 324 and 325 r/w S. 149

See also Ss. 302 and 325 r/w S. 149

See also Ss. 304, 325 r/w Ss. 147 and 149

See also Ss. 367, 147 and 325 r/w S. 149

[8453] — **S. 325 r/w S. 149 — Sentence — Apportionment of** — *6 years' RI awarded for constructive liability under — Held, notwithstanding such liability, the sentencing process will take note of the conspectus of circumstances including the absence of overt act, age and antecedents of the offender — Accused appellants of young age, committing no overt acts and instead some of them receiving injuries for which the prosecution offering no explanation — Held, relevant for sentence — One of the accused being only 16 years' old, deprived of the compassionate trial process due to absence of Children Act in the State — He, having already undergone 5 months' imprisonment, must be released forthwith — Sentence of the remaining accused reduced to 2 years' RI. Ram Prasad Sahu* v. *State of Bihar,* (1980) 1 SCC 74: 1980 SCC (Cri) 84: AIR 1980 SC 83: 1980 Cri LJ 10.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *R.S. Pathak*, JJ. [Date of decision: 12-10-1979]

— **Ss. 325/34** *See also* Ss. 34 and 302/34 and 325/34

See also under Ss. 299 to 304

See also Ss. 326, 325/34 and Ss. 323/34

[8454] — **Ss. 325/34 — Minor indiscretions of youth — Condonation of — Right to appointment — Condonation of minor indiscretions of youth — Desirability** — *Respondent's candidature for post of Head Constable cancelled on ground that he had concealed his involvement in criminal case under Ss. 325/34 IPC when he was aged about 20 years — Held, young people often commit indiscretions and approach should be to condone such indiscretions rather than branding them as criminals for rest of their lives — Besides, it was not a serious offence and hence, more lenient view should be taken — Impugned judgment holding cancellation of his candidature illegal calls for no interference* (Paras 8 to 12). *Commr. of Police* v. *Sandeep Kumar,* (2011) 4 SCC 644.

Bench Strength **2**. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 17-3-2011]

Morris v. Crown Office, (1970) 2 QB 114: (1970) 2 WLR 792: (1970) 3 All ER 1079 (CA), approved

Victor Hugo: Les Miserables, Lord Denning: Due Process of Law, considered

[8455] — **Ss. 325/34 — R.P.F. pursuing appellants on suspicion of possession of opium — Appellants assaulting policeman causing loss of tooth** — *Question of ownership of opium not relevant. Dharamvir* v. *State of M.P.*, (1974) 4 SCC 150: 1974 SCC (Cri) 352: AIR 1974 SC 1156: 1974 Cri LJ 812.

Bench Strength **2**. Coram: **H.R. Khanna** and *A. Alagiriswami*, JJ. [Date of decision: 9-8-1973]

[8456] — **Ss. 325/34 or Ss. 302/149, 302/148 — Five accused beating deceased with sticks causing his death** — *Incident occurring suddenly without any prior meeting of minds between the accused persons — None of the eyewitnesses claiming to have seen the entire incident from start to end — Most of the injuries sustained on the non-vital part of the body and since after falling down deceased was shifting his position 2-3 blows also landed on his skull — Nature of motive and injuries indicating accuseds' intention to give a thrashing and not to kill him — In the circumstances held, conviction under Ss. 148, 149 and 302 not sustainable — In absence of any evidence showing when and by whom the fatal injury was caused to the deceased, none could be convicted substantively for offence of murder with the aid of S. 34 — Hence conviction altered to that under Ss. 325/34 — Besides, for causing injuries to deceased's brother who tried to save the deceased conviction under Ss. 323/34 confirmed. Deoka* v. *State of Maharashtra*, 1993 Supp (1) SCC 447: 1993 SCC (Cri) 237.

Bench Strength **3**. Coram: *A.M. Ahmadi, V. Ramaswami* and *M.M. Punchhi*, JJ. [Date of decision: 11-7-1991]

[8457] — **Ss. 325/34 or 304 Pt. I — Infliction of injuries resulting in death** — *Out of thirteen external injuries on the dead body, eleven found on lower legs and arms — Intention to cause death or intention to cause such injuries as would be sufficient in the ordinary course of nature to cause death not found on the part of the accused by High Court — Agreeing with High Court's view, held, intention of accused appellants was to cause grievous hurt — Hence appellants must be convicted under Ss. 325/34 and not under S. 304 Part I — Sentence of imprisonment altered to that already undergone — Sentence of fine of Rs 7000 also imposed on each appellant — Amount realised as fine to be paid to parents of the deceased. Parusuraman* v. *State of T.N.*, 1992 Supp (1) SCC 429: 1992 SCC (Cri) 292: AIR 1993 SC 141.

Bench Strength **2**. Coram: **Kuldip Singh** and *M.M. Punchhi*, JJ. [Date of decision: 11-9-1991]

[8458] — **Ss. 325/34 and 304 Pt. II — Fight between two groups — Accused inflicting stick blows — Deceased dying after a week** — *Held, in the circumstances, accused are liable to be convicted under Ss. 325/34 and not under S. 304 Pt. II. Halke* v. *State of M.P.*, 1998 SCC (Cri) 953: AIR 1994 SC 951: 1994 Cri LJ 1220.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 24-7-1992]

[8459] — Ss. 325/109, 302/109 & 302/34 — Conviction under Ss. 325/109 in absence of separate charge — Sustainability — *A-1 and A-2 convicted under Ss. 302/34 and sentenced to life imprisonment whereas A-3 convicted under Ss. 302/109 — Sentence of A-1 commuted by State and appeal preferred by A-2 dismissed by Supreme Court — On appeal being preferred by A-3, conviction under Ss. 302/109 converted into that under Ss. 325/109 — Held, conviction of A-3 under Ss. 325/109 cannot be sustained — Principal offender having been convicted under Ss. 302/34, A-3 alone cannot be convicted under Ss. 325/109 for which no separate charge framed against him — Even otherwise offence under S. 109 not made out by evidence on record* (Para 4). *Shivananda Mundodi* v. *State of Karnataka*, (2006) 9 SCC 191: (2006) 2 SCC (Cri) 616.

Bench Strength **2**. Coram: *H.K. Sema* and *B.N. Srikrishna*, JJ. [Date of decision: 9-11-2005]

— **Ss. 325/149** *See also* Ss. 147, 447, 325/149 and 304 Pt. II/149

See also Ss. 149, 302/149, 325/149, 323/149 and 452

See also Ss. 149, 302/149, 325/149 and 324/149

See also under Ss. 299 to 304

See also Ss. 307/149 and 325/149

See also Ss. 326/149 and 325/149

[8460] — Ss. 325/149 — Enhancement of sentence

The High Court was justified in enhancing the sentence of 3 years' RI under Ss. 325/149, IPC to 7 years' RI when a brutal attack was made by several persons in a fit of superstition relating to suspected sorcery. The circumstances in which the attack was made calls for a deterrent sentence. *Dasrath Gond* v. *State of Orissa*, AIR 1955 SC 583: 1955 Cri LJ 1297.

Bench Strength **3**. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 15-3-1955]

[8461] — Ss. 325/149, 148 and 302/149 — Multiple injuries caused with iron rods, tyre lever and axe — *Injuries not sufficient to cause death in the ordinary course of nature nor likely to cause death — No attempt made by them to cause serious injury on any vital part of the body — Held, in the circumstances of the case, accused persons are liable to be convicted under Ss. 325/149 and not Ss. 302/149 — Sentence reduced to the period already undergone and a fine of Rs 10,000 to be paid to the widow of the deceased by way of compensation. G.S. Walia* v. *State of Punjab*, (1998) 5 SCC 150: 1998 SCC (Cri) 1283: AIR 1998 SC 2857.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 19-3-1998]

[8462] — Ss. 325/149, 323/149 and 147 — Compounding of offences under — Compounding of compoundable offences — *Where after conviction confirmed by High Court, appellant made an application for compounding before Supreme Court and such application was endorsed by complainant-informant, and occurrence dated back to 1987, in the interests of justice permission for compounding accorded; conviction and sentence set aside — CrPC, 1973, S. 320* (Para 2). *Ramphal* v. *State of M.P.*, (2000) 9 SCC 61: 2000 SCC (Cri) 1162.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 13-1-2000]

— **S. 326** *See also* S. 34

See also Ss. 34, 302/34, 307 and 326

See also Ss. 34/302 and 326

See also Ss. 96 to 106

See also Ss. 143, 147, 341, 307, 326 and 149

See also Ss. 148, 302/34, 307, 324 and 326

See also S. 149

See also Ss. 153-A, 201, 302, 326, 324, 419 and 436

See also under Ss. 299 to 304

See also S. 302 and Ss. 147, 148, 324, 326, 307 and 302 r/w S. 149

See also Ss. 302, 302/149 and 326, 326/149

See also S. 302 or S. 304 Pt. I and S. 326 or S. 324

See also Ss. 302, 307 and 326

See also S. 304 Pt. II r/w S. 149, S. 148 and S. 326 r/w S. 149

See also Ss. 307, 323, 326 and 447

See also Ss. 307 and 326

See also Ss. 307, 326 and 34

See also Ss. 308/34, 323/34, 324, 325 and 326

See also Ss. 320 and 326

See also Ss. 320, 326 and 324

See also Ss. 320 Seventhly, 326 and 324

See also Ss. 320 Eighthly and 326

See also Ss. 321, 322, 324 and 326

See also Ss. 323 and 326

See also Ss. 324, 325 and 326

See also Ss. 324 and 326

See also Ss. 324, 326 and 452

See also Ss. 325 and 326 or Ss. 302/149, Ss. 307/149 and 148

See also Ss. 326/149 and 325 and 326

See also Ss. 341, 326, 504, and 506 r/w S. 34 and Ss. 324 and 325 r/w S. 34

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C.12. Hurt, grievous or not, with or without dangerous weapons or means (Ss. 319 to 338)', in Vol. 2

[8463] — **S. 326 — Age of offender — Juvenile offender** — *No State law to deal with such offenders — Accused, aged 12 years, found guilty under S. 326 Indian Penal Code — Punishment to be imposed — Emphasis is on reformatory nature of the punishment that should be imposed on such accused. Hiralal Mallick* v. *State of Bihar*, (1977) 4 SCC 44: 1977 SCC (Cri) 538: AIR 1977 SC 2236: 1977 Cri LJ 1921.

Bench Strength **2**. Coram: **V.R. Krishna Iyer**[1] and **P.K. Goswami**[2], JJ. [Date of decision: 16-8-1977]

[8464] — **S. 326 — Appeal against conviction** — *Conviction and sentence of imprisonment upheld but sentence of fine reduced by Supreme Court — CrPC, 1973, Ss. 374 and 386 — Constitution of India, Art. 134. Labh Singh* v. *State of Punjab*, 1990 Supp SCC 20: 1990 SCC (Cri) 602.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1990]

[8465] — **S. 326 — Bail in case of offence under — Grant of, where trial delayed** — *Grievous hurt by dangerous weapons or means — Bail in case of — Appellant-accused having been in jail for about one year pending appeal against their conviction and punishment of 3 years' imprisonment, and there being no likelihood of the appeal being heard in near future, bail granted — CrPC, 1973, Ss. 437 and 439. Ganpat Shankar Mhatre* v. *State of Maharashtra*, (2005) 12 SCC 279.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 4-2-2005]

[8466] — **S. 326 — Causing grievous injury — FIR as well as eyewitnesses clearly stating that appellant inflicted injury with his weapon on the victim** — *Medical evidence affirming that the injury was grievous in nature and was inflicted by a sharp-edged weapon — Appellant's plea of exercise of right of self-defence rightly rejected by High Court — On facts held, appellant was rightly convicted under S. 326 — But in the peculiar facts and circumstances, sentence reduced from 3 years to 2 years' RI but fine enhanced from Rs 100 to Rs 3000 which shall be paid over to the injured victim by way of compensation — In case of default of payment of fine within a period of one month he should suffer further imprisonment for a period of six months* (Paras 23 and 24). *Preetam Singh* v. *State of Rajasthan*, (2003) 12 SCC 594.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 4-11-2003]

[8467] — **S. 326 — Compounding of offence** — *Offence under S. 326 IPC, held, not compoundable — High Court rightly refused to grant permission to compound the same — CrPC, 1973, S. 320(9)*

Sub-section (9) of Section 320 specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 provided under Section 320 can be compounded and the rest of the offences punishable under IPC cannot be compounded. (Para 11). *Bankat* v. *State of Maharashtra*, (2005) 1 SCC 343: 2005 SCC (Cri) 316: AIR 2005 SC 368: 2005 Cri LJ 646: (2005) 2 Mah LJ 707.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 25-11-2004]

Ram Lal v. State of J&K, (1999) 2 SCC 213: 1999 SCC (Cri) 123; Surendra Nath Mohanty v. State of Orissa, (1999) 5 SCC 238: 1999 SCC (Cri) 998, followed

Mahesh Chand v. State of Rajasthan, 1990 Supp SCC 681: 1991 SCC (Cri) 159; Y. Suresh Babu v. State of A.P., (2005) 1 SCC 347, held, per incuriam

Ram Pujan v. State of U.P., (1973) 2 SCC 456: 1973 SCC (Cri) 870, distinguished

***Distinguished in** Dhananjay v. State of Bihar, (2007) 14 SCC 768*

[8468] — **S. 326 — Compounding of offence under — Offence under S. 326 IPC, held, is not compoundable under S. 320 CrPC** — *However, having regard to the facts of the case that the occurrence had taken place on 24-12-1979 on a trivial issue and that the complainant and the accused are close relations who are now living amicably, the sentence of 18 months' rigorous imprisonment reduced to the period already undergone by appellant — CrPC, 1973, S. 320. Jalaluddin* v. *State of U.P.*, (2002) 9 SCC 561: 2001 Cri LJ 4944.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and *Doraiswamy Raju*, JJ. [Date of decision: 7-4-2000]

[8469] — **S. 326 — Compounding of offences — Non-compoundable offences — Conviction under S. 326 IPC — Petitioners cannot be acquitted straightaway in spite of settlement between parties** — *Held, some of non-compoundable offences under Ss. 498-A, 326, etc. IPC can be made compoundable by introducing a suitable amendment in the statute — Law Commission of India could examine whether a suitable proposal can be sent to the Union Government in this regard — CrPC, 1973, S. 320. Ramgopal* v. *State of M.P.*, (2010) 13 SCC 540.

Bench Strength **2**. Coram: *Markandey Katju* and *T.S. Thakur*, JJ. [Date of decision: 30-7-2010]

[8470] — S. 326 — Conviction and sentence under Ss. 302/34 set aside and conviction under S. 326 and sentence of 3 years' RI imposed on the basis of concession on behalf of the respondent State which on facts appearing to be proper. *Punjab Singh* v. *State of Haryana*, 1984 Supp SCC 233: 1984 SCC (Cri) 484: AIR 1984 SC 1233: 1984 Cri LJ 921.

Bench Strength **2**. Coram: *D.A. Desai* and *Ranganath Misra*, JJ. [Date of decision: 15-3-1984]

[8471] — S. 326 — Conviction confirmed — *Pursuant to long enmity, accused persons armed with firearms, entered house of S — Appellant J fired a shot at S — Four dying declarations recorded during investigation — Trial court found that accused persons had not been properly identified — Due to long enmity, false implication was possible — Accused were accordingly acquitted — High Court maintained the acquittal of four of the accused but reversed acquittal of appellant J — Eyewitnesses' account of several persons including wife of deceased — Dying declarations recorded before several independent persons including an Executive Magistrate — Conviction of appellant upheld — No fault could be found with conviction — CrPC, 1973, Ss. 378 and 386(a)* (Paras 3 and 5 to 7). *Jabar Singh* v. *State of M.P.*, (2010) 11 SCC 742.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 12-8-2010]

[8472] — S. 326 — Death as a result of multiple injuries — *Co-accused acquitted — Apart from fractures by blunt weapons, incised injuries also found on the body of the deceased — According to prosecution case accused-appellant inflicted barchi blows on upper part of right arm of the deceased — But no incised wound found on that part of the body — Moreover the incised wounds found to be non-fatal — Hence he could at best be convicted under S. 326 or 324 — His conviction under S. 302 therefore altered to S. 326 and his sentence reduced to the period of more than 5 years' imprisonment already undergone. Rattan Singh* v. *State of Punjab*, 1988 Supp SCC 456: 1988 SCC (Cri) 708: AIR 1988 SC 2147: 1988 BLJR 459.

Bench Strength **2**. Coram: *G.L. Oza* and *K. Jagannatha Shetty*, JJ. [Date of decision: 22-3-1988]

[8473] — S. 326 — Free fight — *Accused inflicting only one injury with a sharp-edged weapon — He could not be held responsible for fatal injury inflicted by other accused — His conviction under S. 326 upheld. Amrik Singh* v. *State of Punjab*, 1994 Supp (1) SCC 320: 1994 SCC (Cri) 387: 1993 Cri LJ 2857.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 4-2-1993]

[8474] — S. 326 — Grievous hurt — *Testimony of son that accused seen coming out of deceased's house with blood-stained balua — Son not questioned in cross-examination — Conviction upheld. Prasad Mahato* v. *State of Bihar*, 1994 SCC (Cri) 55: AIR 1993 SC 2477: 1993 Cri LJ 3136.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 18-2-1993]

[8475] — S. 326 — Grievous hurt — Blow on head with an axe

A blow on the head with an axe which penetrates half an inch into the head is likely to endanger life and hence is a grievous hurt. *Pandurang* v. *State of Hyderabad*, AIR 1955 SC 216: (1955) 1 SCR 1083: 1955 Cri LJ 572, 578.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *S.R. Das* and **Vivian Bose**, JJ. [Date of decision: 3-12-1954]

[8476] — S. 326 — Grievous hurt — Serious burn injuries caused by acid pouring — No leniency to accused in such cases — *Original sentence, on facts, restored — Appellant suffering serious burn injuries on head, face, neck, eyes and chest due to acid pouring by Respondent 1 — Accused convicted under S. 326 and sentenced to three years' RI with fine and default stipulation — However, High Court reducing sentence to the period already undergone, which was only thirty-five days, while increasing fine — Sustainability — Held, interference by High Court in such heinous crime, not proper — Accused is a person of criminal inclinations and no leniency is called for, for such persons, otherwise people cannot go around in life peacefully — Hence, judgment of High Court set aside* (Paras 5 and 6). *Vishwambhar Narayan Jadhav* v. *Mallappa Sangramappa Mallipatil*, (2007) 15 SCC 600.

Bench Strength **2**. Coram: *Markandey Katju* and *Aftab Alam*, JJ. [Date of decision: 2-12-2008]

[8477] — S. 326 — Grievous hurt by dangerous weapon — Ingredients of the section — What is dangerous weapon would depend upon facts of each case, having regard to the weapon's size, sharpness, etc. — *Stone used for hitting the victim on his head and face causing lacerated wound over left posterior parietal region of head and fracture of the left upper second incisor tooth involving pulp and root — Medical evidence established that the injuries suffered by the victim covered by expression "grievous hurt" under S. 320 — But having regard to the size of the stone used, held, it was not covered by the expression "dangerous weapon" — Therefore, accused liable to be convicted under S. 325 instead of S. 326*

The prosecution case was that while PW 1 was walking along a public road, the appellant hit him on his head and face with a stone causing injuries. The doctor who examined the injured noticed following injuries: (*1*) Lacerated wound over the left posterior parietal region of the head. (*2*) Fracture of the left upper second incisor tooth involving the pulp and the root. The trial court convicted the appellant under Section 326 IPC and sentenced him to 2 years' RI. The Addl. Sessions Judge upheld the conviction, and sentence. The High Court dismissed the revision application under Section 397 r/w Section 401 CrPC.

Disposing of the appeal,

Held :

"Grievous hurt" has been defined in Section 320 IPC. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly. (Paras 14 and 15)

There is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. In this case, the evidence of the doctor (PW 5) clearly shows that the hurt or the injury that was caused was covered under the expression "grievous hurt" as defined under Section 320 IPC. The inevitable conclusion is that a grievous hurt was caused. (Para 17)

The expression "any instrument which, used as a weapon of offence, is likely to cause death" used in Section 326 has to be gauged taking note of the heading of the section. The heading of the section provides some insight into the factors to be considered. What would constitute a "dangerous weapon" would depend upon the facts of each case and no generalisation can be made. It is not that in every case a stone would constitute a dangerous weapon. It would depend upon the facts of the case. In some provisions e.g. Sections 324 and 326 the expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable. In the instant case considering the size of the stone which was used, as revealed by material on record, it cannot be said that a dangerous weapon was used. Therefore, the conviction is altered to Section 325 IPC. (Paras 16 and 17). *Mathai* v. *State of Kerala*, (2005) 3 SCC 260: 2005 SCC (Cri) 695: AIR 2005 SC 710: 2005 Cri LJ 898.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-1-2005]

State of U.P. v. Indrajeet, (2000) 7 SCC 249: 2000 SCC (Cri) 1338, relied on

[8478] — S. 326 — Non-compoundable offence — Compromise in — Relevance of — *Held, though compromise cannot be recorded in such a case, but the effect of compromise can be taken into consideration while awarding the sentence — Appellants convicted under S. 326 IPC and sentenced to two years' RI — Compromise petition filed — Appellants in custody for about five months — Held, ends of justice would be met if sentence reduced to period already undergone — CrPC, 1973, Ss. 320 and 354* (Para 4). *Jetha Ram* v. *State of Rajasthan*, (2006) 9 SCC 255: (2006) 2 SCC (Cri) 561.

Bench Strength **2**. Coram: *B.N. Agrawal* and *S.H. Kapadia*, JJ. [Date of decision: 29-7-2005]

[8479] — S. 326 — Non-compoundable offence — Settlement between parties — *Held, conviction would stand, sentence reduced to that already undergone and accused directed to pay compensation to the complainant — CrPC, 1973, S. 320. Shah Noor* v. *State of A.P.*, (1982) 3 SCC 511: 1983 SCC (Cri) 107.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.P. Sen*, JJ. [Date of decision: 27-7-1981]

[8480] — S. 326 — Nose cutting — Sentence

Since there was grave provocation for the accused who could naturally feel extremely hurt by the victim's conduct in seducing the former's wife and thereafter living in the same vicinity, the ends of justice would be amply met if the accused are sentenced to three years rigorous imprisonment. The sentence of eight years is too severe in these circumstances. *Modi Ram* v. *State of M.P.*, (1972) 2 SCC 630: 1973 SCC (Cri) 45: AIR 1972 SC 2438: 1972 Cri LJ 1521.

Bench Strength **3**. Coram: *J.M. Shelat*, **I.D. Dua** and *H.R. Khanna*, JJ. [Date of decision: 11-8-1972]

[8481] — S. 326 — On facts, conviction upheld — *No law point laid down. Thathanna* v. *State of A.P.*, AIR 1994 SC 652: 1994 Cri LJ 632.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N. Venkatachala*, JJ. [Date of decision: 6-10-1993]

[8482] — S. 326 — Plea of leniency — Case of acid throwing by appellant on complainant due to enmity between landlord (appellant's father) and tenant (complainant) regarding tenancy — *Conviction of appellant under S. 326 IPC with sentence of 4 years' RI, while his father acquitted — Incident 30 years old — Complainant filing affidavit absolving appellant — Nothing stated against appellant regarding his indulgence in any criminal activity — Nothing on record to suggest that injuries were very serious, endangering life of complainant — Appellant already undergoing one year of sentence before being released on bail on the basis of order passed by Supreme Court — Herein, notice was issued limited to question of sentence alone, hence, merits of conviction not considered — In the facts and circumstances of the case, leaning in favour of leniency, sentence limited to the period undergone* (Paras 10 and 11). *Radhey Shyam* v. *State of U.P.*, (2008) 14 SCC 558: (2009) 2 SCC (Cri) 862: 2009 Cri LJ 1107.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *V.S. Sirpurkar*, JJ. [Date of decision: 18-11-2008]

[8483] — S. 326 — Sentence — *Accused, a school teacher, offence committed in heat of moment and lapse of 13 years since commission of the offence considered for reducing sentence of one year's RI to imprisonment till rising of the Court and fine of Rs 5000*

Having regard to the facts that the appellant was a school teacher, he had acted in the heat of the moment and the incident occurred about 13 years back, it would not be desirable to send him back to jail. Therefore, the sentence of RI for one year awarded by the High Court should be reduced to imprisonment till the rising of the court and payment of a fine of Rs 5000 or in default, to undergo rigorous imprisonment for a period of six months. The amount of fine shall be paid to the complainant by way of compensation. *Naib Singh* v. *State of Punjab*, (1986) 4 SCC 401: 1986 SCC (Cri) 475: AIR 1986 SC 2192: 1986 Cri LJ 2061.

Bench Strength **2**. Coram: **A.P. Sen** and *B.C. Ray*, JJ. [Date of decision: 23-9-1986]

[8484] — S. 326 — Sentence — *Causing injury with an axe on forehead resulting in fracture — Conviction under S. 326 proper — Sentence of one year's RI not excessive. A.C. Gangadhar* v. *State of Karnataka*, 1998 SCC (Cri) 1477: AIR 1998 SC 2381.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 28-4-1998]

[8485] — S. 326 — Sentence — *Occurrence taking place about 14 years back and accused persons already undergoing imprisonment for a year or so — Sentence reduced to the period already undergone. G. Satyanarayana Reddy* v. *State of A.P.*, 1994 Supp (2) SCC 287: 1994 SCC (Cri) 1239.

Bench Strength **2**. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 9-5-1994]

[8486] — S. 326 — Sentence — Both hands of the victim almost maimed by shots fired by the accused appellant — *Sentence of 3 years and fine of Rs 500 imposed by High Court — No error of law in the High Court's judgment — Supreme Court refused to take a lenient view on the question of sentence. Gurdeep Singh* v. *State of Rajasthan*, 1980 Supp SCC 432: 1981 SCC (Cri) 360: AIR 1979 SC 1432.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 16-2-1979]

[8487] — S. 326 — Sentence — Causing injury with an axe on forehead resulting in fracture — *Conviction under S. 326 proper — Sentence of one year's RI not excessive. A.C. Gangadhar* v. *State of Karnataka*, (2009) 14 SCC 710.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 29-4-1998]

[8488] — S. 326 — Sentence — Fact of compromise can be taken into account even though offence non-compoundable. *Ram Pujan* v. *State of U.P.*, (1973) 2 SCC 456: 1973 SCC (Cri) 870: AIR 1973 SC 2418: 1973 Cri LJ 1612.

Bench Strength **3**. Coram: *P. Jaganmohan Reddy*, **H.R. Khanna** and *V.R. Krishna Iyer*, JJ. [Date of decision: 25-7-1973]

Held, in *Surendra Nath Mohanty* v. *State of Orissa*, (1999) 5 SCC 238 in para 8 that that the course adopted in this case was not in accordance with law.

[8489] — S. 326 — Sentence — Mitigating circumstances — Old age — *Accused aged 71 years o the date of occurrence and had undergone imprisonment for quite some time — Sentence of 3 years' R.I. reduced to the period already undergone. Kishan Chand* v. *State of Punjab*, AIR 1994 SC 32: 1994 Cri LJ 19.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *R.C. Patnaik*, JJ. [Date of decision: 19-2-1992]

[8490] — S. 326 — Sentence for offence under, r/w S. 27, Arms Act — High Court altering sentence of five years' RI and fine of Rs 2000 to period of custody already undergone (63 days) and enhancing fine to Rs 25,000 — *Held, High Court erred in doing so — Custodial sentence, in light of enhanced fine, however, raised only to 18 months, and of the Rs 25,000 fine Rs 10,000* *awarded to victim-complainant — CrPC, 1973, S. 357 — Victim-complainant awarded part of the fine — Constitution of India — Art. 136 — Arms Act, 1959, S. 27*

The trial court found the respondent-accused guilty of the offence punishable under Section 326 IPC and Section 27 of the Arms Act. He was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs 2000 with default stipulation for the offence relatable to Section 326 IPC. He was also sentenced to undergo rigorous imprisonment for one year in respect of the offences under the Arms Act. On appeal, however, the High Court while upholding the conviction reduced the sentence to the period of custodial sentence already undergone. The fine was, however, enhanced to Rs 25,000. The appellant complainant/victim was before the Supreme Court by special leave.

Allowing the appeals,

Held :

When the factual scenario as noted by the trial court, and the principles of law as noted above are considered, the inevitable conclusion is that the High Court was not justified in reducing the custodial sentence. Taking into account the enhanced fine as imposed by the High Court which admittedly had been paid, it would be appropriate to fix the custodial sentence at eighteen months. The accused-Respondent 1 shall surrender to custody forthwith to serve the remainder of sentence. The custodial sentence has been fixed taking note of the peculiar facts of the case. Out of the fine deposited a sum of Rs 10,000 shall be paid to the appellant. (Paras 9 and 10). *Surjit Singh* v. *Nahara Ram*, (2004) 6 SCC 513: 2004 SCC (Cri) 1801: AIR 2004 SC 4122.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 5-8-2004]

Friedman: Law in Changing Society, relied on

State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13: 2003 SCC (Cri) 1935, relied on

[8491] — S. 326 — Sentence under — Reduction of — *Appellant sentenced to 3 years' RI by High Court — Trial court considered the compromise between the parties and directed the other accused to be released on executing a bond — Incident took place about two decades back — Appellant already undergone about six months' imprisonment — In these circumstances, imposing a fine of Rs 2000, sentence of imprisonment reduced to period already undergone* (Para 5). *Sattan Sahani* v. *State of Bihar*, (2002) 7 SCC 604: 2002 SCC (Cri) 1811.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 1-10-2002]

[8492] — S. 326 — Sentence under — Reduction of — *Settlement arrived at between parties — On facts, sentence reduced to period of about 4 months already undergone — CrPC, 1973, S. 320 — Settlement in respect of offence under S. 326 IPC. Ram Ekbal Upadhya* v. *State of Bihar*, (2001) 10 SCC 233.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 17-11-2000]

[8493] — S. 326 — Sole testimony of victim suffering from substantial infirmities and inconsistencies — *Held, conviction cannot be sustained. Sudhir* v. *State of M.P.*, (1985) 1 SCC 559: 1985 SCC (Cri) 123: AIR 1985 SC 515: 1985 Cri LJ 795.

Bench Strength **2**. Coram: *Y.V. Chandrachud, C.J.* and *V. Balakrishna Eradi*, J. [Date of decision: 24-1-1985]

[8494] — Ss. 326 and 34 — Suspension of sentence pending appeal and release of appellants on bail — Discretion of High Court — Scope and manner of exercise of — Considerations involved — *Held, High Court has to consider each case on the basis of (i) nature of the offence, (ii) manner in which occurrence had taken place, and (iii) whether in any manner bail granted earlier had been misused — High Court has ample power and discretion to suspend sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case — No straitjacket formula can be applied in exercising the discretion — Facts and circumstances of each case will govern the exercise of judicial discretion — Considering the fact position in its entirety, Supreme Court suspending sentence pending appeal and directing release of appellants on bail — Constitution of India, Art. 136 — CrPC, 1973, S. 389*

Disposing of the appeal,

Held :

When an appeal is preferred against conviction in the High Court, the High Court has ample power and discretion to suspend the sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case. While considering the suspension of sentence, each case is to be considered on the basis of nature of the offence, manner in which occurrence had taken place, whether in any manner bail granted earlier had been misused. In fact, there is no straitjacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discretion while considering the application filed by the convict under Section 389 CrPC. (Para 14)

In the present case, the appellants were on bail during the pendency of the case before the Sessions Court. The Sessions Court has acquitted most of the accused persons after trial except the appellants who were convicted under Section 326 read with Section 34 IPC and sentenced to four years' rigorous imprisonment with a fine of Rs 2000. It is not the case of the other side, that, when the accused were on bail they had indulged themselves in any offence either under the provisions of the Penal Code or any other statute. It is also not the case of the prosecution that when the appellants were on bail they had either jumped the bail or were any way responsible for prolonging the proceedings before the Sessions Court, and it is also not the case of the other side that they would abscond and would not be available to undergo the sentence if the appellate court affirms the order passed by the Sessions Court. (Paras 23 and 13)

Taking into consideration an overall view of the matter and in particular the offence alleged and sentence imposed and further taking into consideration the acquittal of the other accused persons, who were also charge-sheeted for the same offences as that of the appellants and further taking into consideration the conduct of the appellants during the trial before the Sessions Court when they were on bail, the High Court could have suspended the sentence and granted bail to the appellants. Therefore, interference with the discretion exercised by the High Court would be justified under Article 136 of the Constitution. The sentence is suspended and the appellants are directed to be released on bail on each one of them executing a bond with two solvent sureties to the satisfaction of the trial court. (Para 24). *Angana* v. *State of Rajasthan*, (2009) 3 SCC 767: (2009) 2 SCC (Cri) 742: AIR 2009 SC 1669: 2009 Cri LJ 1538.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *H.L. Dattu*, JJ. [Date of decision: 6-2-2009]

Takht Singh v. State of M.P., (2001) 10 SCC 463: 2003 SCC (Cri) 800; Kashmira Singh v. State of Punjab, (1977) 4 SCC 291: 1977 SCC (Cri) 559; Babu Singh v. State of U.P., (1978) 1 SCC 579: 1978 SCC (Cri) 133; Emperor v. H.L. Hutchinson, AIR 1931 All 356; Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421: 1999 SCC (Cri) 553; Suresh Kumar v. State (NCT of Delhi), (2001) 10 SCC 338: 2002 SCC (Cri) 1043, relied on

Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281: 2005 SCC (Cri) 1052; Sidhartha Vashisht v. State (NCT of Delhi), (2008) 5 SCC 230: (2008) 2 SCC (Cri) 571; Gomti v. Thakurdas, (2007) 11 SCC 160: (2008) 1 SCC (Cri) 644, considered

[8495] — Ss. 326 and 39 — Voluntarily causing grievous hurt — Mens rea — *Accused adulterating liquor with methyl alcohol, a poisonous substance — Consumption of liquor resulting in death and permanent loss of eyesight of several persons — Accused pleading that they had no knowledge that the effect of consumption of the adulterated liquor would be so injurious — Held, contention not sustainable — Adulteration itself an illegal act under Kerala Abkari Act — Having regard to the percentage of methyl alcohol, the poisonous substance, in the liquor, it is clear that the persons responsible for mixing the same had knowledge that consumption of the liquor was likely to cause very serious adverse effects — Fact that all the consumers were not adversely affected not material* (Para 26). *E.K. Chandrasenan* v. *State of Kerala*, (1995) 2 SCC 99: 1995 SCC (Cri) 329: AIR 1995 SC 1066: 1995 Cri LJ 2060: (1995) 1 Crimes 421.

Bench Strength **2**. Coram: *Kuldip Singh* and **B.L. Hansaria**, JJ. [Date of decision: 17-1-1995]

[8496] — Ss. 326 and 120-B — Sentence — Enhancement of — Liquor tragedy — *Deterrence and retribution principles applied — Partners of a firm in conspiracy with a chemist adulterating liquor with methyl alcohol, a poisonous substance and supplying the same to shops and sub-shops — Consumption of such liquor resulting in death of 70 persons, total loss of eyesight of 24 persons and minor injuries to others — Held on facts, enhancement of sentences called for — Plea of the chemist for non-enhancement on ground of his now being an old man of 72 years, completely deaf and financially weak not acceptable — Sentence enhanced to the maximum i.e. life imprisonment* (Paras 46 to 52). *E.K. Chandrasenan* v. *State of Kerala*, (1995) 2 SCC 99: 1995 SCC (Cri) 329: AIR 1995 SC 1066: 1995 Cri LJ 2060: (1995) 1 Crimes 421.

Bench Strength **2**. Coram: *Kuldip Singh* and **B.L. Hansaria**, JJ. [Date of decision: 17-1-1995]

[8497] — Ss. 326, 143, 148 r/w S. 149 — Sustainability of conviction under — Sentence to be imposed — Effect of protraction of proceedings — *Accused-appellants (A-1 to A-18) alleged to have formed an unlawful assembly and brutally assaulted V (deceased, who later succumbed to the injuries) and PWs 1, 3 and 10 — PWs managing to escape from their clutches and leaving V at the place of occurrence in injured condition — Evidence of eyewitness (PW 2) and injured witnesses found credible and fully establishing the prosecution case against A-1 to A-5 — Discrepancies in their evidence found minor and insignificant — No discernible reason found for false implication — However, participation of accused-appellants A-6 to A-18 not established by satisfactory and cogent evidence connecting them with the commis-*

sion of the offences — Hence, while acquitting accused-appellants A-6 to A-18, conviction of accused-appellants A-1 to A-5 under S. 326 r/w S. 149 maintained — However, considering the fact that the incident took place on 4-11-1986, nature of injuries suffered by the deceased and PWs and the physical, mental and financial hardships suffered by the accused-appellants in prosecuting the legal battle in different courts for the past about 20 years, sentence of 5 years' RI reduced to 1 year's RI each, while the amount of fine reduced to Rs 5000 each from Rs 10,000 each — Mitigating circumstances or factors (Paras 13, 16, 17 and 18). *Venkategowda* v. *State of Karnataka*, (2006) 13 SCC 203: (2007) 2 SCC (Cri) 610: (2006) 48 AIC 47 (SC).

Bench Strength **2**. Coram: *A.K. Mathur* and **L.S. Panta**, JJ. [Date of decision: 6-11-2006]

[8498] — Ss. 326, 148 and 302 — Fatal injuries caused by unlawful assembly — Conviction for murder when not possible — *Multiple injuries caused to the deceased by members of unlawful assembly — Charge against the appellants stating that their common object was to assault the deceased and commit rioting with deadly weapons — Absence of evidence to show who caused fatal injuries to the deceased — Held, in the circumstances, High Court rightly convicted them under S. 326. Rewa Ram* v. *Teja*, (2008) 8 SCC 346.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 3-3-1998]

[8499] — Ss. 326, 302, 34, 149, 147 & 148 — Dispute originating from a trivial exchange of abuse between two groups — *Deceased, though not the main target of attack, knifed to death, while his brother, the main target, sustaining grievous injuries — Prosecution evidence discrepant as to whether A-1 or A-2 fatally stabbed the deceased but established that they acted in unison — Other accused, either unarmed or having sticks, only standing at some distance at the time of the stabbing, but contributing in causing grievous hurt to deceased's brother — Held, on facts A-1 and A-2 shared common intention of causing grievous hurt and not death and hence to be convicted under S. 326 read with S. 34 and also under S. 148 — Other accused, held, had common object to cause grievous hurt and hence to be convicted under S. 326 read with S. 149 and also under S. 147 — Sentence reduced to the period already undergone. Nammu* v. *State of M.P.*, 1980 Supp SCC 23: 1979 SCC (Cri) 1025: AIR 1979 SC 1755: 1979 Cri LJ 1329.

Bench Strength **3**. Coram: *R.S. Sarkaria, P.N. Shinghal* and **O. Chinnappa Reddy**, JJ. [Date of decision: 31-7-1979]

[8500] — Ss. 326 and 302/34 — Appellant causing grievous injury on the head of the deceased by a kudali — *Other two accused against whom the allegation was that they also inflicted injuries on the deceased acquitted — Absence of evidence to prove that the injury inflicted by the appellant resulted in death of the victim — Held, in the circumstances, appellant is liable to be convicted under S. 326 and not under S. 302. Roopa Ram* v. *State of Rajasthan*, 1999 SCC (Cri) 1316: 1999 Cri LJ 2901.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *M. Srinivasan*, JJ. [Date of decision: 9-10-1998]

[8501] — Ss. 326 and 307 — Grievous hurt — Sentence — Relative seriousness of offences under Ss. 307 and 326 — Alteration of conviction from S. 307 to S. 326 — Effect on sentence — *Trial court convicting respondent-accused under S. 307 and sentencing them to RI for 5 years and fine of Rs 1000 each — High Court in appeal filed thereagainst altering conviction to S. 326 and reducing sentence to period undergone which was four months and three months respectively, and in lieu of imprisonment imposing fine of Rs 3500 each with default stipulation — Considerations weighing therefor being (i) offence was committed in year 1996, and (ii) alteration in conviction — Held, any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on society generally, and particularly on two sides to the case — Sometimes victim may suffer even more than accused — Hence, no reason to give all benefits on account of delay in trial to accused alone — In the instant case there was nothing to indicate that appellants or prosecution were responsible for delay in trial — Hence, High Court was not right in substituting custodial sentence of respondents to only fines of Rs 3500 — Further, it would be a mistake to think that as a rule all offences falling under S. 326 would be less serious than offences falling under S. 307 IPC and would consequently attract lighter sentence — Offence under S. 326 may be actually more serious than another falling under S. 307 IPC — From injuries suffered by victim it was evident that though respondents did not intend to kill him altogether, they surely wanted to leave him crippled for a lifetime — Therefore, High Court was not right in letting them off on period undergone — Accordingly RI for 2 years in addition to fine of Rs 3500 imposed out of which Rs 6000 directed to be paid to victim — Constitution of India, Art. 21* (Paras 2, 3 and 12 to 16). *Mangal Singh* v. *Kishan Singh*, (2009) 17 SCC 303: AIR 2009 SC 1535.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **Aftab Alam**, JJ. [Date of decision: 21-11-2008]

[8502] — S. 326 or S. 307 or Ss. 323 & 324 — Appropriate conviction and sentence — Benefit of doubt — Doubt as to whether accused while inflicting two knife injuries, on chest and shoulder deliberately causing simple or grievous injuries — *Injured however, remaining in hospital for 15 days — On facts, held, accused should be held guilty under S. 326 IPC simpliciter and not under Ss. 307 or 323 and 324 — Accused having undergone one year's imprisonment in 1987 (when he was 25 years old), his sentence reduced to period already undergone*

A reading of the injuries would indicate that though the general condition of the victim was very bad yet there was no categorical statement in the medical certificate issued by the doctor, PW 1 that the injuries were in fact dangerous to life. It is doubtful as to whether it was a deliberate omission or an oversight but whatsoever it may be the benefit must accrue to the accused. Furthermore, the case would not fall under Sections 323 or 324 IPC because of the statement of the victim that as he had remained in hospital for fifteen days due to the injuries caused to him, this made out a case of grievous hurt. Accused *RK* alone should thus be held guilty under Section 326 IPC simpliciter. As *RK* had undergone sentence of one year when he was a young man of 25 years in 1987 and was now in his middle years, his sentence must be reduced to the period already undergone. (Paras 12 and 13). *Neelam Bahal* v. *State of Uttarakhand*, (2010) 2 SCC 229.

Bench Strength **2**. Coram: *H.S. Bedi* and *Deepak Verma*, JJ. [Date of decision: 2-12-2009]

[8503] — Ss. 326 and 320 — For conviction under S. 326, requirements of S. 320 IPC must be satisfied — *Accused-appellant inflicted only one bhala-blow — Said act was likely to cause death of the injured person — On facts, held, offence attracted conviction under S. 326 IPC* (Para 4). *Sattan Sahani* v. *State of Bihar*, (2002) 7 SCC 604: 2002 SCC (Cri) 1811.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 1-10-2002]

[8504] — Ss. 326 and 320 Secondly & Eighthly — Grievous hurt — Hurt to be grievous need not be such which endangers life — *Requirement endangering life mentioned in cl. Eighthly cannot be read in other clauses of S. 320 — Where due to consumption of liquor adulterated with methyl alcohol, a poisonous substance, supplied by accused, 24 persons lost their eyesight permanently, held, the hurt must be regarded as 'grievous' because of cl. secondly of S. 320. E.K. Chandrasenan* v. *State of Kerala*, (1995) 2 SCC 99: 1995 SCC (Cri) 329: AIR 1995 SC 1066: 1995 Cri LJ 2060: (1995) 1 Crimes 421.

Bench Strength **2**. Coram: *Kuldip Singh* and **B.L. Hansaria**, JJ. [Date of decision: 17-1-1995]

Govt. of Bombay v. Abdul Wahab, (1945) 47 Bom LR 998: AIR 1946 Bom 38, distinguished

[8505] — Ss. 326, 323 & 324 r/w S. 149 — Appeal against acquittal — *Reappreciation of evidence and interference with the findings of acquittal — When called for — CrPC, 1973, Ss. 378 and 386*

While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if it decides to interfere, it should assign reasons for differing with the decision of the trial court. (Para 8)

In the instant case the High Court had not interfered in the matter in a routine manner merely because a different view was possible. The High Court had interfered rightly, because the trial court unreasonably disbelieved the evidence of six eyewitnesses on insufficient grounds, and had also assigned reasons for interfering with acquittal. Hence, judgment of the High Court was well justified. (Para 16). *Kallu* v. *State of M.P.*, (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546: AIR 2006 SC 831: 2006 Cri LJ 799.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

Bhim Singh v. State of Haryana, (2002) 10 SCC 461: 2003 SCC (Cri) 1469, relied on

[8506] — Ss. 326, 323 and 324 r/w S. 149 — Unlawful assembly of 27 persons, including the appellants, armed variously, alleged to have assaulted *S* (PW 4) and when the womenfolk (PWs 6, 7, 9 and 10) ran to save him they were also beaten up — *Testimony of PW 3 (a neighbour and an eyewitness) read with evidence of PWs 4, 6, 7, 9 and 10 clearly establishing the identity of the appellants as the assailants — Neither S nor the* *womenfolk were armed while the appellants fully armed had entered S's house shouting "kill/hit" — Evidence of eyewitnesses also making it clear that but for a police van intervening at that time, there was likelihood of S and the womenfolk sustaining more injuries — Longstanding enmity between the victim and the appellants established — Cross-complaint by the defence not material since none of them were injured — Held, in such circumstances the appellants were rightly held guilty by the High Court — Further held, mere fact that there was enmity between the two groups cannot be a ground to reject the clear evidence of eyewitnesses* (Paras 9 to 15). *Kallu* v. *State of M.P.*, (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546: AIR 2006 SC 831: 2006 Cri LJ 799.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

[8507] — Ss. 326 and 324 — Conviction and sentence under — *Prosecution case that Appellant 1 stabbed PW 3 with a knife and Appellants 2 to 4 assaulted him with bamboo clubs and iron rod — Trial court taking the view that prosecution proved beyond reasonable doubt guilt of the accused appellants — Trial court convicting Appellant 1 under S. 326 and sentencing him to one year's RI and Appellants 2 to 4 under S. 324 and sentencing them to 3 months' simple imprisonment — Appeal against the said conviction and sentence dismissed by appellate court — On examination of evidence, held, prosecution has proved beyond reasonable doubt that appellants had attacked and caused injuries to PW 3 — Hence, conviction upheld — Appellant 3 already died and Appellants 2 and 4 had already served out the sentence — Since Appellant 1 suffering from 60% disability in both lower limbs, diabetes and acute bronchitic attacks and since his wife deserted him and he having two small children with an aged mother, it will be sufficient if the sentence of Appellant 1 is reduced to that already undergone by him* (Para 10). *R. Seetharam* v. *State of Karnataka*, (2001) 9 SCC 59: 2002 SCC (Cri) 127: AIR 2001 SC 1091: 2001 Cri LJ 1451.

Bench Strength **2**. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 28-2-2001]

[8508] — S. 326 or S. 324 — Conviction under S. 326 — Propriety — Whether the injury in question was grievous — *Assault by using sword — As per the wound certificate, there was an incised wound measuring 3" x 1" over the left hand and the nerve of the middle finger, index finger and the fourth finger was cut — Said injury stated by doctor to be grievous — No fracture to bone of finger — Victim neither suffered severe body pain during the space of twenty days nor was unable to follow his ordinary pursuits for that period — Also, no case that there was permanent privation of sight of either eye, permanent privation of hearing of either ear or privation of any member or joint or destruction or permanent impairing of the power of any member or joint — Held, the said injury was not a grievous hurt falling under S. 320 IPC — Doctor's opinion was erroneous — Conviction altered from S. 326 to S. 324 IPC* (Paras 6 and 7). *Avinash Shetty* v. *State of Karnataka*, (2004) 13 SCC 375.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 13-9-2004]

[8509] — Ss. 326, 324 and 307 — Single sickle-blow leading to death two years later because of ulcers caused by the injury — Appropriate sentence — *High Court by impugned judgment altering conviction from under S. 307 and sentence of seven years' RI to conviction under S. 326 and three years' RI — Single blow given on back of deceased with sickle who died nearabout two years later — Doctor opining that death of deceased was not due to direct result of said injury but because of "ulcers" which were indirect outcome of the injury — Appellant undergoing about 15 months of imprisonment in terms of order of High Court — Appellant had been prosecuting present case for last more than 14 years in various courts and in that process he undoubtedly had undergone mental agony and financial sufferings — Hence, justice would be subserved if the sentence imposed by High Court reduced to sentence already undergone by appellant* (Paras 5, 11, 13 and 14). *Ramdas* v. *State of M.P.*, (2009) 4 SCC 57: (2009) 2 SCC (Cri) 65: 2009 Cri LJ 1136: (2009) 74 AIC 14 (SC).

Bench Strength **2**. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 13-1-2009]

[8510] — Ss. 326 and 325 — *On facts, though a sharp-edged weapon like phawra (spade) was used but since blunt side was used causing lacerated wound or contusion, the offence fell under S. 325 and not S. 326 — Offence allowed to be compounded. Ganga Prasad* v. *State of U.P.*, (1987) 2 SCC 232: 1987 SCC (Cri) 345.

Bench Strength **2**. Coram: *G.L. Oza* and *M.M. Dutt*, JJ. [Date of decision: 23-1-1987]

[8511] — Ss. 326, 325 and 149 — Corroborated testimony of interested eyewitnesses — Evidentiary value — *Case under Ss. 326, 325 and 149 IPC — Accused persons, armed with weapons, chasing the victim entering his house and according to eyewitnesses assaulting and killing him and carrying the dead body by dragging the same — Two police* *constables, on being informed, running after the assailants and apprehending some of them — In such circumstances although the eyewitnesses had enmity with the accused and could therefore be said to be interested witnesses, their testimony having been corroborated by the evidence of the constables, held, ought not to have been discarded by the High Court. Lakhiya Devi* v. *Girja Yadav*, (1999) 1 SCC 203: 1999 SCC (Cri) 26: AIR 1998 SC 2395.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 14-7-1998]

[8512] — Ss. 326, 325 and 324 — Sentence — *Mitigating circumstances — Free fight — Occurrence started at the spur of moment — Some of the accused persons also receiving injuries — In the circumstances of the case sentence of imprisonment reduced. Amrik Singh* v. *State of Punjab*, 1994 Supp (1) SCC 320: 1994 SCC (Cri) 387: 1993 Cri LJ 2857.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 4-2-1993]

[8513] — Ss. 326 and 325 r/w S. 34 — Appeal against conviction — Method of disposal — *Reappreciation of the evidence by the appellate court itself, held, essential — It cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone, particularly when the appeal has been already admitted and placed for final hearing — Disposal of criminal appeal in contravention to the said procedure, if permitted, held, would amount to negation of valuable right of appeal of an accused — Since the High Court disposed of the appeal without reappraising the evidence independently, matter remitted to it for disposal afresh — CrPC, 1973, Ss. 374 and 386*

The High Court did not consider any evidence and disposed of the appeal by simply saying that after reappreciation of the evidence and rescrutiny of the records, it did not find any error apparent in the finding of the trial court. (Para 4)

It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone, especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law. Hence, the impugned order passed by the High Court is fit to be set aside. (Para 4). *Rama* v. *State of Rajasthan*, (2002) 4 SCC 571: AIR 2002 SC 1814.

Bench Strength **2**. Coram: *M.B. Shah* and **B.N. Agrawal**, JJ. [Date of decision: 5-4-2002]

[8514] — Ss. 326, 325/34 and Ss. 323/34 — Illicit relationship between the victim and a female relative of the accused persons — *Accused persons taking the victim inside a room and belabouring him, inflicting 5 injuries — Conjointly, K husband of the said female, removing the eyeballs of the victim from the sockets and thereby blinding him — In view of clear and natural version of the victim courts below not justified in convicting K alone and acquitting the remaining three accused — All the accused convicted under Ss. 325/34 and Ss. 323/34 — K, who went beyond the common intention, is liable to be convicted under S. 326 — His conviction enhanced from 2 years' RI to 10 years' RI. State of U.P.* v. *Kamal Haldhar*, 1998 SCC (Cri) 894.

Bench Strength **2**. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 21-11-1997]

[8515] — S. 326 or Ss. 326/34 — Application of Act to offences punishable with imprisonment for life — *Probation of Offenders Act, 1958, Ss. 4 and 6*

Probation of Offenders Act is intended to carry out the object of keeping away from the unhealthy atmosphere of jail life where normally one has to mix with hardened criminals, those found guilty of the commission of comparatively less serious offences by providing for dealing with them more leniently with a view to their reformation, under Ss. 3, 4 and 6 of the Act as the case may be. An offence punishable under S. 326, IPC or under S. 326, read with S. 34, IPC, being punishable with imprisonment for life, does not fall within the ambit of the Probation of Offenders Act. *Jagdev Singh* v. *State of Punjab*, (1974) 3 SCC 412: 1973 SCC (Cri) 977: AIR 1973 SC 2427: 1973 Cri LJ 1614.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 24-4-1973]

[8516] — Ss. 326 and 335 — Courts below convicting accused under S. 326, for cutting nose of two persons, overlooking element of provocation borne out by the fully corroborated evidence of accused — *Accepting accused's evidence, Supreme Court, therefore, altered the conviction to S. 335, IPC. Dhondey* v. *State of U.P.*, (1972) 4 SCC 729: AIR 1972 SC 1273: 1972 Cri LJ 871.

Bench Strength **2**. Coram: **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 7-5-1971]

[8517] — Ss. 326 and 450 r/w S. 34 — Appreciation of evidence — *Absence of direct evidence regarding manner in which two persons killed — Conviction by the trial court on the basis of statement of one of the deceased who died after about 10 days of the incident — Witnesses in whose presence the said statement allegedly made stating before the* *court that no such statement was given by the deceased — Held, in the circumstances of the case, the High Court rightly acquitted the accused persons. State of Karnataka* v. *Narayan Babu Sanadi*, 1998 SCC (Cri) 1480: AIR 1999 SC 848.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 23-7-1998]

[8518] — Ss. 326 and 452 — Sentence — Fine only — Adequacy of sentence — *Out of three accused tried for trespassing and causing injuries, only appellant-accused convicted under Ss. 326 and 452 with confinement till rising of court and fine with default stipulation, which was confirmed by appellate court — In revision, High Court holding that in view of specific provisions of S. 326 relating to imposition of custodial sentence, trial court could not have imposed only fine — Accordingly, while maintaining conviction, it enhanced the sentence, imposing two years' RI in addition to fine imposed — Sustainability — Question whether custodial sentence imposed by trial court i.e. confinement till rising of the court, was adequate or not — Held, in instant case, fine amount was deposited and amount directed to be paid to PW 2 (the victim) was paid — Hence, considering this fact and also long passage of time, it would be appropriate to restrict period of sentence to the period already undergone* (Paras 8 and 9). *George Pon Paul* v. *Kanagalet*, (2009) 13 SCC 478: (2009) 79 AIC 134 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 29-4-2009]

— S. 326 r/w S. 34 *See also* S. 304 Pt. II r/w Ss. 34, 147, 148, 326 r/w S. 34 and S. 307 r/w S. 34

See also S. 304 Pt. II r/w S. 34 and S. 326 r/w S. 34

See also Ss. 307 and 326 r/w S. 34

See also Ss. 325 and 326 r/w S. 34

[8519] — S. 326 r/w S. 34 — Compensation — Offence under S. 326 r/w S. 34 — *Held, out of the fine amount, if realised, a sum of Rs 4000 be paid to each of the injured as compensation — Fine collected payable as compensation — CrPC, 1973, S. 357* (Para 16). *Bankat* v. *State of Maharashtra*, (2005) 1 SCC 343: 2005 SCC (Cri) 316: AIR 2005 SC 368: 2005 Cri LJ 646: (2005) 2 Mah LJ 707.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 25-11-2004]

[8520] — S. 326 r/w S. 34 — Conviction under — Propriety of — Appellant (Accused 2) giving elbow-blow to the deceased — *Held, prosecution failed to prove beyond reasonable doubt that appellant caused fracture of 3rd and 4th ribs of the deceased, particularly, in view of the fact that Accused 4 had also given fist-blows to the deceased — No common intention to commit murder — Quarrel took place all of a sudden and at that time appellant was unarmed — On facts, held, it could not be said that the appellant shared common intention with Accused 3 who gave spade handle-blow on the head of the deceased — Proper conviction of appellant, held, could be under S. 323 IPC — Sentence of 8 months already undergone by him held to be more than sufficient for the said offence* (Para 6). *Ramasamy Gounder* v. *State of T.N.*, (2002) 10 SCC 251.

Bench Strength 2. Coram: *M.B. Shah* and *Ashok Bhan*, JJ. [Date of decision: 28-9-2001]

[8521] — S. 326 r/w S. 34 — Reversal of acquittal by High Court — Sustainability — *Five accused alleged to have assaulted the deceased and other PWs with lathi and axe — Deceased succumbing to the injuries in hospital — Whereas trial court doubted the credibility of so-called eyewitnesses, PWs 3, 4, 6, 7, 8 and 10 who were relatives of the deceased High Court concluded that the evidence of PWs regarding the presence and participation of the accused in the occurrence was reliable and truthful — Victims of assault would not normally spare the real culprits and falsely implicate innocent accused persons — Evidence of PWs clearly showing that the deceased was lying injured at the spot where the accused persons were present and they assaulted PWs 3, 7 and 8 when they went to rescue him — Further, their houses were at a very short distance and it was quite natural that on hearing the alarm they had rushed to the place of occurrence — Moreover, though some exaggeration in evidence of PW 10 (informant) was discernible but reading the same carefully along with the evidence of PWs 3, 7 and 8 lends support to the prosecution case — Non-examination of doctor who examined the injured PWs and deceased initially not fatal since homicidal death was not disputed — Reason for absence of incised wound when weapon of assault was alleged to be axe rightly noted by High Court that axes which are generally used in villages for cutting trees and branches are not so sharp like swords or knives, and when used on the head, can also cause lacerated injuries — Besides the accused were also armed with lathis — High Court found the appellants guilty, but considering the manner of assault and the surrounding factors, convicted them for offence punishable under S. 326 r/w S. 34 IPC — Impugned judgment does not suffer from any infirmity to warrant interference — CrPC, 1973, Ss. 386 and 378. Mukul Mahto* v. *State of Jharkhand*, (2008) 15 SCC 648: (2009) 3 SCC (Cri) 1146: AIR 2009 SC 335.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 15-10-2008]

Ch. Madusudhana Reddy v. State of A.P., 1994 SCC (Cri) 275, followed

[8522] — S. 326 r/w S. 34 — Sentence under — Reduction — Courts below imposing imprisonment for one year and fine of Rs 500 with default stipulation — *Considering that parties settled their dispute outside the court, 10 years elapsed from the date of the incident and accused had already undergone several months' imprisonment, held, reduction of custodial sentence to period already undergone and imposition of fine of Rs 5000 with default stipulation would be proper* (Para 16). *Bankat* v. *State of Maharashtra*, (2005) 1 SCC 343: 2005 SCC (Cri) 316: AIR 2005 SC 368: 2005 Cri LJ 646: (2005) 2 Mah LJ 707.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 25-11-2004]

[8523] — S. 326 r/w S. 34 — Sentence under — Sentence of imprisonment for three years on two counts directed by High Court to run consecutively — *Offence committed of serious nature — Hence, prayer to direct the sentence to run concurrently, rejected — However, sentence reduced from three years to two years on two counts and directed to run consecutively — Thus, sentence reduced from six to four years — CrPC, 1973, S. 427 — Sentence to run consecutively or concurrently — Consideration for* (Para 4). *Ram Lal* v. *State of Haryana*, (2003) 9 SCC 242.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *P. Venkatarama Reddi*, JJ. [Date of decision: 7-5-2003]

[8524] — S. 326 r/w S. 34 or S. 302 r/w S. 34 — Determination of -– *Accused N armed with katarna while other two accused armed with lathis alleged to have administered several blows with their respective weapons on deceased causing severe injuries resulting in his death — Considering the fact that appellant-accused was holding only a stick High Court holding him not guilty under S. 302 r/w S. 34 — However, it noticing that he had caused lacerated wounds and therefore, knowledge which could be inferred from the said acts was that he intended to cause grievous hurt, imposing sentence of 10 years' RI — Held, no interference with impugned judgment called for — However, considering peculiar circumstances sentence reduced to 5 years' RI* (Paras 6, 8 and 9). *Prabhu* v. *State of M.P.*, (2008) 17 SCC 381: AIR 2009 SC 745: (2009) 74 AIC 84 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 3-12-2008]

Mathai v. State of Kerala, (2005) 3 SCC 260: 2005 SCC (Cri) 695, relied on

[8525] — S. 326 r/w S. 34 & S. 325 — Deadly weapon — Scope — Human teeth are not deadly weapons even though injuries caused were grievous — *Conviction altered to one under S. 325 r/w S. 34 IPC. Shakeel Ahmed* v. *State, Delhi*, (2004) 10 SCC 103: 2004 SCC (Cri) 1759.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 9-7-2001]

— S. 326 r/w S. 120-B *See* Ss. 326/335, S. 326 r/w S. 120-B and S. 342

— S. 326 r/w S. 148 *See also* Ss. 307, 325 and 326 r/w Ss. 149 and 148

— S. 326 r/w S. 149 *See also* Ss. 147, 148, 323 and 324, 326 r/w 149 and 34

See also Ss. 147, 148, 341, 504, 506, 324, 326 r/w S. 149

See also S. 302 and S. 326 r/w S. 149 and S. 148

See also S. 302 r/w Ss. 149, 143, 147, 148, 323, 324, 325 and S. 326 r/w S. 149

See also S. 302 r/w S. 149, S. 300 Thirdly and S. 326 r/w S. 149

See also S. 304 Pt. II r/w S. 149, S. 148 and S. 326 r/w S. 149

See also Ss. 307, 325 and 326 r/w Ss. 149 and 148

[8526] — S. 326 r/w S. 149 — Credibility of witness — *Held, there was no reason why an injured witness would leave out his real assailants and unnecessarily implicate others falsely — Hence, there was no ground to disbelieve and discard the evidence of injured witness PW 6 regarding the assault on him by the eight accused in question* (Para 46). *Chikkarangaiah* v. *State of Karnataka*, (2009) 17 SCC 497: 2009 Cri LJ 4667: (2010) 1 ECrN 427 (SC): (2009) 82 AIC 233 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 2-9-2010]

[8527] — S. 326 r/w S. 149 — Grievous hurt — Allegation as to assault on victim by clubs, sticks and stones — Conviction under S. 326 r/w S. 149, confirmed — *Common object of all accused was to cause grievous injury to victim PW 6 — End result of attack was that PW 6 was grievously injured with fractures and was bedridden for fifteen days at hospital concerned — No contradictions or omissions elicited in cross-examination of PW 6 with respect to identification of accused — Evidence of PW 6 regarding the incident found reliable and corroborated by evidence of an eyewitness — Held, in view of the entire facts and circumstances of the case, conviction of accused under S. 326 r/w S. 149 IPC by High Court, was proper — Hence, not liable to be interfered with* [Paras 38 to 53(*ii*)]. *Chikkarangaiah* v. *State of Karnataka*, (2009) 17 SCC 497: 2009 Cri LJ 4667: (2010) 1 ECrN 427 (SC): (2009) 82 AIC 233 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 2-9-2010]

— Ss. 326/34 *See also* Ss. 34 and 326/34
See also Ss. 34/302 and 326/34
See also Ss. 149, 326/34, 324/34, 427/34, 450 and 392, 395 and 397
See also Ss. 302/34 and 326/34
See also Ss. 302/34, 326/34 and 323/34
See also Ss. 302/34, 449 and 326/34
See also Ss. 304 Pt. II and 326/34
See also Ss. 320 Eighthly and 326/34 or 302

[8528] — Ss. 326/34 — Appreciation of evidence — Sentence — *Assault of deceased by several persons including appellant — Appellant alleged to have caused injuries to deceased with a stick — Appellant and others convicted by trial court under S. 302 r/w S. 34 IPC — High Court, however, altering the conviction to one under S. 326 r/w S. 34 IPC and sentencing appellant to three years' RI while imposing longer terms on other convicted persons — In the dying declaration of the deceased appellant mentioned as a participant — Besides this the eyewitnesses also deposing about the participation of the appellant specifically as well as generally — Held, in this state of evidence it cannot be held that the High Court erred in convicting the appellant under S. 326 r/w S. 34, merely because there was only one blunt weapon injury on the deceased — Constructive liability of the appellant cannot be ruled out on this argument — Also the High Court committed no error in distinguishing his case from the other two convicted accused insofar as the imposition of sentence was concerned due to the formidable weapons used by the other accused — There was therefore no scope for further reducing the sentence imposed on the appellant. Bishwanath Singh* v. *State of Bihar*, 1997 SCC (Cri) 212: 1995 Cri LJ 2626.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-1-1995]

[8529] — Ss. 326/34 — Offence under — Benefit of doubt — When warranted — It not being certain if co-accused (*N*, sister of assaulting accused *RK*) aware about knife (weapon of offence) carried by *RK* — *N playing a tenuous role in quarrel and no overt act being ascribed to her — Only when quarrel reaching a certain pitch,* ***RK*** *taking out his knife and striking victim which resulted in offence under S. 326 IPC — Effect — On facts, N, held, is entitled to benefit of doubt* (Paras 11 and 14). *Neelam Bahal* v. *State of Uttarakhand*, (2010) 2 SCC 229.

Bench Strength **2**. Coram: *H.S. Bedi* and *Deepak Verma*, JJ. [Date of decision: 2-12-2009]

[8530] — **Ss. 326/34 — Sentence** — *Mitigating factors like burden of maintaining widow and minor children of brother besides his own family, considered — Sentence further reduced from 3 years' RI to that already undergone*

The incident had taken place as far back as on August 27, 1981. The accused is a cultivator and has already suffered the agony of the case in the trial court for more than one year and for more than 10 years in the High Court and the Supreme Court. The co-accused ('L'), the real brother of the appellant, died in Jan. 1992. The burden of looking after the widow and three minor children of 'L' has fallen on the shoulders of the appellant apart from the burden of his own wife and three minor children. The appellant remained in jail for 52 days during the trial and is now continuing in jail after having surrendered on February 28, 1992 during the pendency of the appeal before the Supreme Court

Held :

In view of the entire facts and circumstances of the case, justice would be met if the appellant is awarded a sentence of imprisonment of the period already undergone by him for the offence under Ss. 326/34. The appellant is also sentenced to pay a fine of Rs 3000 (as awarded by High Court) and in default of payment of fine to undergo further rigorous imprisonment for six months. Out of the aforesaid fine, if realised, Rs 2000 and Rs 1000 shall be paid to the two victims (viz. 'P' and 'A' respectively) by way of compensation. *Pashora Singh* v. *State of Punjab*, 1993 Supp (2) SCC 33: 1993 SCC (Cri) 387: AIR 1993 SC 1256: 1993 Cri LJ 1053: (1993) 1 An WR 25 (SC).

Bench Strength **2**. Coram: *Kuldip Singh* and **N.M. Kasliwal**, JJ. [Date of decision: 9-10-1992]

[8531] — **Ss. 326/34 — Two appellants holding hands of deceased while another person on being instigated by his father inflicting dagger below resulting in death of the deceased** — *Appellants having no weapons at the time of the incident nor they attacking the deceased nor expressing their intention to cause death of the deceased — No evidence indicating any preconcert of mind of all the four accused persons — Circumstances showing absence of intention on the part of the appellants to participate in the act of murder — However, having regard to appellants' act of holding hands of deceased thereby facilitating the other accused to inflict the fatal wound, held, appellant at least shared the common intention with the main accused to cause grievous hurt — Hence appellants' conviction under Ss. 302/34 altered to that under*

Ss. 326/34 — Appellants having served nine years' of their substantive sentence and being still in jail their sentence of imprisonment reduced to the period already undergone. Harbans Nonia v. *State of Bihar,* 1993 Supp (1) SCC 485: 1993 SCC (Cri) 257: AIR 1992 SC 125.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *M. Fathima Beevi*, JJ. [Date of decision: 27-9-1991]

[8532] — Ss. 326/34 and 147 and 148 — Conviction and sentence — *Accused 1 to 4 convicted under Ss. 326/34 and accused 5 to 7 convicted under Ss. 147 and 148 — Conviction based on dying declaration and testimony of a witness — Dying declaration found to be voluntary and testimony of the witness found to be trustworthy — No interference with conviction called for — But in the circumstances and in view of long lapse of time sentence of accused 1 to 4 reduced from 3 years' to 18 months' RI. Purshothaman* v. *State of T.N.*, 1987 Supp SCC 247: 1988 SCC (Cri) 46.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 24-2-1987]

[8533] — Ss. 326/34 and 302/34 — Caste rivalry — *Armed mob burning bus killing four and another person who intervened — Six out of 30 convicted — Testimony of witnesses belonging to of one faction — Should be scrutinised with great care and caution and examined in the light of the earliest statement, medical evidence and other surrounding circumstances — Where FIR is the earliest statement, it is of importance in appreciating evidence of such witnesses, though it is not a substantive evidence — When no overt act attributed by the witnesses to some of the accused persons in a mass attack, held, they would be entitled to benefit of doubt — But when part played by other accused specifically mentioned in FIR and that is the consistent version of the witnesses which is corroborated by medical evidence also, held, prosecution case against them can be safely accepted — Accordingly conviction and sentences under Ss. 302/34 IPC awarded to accused 15, 16 and 26 set aside but those under Ss. 326/34 IPC awarded to accused 18, 24 and 28 confirmed — Evidence Act, 1872, S. 157. Ladha Shamji Dhanani* v. *State of Gujarat*, 1993 Supp (1) SCC 20: 1993 SCC (Cri) 97: AIR 1992 SC 956.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *R.C. Patnaik*, JJ. [Date of decision: 11-3-1992]

[8534] — Ss. 326/34 & 302/34 — High Court converting conviction under Ss. 302/34 to that under Ss. 326/34 — *On facts, High Court's verdict upheld as there was lack of motive and common intention to cause death. State of Punjab* v. *Surjan Singh*, (1976) 1 SCC 588: 1976 SCC (Cri) 106: AIR 1976 SC 1130: 1976 Cri LJ 845.

Bench Strength **2**. Coram: *M.H. Beg* and **P.K. Goswami**, JJ. [Date of decision: 10-11-1975]

[8535] — Ss. 326/34 and 302/34 — Opinion of the doctor who conducted post-mortem examination that injuries of the deceased were medically interfered with and the death was caused due to pus in brain — Nothing on record to indicate that any external factor contributed to the formation of pus — *Held, finding of the High Court that the death was not direct result of the injuries caused by the accused not correct — That apart, in view of the opinion of other doctor that the injuries found on the abdomen of the deceased was a grievous injury conviction under Ss. 326/34 justified. Bhagwan Singh* v. *State of Bihar,* 1998 SCC (Cri) 252: AIR 1998 SC 119.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 5-11-1997]

[8536] — Ss. 326/34 or 302/34 — Murderous assault — *Main accused found to have inflicted injuries by a gupti on the vital parts of the body of the deceased and accordingly convicted under S. 302 — Co-accused also armed with a knife and a party to the attack on deceased — But no blood stain found on the knife recovered from the place of occurrence — High Court on a dispassionate analysis finding that common intention to cause death of deceased could not be attributed to the co-accused in absence of sufficient material — Held, High Court took a very reasonable and sympathetic view in convicting the co-accused under S. 326/34 and sentencing him to imprisonment for the period already undergone by him — Hence no interference of Supreme Court called for — Constitution of India, Art. 134. Prakash* v. *State of M.P.*, (1992) 4 SCC 225: 1992 SCC (Cri) 853: AIR 1993 SC 65.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 20-8-1992]

Prakash v. State of M.P., Criminal Appeal No. 222 of 1977; State of M.P. v. Shibboo, Criminal Appeal No. 714 of 1976, affirmed

[8537] — Ss. 326/34 & 323/34 — Where accused only asserted their supposed or bona fide claim to the property resulting in free fight, intention to cause grievous hurt not inferred. *Ram Rattan* v. *State of U.P.*, (1977) 1 SCC 188: 1977 SCC (Cri) 85: AIR 1977 SC 619: (1977) 2 SCR 232.

Bench Strength **3**. Coram: *P.N. Bhagwati*, *V.R. Krishna Iyer* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 26-11-1976]

— Ss. 326/149 *See also* Ss. 147, 148, 302/149 and 324/149, 326/149

See also Ss. 147 and 326/149

See also under Ss. 299 to 304

See also Ss. 302, 302/149 and 326, 326/149

[8538] — Ss. 326/149 — Appeal — Non-application of mind — Casual disposal of appeal — *In appeal by A-1 to A-3 against conviction under Ss. 326/149, without adverting to contentions of appellants held that since S. 149 was invoked acquitted accused would be equally and vicariously liable though noting that State had not filed appeal against such "illegal acquittal" — Held, High Court had not applied its mind to the various contentions and disposed of the appeal in a casual manner — Matter remitted for fresh disposal — CrPC, 1973, Ss. 374, 386 and 389* (Paras 3 to 6). *Huchappa* v. *State of Karnataka*, (2008) 14 SCC 497: (2009) 2 SCC (Cri) 846: AIR 2008 SC 1806: (2008) 65 AIC 120 (SC): 2008 Cri LJ 2596.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 1-4-2008]

[8539] — Ss. 326/149 — Conviction under justified when one of raiders was armed with a gupti and did cause grievous injuries resulting in death of one of the victims — *All the raiders rightly convicted in conformity with S. 149. Mahesh Chandra* v. *State of U.P.*, (1979) 1 SCC 294: 1978 SCC (Cri) 607.

Bench Strength **3**. Coram: *Jaswant Singh*, *P.S. Kailasam* and *A.D. Koshal*, JJ. [Date of decision: 15-9-1978]

[8540] — Ss. 326/149 — Sentence — Convict aged about 80 years and in jail for about 2 years *— In the circumstances sentence reduced to the period of imprisonment already undergone. S.P. Sinha* v. *State of Maharashtra*, 1993 Supp (1) SCC 658: 1993 SCC (Cri) 684: AIR 1992 SC 1751.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *R.C. Patnaik*, JJ. [Date of decision: 8-4-1992]

[8541] — Ss. 326/149 — Sentence — Conviction for being members of a crowd which chased the deceased — *One accused merely chasing while another, a boy of 15 years, also holding the deceased at the time of infliction of the fatal injury — Having regard to the age and absence of any overt act on the part of the former accused, his sentence reduced to 2 years' RI. Sushil Chowdhary* v. *State of Bihar*, (1979) 4 SCC 765: 1980 SCC (Cri) 179: AIR 1980 SC 1716.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *P.N. Shinghal*, JJ. [Date of decision: 6-9-1979]

[8542] — Ss. 326/149, 147 and 148 — Sentence — Reduction of — *Occurrence took place in 1986 — Accused-appellants acquitted by trial court in 1987 — But acquittal set aside by High Court and appellants convicted under Ss. 326/149, 147 and 148 and awarded maximum sentence of 4 years under Ss. 362/149 in 1992 — After appellants surrendered, they were directed to be released on bail — Nothing brought to Supreme Court's notice to show that after their release on bail they acted in any manner prejudicial to law and order — Keeping all these factors in view, held, it would serve ends of justice if appellants are not now sent back to jail — Therefore substantive sentence of imprisonment of the appellants is reduced to the period already undergone by them for the various offences for which they were convicted — But each of them directed to pay fine in addition to the sentence of imprisonment already undergone. Habbalappa Dundappa Katti* v. *State of Karnataka*, (2002) 10 SCC 197: AIR 2002 SC 485.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, *C.J.* and *R.C. Lahoti* and *Shivaraj V. Patil*, JJ. [Date of decision: 14-2-2001]

[8543] — Ss. 326/149 and 325 and 326 — Multiple injuries inflicted with torches, knife, iron rod, cycle chain etc. on non-vital parts of deceased's body found to be cumulatively sufficient in the ordinary course of nature to cause death — *Having regard to the type of weapons used and nature and seat of injuries, held, accused persons cannot be said to have shared common object of causing such bodily injuries on the deceased as were likely to cause his death or were sufficient in the ordinary course of nature to cause his death — Accused would be liable for their individual acts — Those who used torch, iron rod and cycle chain to be convicted under S. 325 and sentenced to 2 years' RI but one who caused grievous injuries with knife to be convicted under S. 326 and sentenced to 3 years' RI with fine of Rs 500. Subran* v. *State of Kerala*, (1993) 3 SCC 32: 1993 SCC (Cri) 583: 1993 Cri LJ 1387: (1993) 2 Crimes 15.

Bench Strength **3**. Coram: *M.N. Venkatachaliah*, *C.J.* and *B.P. Jeevan Reddy* and **Dr. A.S. Anand**, JJ. [Date of decision: 24-2-1993]

[8544] — Ss. 326/149 and 325/149 — Sentence under — Quantum of — *Accused persons assaulting the victim and killing him — However, the trial court finding their common object to be beating, and not causing death, of the victim — Trial court sentencing one the accused persons to 4 years' RI under S. 325 read with S. 149 and the rest, to 8 years' RI under S. 326 read with S. 149 — Case* *coming up before Supreme Court over 22 long years after the occurrence — In view of such long lapse of time, while upholding the order of conviction passed by the trial court, sentence of those convicted under S. 326 read with S. 149, reduced to five years' RI. Lakhiya Devi* v. *Girja Yadav*, (1999) 1 SCC 203: 1999 SCC (Cri) 26: AIR 1998 SC 2395.

Bench Strength 2. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 14-7-1998]

[8545] — Ss. 326/149 or Ss. 352/149 — Unlawful assembly formed only to cause assault on the deceased *P* — *Some of the accused entered the house while appellants stayed outside the house — Grievous injuries caused by those who entered the house due to which P died — Appellants did not take part in the assault on the deceased, nor was any grievous injury caused to anyone by them — Held, in the absence of any material to the contrary, those members of the original unlawful assembly who only shared the common object of assaulting P could not be attributed with the subsequent change in the common object of some of the members of the assembly who entered the house of P and caused grievous injuries to him — Hence, the appellants were liable to be punished only under S. 352 r/w S. 149 and not under S. 326 r/w S. 149* (Paras 3 and 8). *Bhimrao* v. *State of Maharashtra*, (2003) 3 SCC 37: 2003 SCC (Cri) 727: AIR 2003 SC 1493: 2003 Cri LJ 1204.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 6-2-2003]

— Ss. 326/322 *See also* Ss. 96, 97, 99 Fourthly, S. 320 Eighthly and Ss. 326/322

[8546] — Ss. 326/335, S. 326 r/w S. 120-B and S. 342 — Custodial violence and atrocities — Infliction of grievous hurt — Conviction confirmed — Premeditated act (cutting off victim's penis) — Inference of — Defence of grave and sudden provocation under S. 335 — Plea of, rejected — *Victim **J**'s penis cut off (bobbitted) by accused Constable **K** with a barber's razor in police station while accused ASI **S** held him, on **J**'s admission that he was having affair with accused **B**'s wife — **B** being a relative of **K** — Held, there cannot be said to be grave and sudden provocation so as to attract S. 335, rather it was a premeditated act — Normally, policemen do not carry sharp-edged weapons like razors which **K** was carrying — Moreover, **S** was not related to either **B** or his wife and hence, there was no justifiable ground for sudden provocation on his part at all — Furthermore, evidence revealing that **J** was subjected to third-degree methods while he was locked up in police station from 2-2-1994 to 5-2-1994, without being produced before Magistrate — Contention of **S** that his presence at police station was not established rejected, since his presence there was proved vide testimony of **J** — Hence, S. 326 and not S. 335 applicable — **K** convicted under S. 326 and sentenced thereunder to 5 years' RI and under S. 342 to six months' RI, with a fine of Rs 50,000, while acquittal of S set aside and he convicted under S. 326 r/w S. 120-B and sentenced thereunder to 3 years' RI and under S. 342 to six months' RI, with a fine of Rs 50,000 — **K** to suffer default imprisonment of six months' RI and **S** one year's RI on non-payment of fine — Fine to be paid as compensation to **J** — Constitution of India — Art. 22(2) — CrPC, 1973, S. 57* (Paras 13 to 15 and 25 to 27)

The victim *J* was an employee of accused *B* and was also residing in *B*'s house. *B* suspected that *J* was having illicit affair with his wife and eldest daughter. Constable *K* was relative of *B*. On 2-2-1994 at about 8 p.m. *J* was carrying a bottle of liquor when *K* met him and snatched the bottle. In ensuing scuffle, the bottle fell down and broke. *K* then took *J* to police station where accused SHO *Sh* allegedly slapped him. *J* was locked in police station from 2-2-1994 to 5-2-1994 and beaten without producing him before Magistrate. He was repeatedly questioned about his illicit relationship. On 5-2-1994, *J* admitted that he had relations with *B*'s wife whereupon accused ASI *S* held him by the neck while *K* chopped off *J*'s penis with a razor. *J* was taken to a hospital. An FIR was registered under Sections 307/326, 343 and 120-B IPC.

B died during pendency of trial. The trial court convicted *K* under Sections 326, 308, 323 and 343, *Sh* was convicted under Sections 323 and 343, while *S* was convicted under Sections 326/114, 308/114 and 120-B IPC. In appeal, the High Court acquitted *Sh* and *S* and reduced sentence of *K* to period undergone for offence under Section 326, while conviction under Section 343 was altered to Section 342. Hence, instant appeal.

Allowing the appeal, the Supreme Court held as above. *CBI* v. *Kishore Singh*, (2011) 6 SCC 369.

Bench Strength 2. Coram : **Markandey Katju** and *T.S. Thakur*, JJ. [Date of decision : 25-10-2010]

[8547] — Ss. 326/335 and 326 r/w 120-B and 342 — Fine converted as compensation to victim — Strict default stipulations made, to compel payment of fine — *Three policemen convicted for voluntarily causing grievous hurt to a person illegally confined in police station — Apart from sentencing them to imprisonment, fine also* *imposed on them — Fine of Rs 50,000 imposed on constable cutting off penis of victim with default stipulation of six months' RI; Rs 50,000 fine with default stipulation of one year's RI imposed on ASI who held victim while his penis was being cut off; and Rs 10,000 fine imposed on SHO with default stipulation of one month's SI — Fine, held, to be paid to victim as compensation — CrPC, 1973, Ss. 357 and 30* (Paras 25 to 27)

The victim *J* was an employee of accused *B* and was also residing in *B*'s house. *B* suspected that *J* was having illicit affair with his wife and eldest daughter. Constable *K* was relative of *B*. On 2-2-1994 at about 8 p.m. *J* was carrying a bottle of liquor when *K* met him and snatched the bottle. In ensuing scuffle, the bottle fell down and broke. *K* then took *J* to police station where accused SHO *Sh* allegedly slapped him. *J* was locked in police station from 2-2-1994 to 5-2-1994 and beaten without producing him before Magistrate. He was repeatedly questioned about his illicit relationship. On 5-2-1994, *J* admitted that he had relations with *B*'s wife whereupon accused ASI *S* held him by the neck while *K* chopped off *J*'s penis with a razor. *J* was taken to a hospital. An FIR was registered under Sections 307/326, 343 and 120-B IPC.

B died during pendency of trial. The trial court convicted *K* under Sections 326, 308, 323 and 343, *Sh* was convicted under Sections 323 and 343, while *S* was convicted under Sections 326/114, 308/114 and 120-B IPC. In appeal, the High Court acquitted *Sh* and *S* and reduced sentence of *K* to period undergone for offence under Section 326, while conviction under Section 343 was altered to Section 342. Hence, instant appeal.

Allowing the appeal, the Supreme Court held as above. *CBI* v. *Kishore Singh*, (2011) 6 SCC 369.

Bench Strength **2**. Coram : **Markandey Katju** and *T.S. Thakur*, JJ. [Date of decision : 25-10-2010]

— **S. 327** *See also* Ss. 149, 302/149, 327, 336, 449 and 147

— **S. 328** *See also* Ss. 302, 201, 328 and 120-B

See also Ss. 302 and 328

[8548] — S. 328 — Circumstantial evidence — Test of — When enough to sustain a conviction

As a proposition of law and commonsense, it is true that unlike direct evidence the indirect light circumstances may throw, may vary from suspicion to certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction.

Every evidentiary circumstance is a probative link, strong or weak, and must be made out with certainty. Link after link, forged firmly by credible testimony may form a strong chain of sure guilt binding the accused. Each link taken separately may just suggest but when hooked on to the next and on again may manacle the accused inescapably. Only then can a concatenation of incriminating facts suffice to convict a man. Short of that is insufficient.

The circumstances against the accused were:

(*a*) The accused bore grudge against the doctor, the victim.

(*b*) He took about 12 or 13 minutes to comply with the request for aspirin.

(*c*) He trembled when asked searching questions by the other doctor.

(*d*) He falsely denied stock of strychnine, the poison in question.

(*e*) He did not show any anxiety to save the victim out of the calamity.

(*f*) He took a false plea of denial in the committal courts modified in the Sessions Court to present a plausible defence.

Held :

The guilt of the accused to be conclusively proved. *Dharm Das Wadhwani* v. *State of U.P.*, (1974) 4 SCC 267: 1974 SCC (Cri) 429: AIR 1975 SC 241: (1974) 3 SCR 607: 1974 Cri LJ 1249.

Bench Strength **2**. Coram: *H.R. Khanna* and **V.R. Krishna Iyer**, JJ. [Date of decision: 14-3-1974]

[8549] — S. 328 — Death of prisoner in jail caused by administering poisoned laddus and tea — *Accused entering jail as a visitor by giving the name of deceased's brother and passing on laddus and tea to deceased — Deceased complaining to jail authorities and doctor that he became sick immediately after taking laddus and tea given by accused — Held, evidence conclusive to establish guilt — Since deceased complained of sickness only after eating laddus and not after consumption of alcohol — Presence of alcohol in his stomach not a material factor to detract truth of prosecution case against accused — Evidence Act, 1872, S. 8. Balkar Singh* v. *State of Punjab*, 1989 Supp (2) SCC 158: 1990 SCC (Cri) 42.

Bench Strength **2**. Coram: *S. Natarajan* and *Kuldip Singh*, JJ. [Date of decision: 30-3-1989]

[8550] — S. 328 — Liquor adulterated with methyl alcohol supplied by accused to shops and sub-shops — *Consumption of such liquor resulting in permanent loss of eyesight of 24 persons — In the circumstances held, accused caused liquor to be* *taken by the affected persons and hence conviction under S. 328 justified* (Para 30). *E.K. Chandrasenan* v. *State of Kerala*, (1995) 2 SCC 99: 1995 SCC (Cri) 329: AIR 1995 SC 1066: 1995 Cri LJ 2060: (1995) 1 Crimes 421.

Bench Strength **2**. Coram: *Kuldip Singh* and **B.L. Hansaria**, JJ. [Date of decision: 17-1-1995]

[8551] — Ss. 328, 300 Fourthly, 302 and 304 — Ingredients of S. 328 — *Prosecution must prove by direct, reliable and cogent evidence that the accused administered poison, etc. himself or by means of another with necessary intent and mens rea — Death by consuming adulterated arrack purchased from a retail shop — Arrack depot from where arrack supplied to the retail shops controlled and managed by A-1 — Sample taken from the said depot found to be adulterated with poisonous substance methyl alcohol — Applicability of S. 302 or S. 304 ruled out by lower courts on finding that A-1 had no mens rea — Held, on such finding conviction under S. 328 not sustainable*

In order to prove offence under S. 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug, etc., that the accused administered the substance to the complainant or caused the complainant to take such substance, that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison etc. or causing it to be taken by any person, through another. In other words, the accused may accomplish the act by himself or by means of another. In either situation direct, reliable and cogent evidence is necessary. Now on that basis it has to be seen whether A-1 had any role to play in directly administering to or causing to be taken the poisonous liquor by the deceased, who had purchased and consumed liquor from a retail shop, with intent to cause hurt to him or knowing it to be likely that it would cause hurt to him.

In the present case the trial court observed that it cannot be said that the accused or any of them knew that arrack mixed with small quantity of methyl alcohol (2.64% as found by the chemical analyst) was likely to cause death or serious bodily injury that is likely to cause death. On this finding applicability of S. 302 or even that of S. 304 IPC has been ruled out. This finding on the fact situation is open to doubt. If the finding be correct that the accused did not have guilty knowledge of causing death or of likelihood of causing death or of serious bodily injury likely to cause death, how could the guilty knowledge stop in that slide or grading not coming down to take within its arms hurt also. The act of the accused in adulterating liquor per se, as the law then stood sans amendments, would not attract the provision of S. 328 of IPC unless there is positive evidence that A-1 administered the poisoned liquor directly or caused it to be taken by the deceased indirectly with necessary intent and mens rea. This view of the trial Judge as confirmed by the High Court does not appear to be sound in the backdrop of the death actually occurring. But since it has taken that view it cannot stop short of hurt and so must slip down to a fall downright. Important links in the prosecution case on this particular aspect remain otherwise missing. A-1 would thus have to be acquitted of the charge under S. 328 IPC in carrying out the findings of the High Court to their logical end. *Joseph Kurian* v. *State of Kerala*, (1994) 6 SCC 535: 1995 SCC (Cri) 20: AIR 1995 SC 4.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 4-10-1994]

— Ss. 328/34 *See also* S. 302 and Ss. 328/34

— S. 330 *See also* Ss. 166, 330, 331 and 304 Pt. II

See also Ss. 220, 330 and 331

See also Ss. 302/34, 330, 348 and 201

See also Ss. 304 Pt. II, 330, 201, 218/34 and 161

See also Ss. 307 and 330

***See also* Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C.15. Police atrocities/ Custodial violence/death', in Vol. 2**

[8552] — S. 330 — Charge under — Dropping of — Case of custodial death — Whether, on facts, trial court and High Court justified in dropping charge under, since death of the deceased took place while he was in custody — *On facts, held, prima facie a case was made out for framing of charge under S. 330 — Hence, while restoring order of trial court framing charges against accused persons under S. 304 Pt. II IPC, directions for framing charges under S. 330 also issued*

In the fact situation, the question is whether the trial court as well as the High Court were justified in dropping the charge under Section 330 IPC since the death of the deceased took place while he was in custody. The important question is whether a prima facie case can be said to have been made out for a charge to be framed under Section 330 IPC. Since the cause of death has been shown to be asphyxia on account of detention of the deceased in unhygienic conditions despite his respiratory problems and the injuries to the ribs and mouth of the deceased could possibly have been caused by the attempts made by the doctor at the hospital to resuscitate the deceased, who had been brought to the hospital in a comatose condition, with the body showing no signs of pulse, respiration or blood pressure, prima facie a case is made out for framing of charge under Section 330 IPC. The sheet showing the progress and treatment of the deceased on arrival at the hospital also corroborates the same and it also mentions the fact that cardiopulmonary resuscitation was immediately started and the patient was also put on mechanical ventilator as part of the attempts at resuscitation. Apart from indicating that the patient had died of asphyxia, the medical opinion does not give any reason for such asphyxia and even in reply to the queries made on behalf of the investigating authorities the reply received, as to the cause of death, was that it had occurred due to asphyxia, but as to how it had occurred was under investigation. (Para 40)

In this regard, the materials submitted by the investigating authority in its final report under Section 173 CrPC do establish the fact that the deceased had been kept in a room which was highly unsuitable for a person suffering from respiratory problems. In fact, as was indicated by the Senior Scientist of the mobile unit of the District Police Force, the condition of the room where the deceased had been detained was completely unsuitable for a patient of asthma as it was filled with dust and cobwebs which was sufficient to trigger an asthmatic attack which could have caused asphyxia which ultimately led to *R*'s death. (Para 41)

While restoring the order of the trial court framing charge against the accused persons under Section 304 Part II IPC, it is directed that charges be also framed against the accused persons under Section 330 IPC. (Para 42). *Indu Jain* v. *State of M.P.*, (2008) 15 SCC 341: (2009) 3 SCC (Cri) 996: AIR 2009 SC 976: 2009 Cri LJ 951.

Bench Strength 2. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 23-10-2008]

[8553] — S. 330 — Inquiry Commission set up to go into an incident of rioting which took place on death of a person as a result of injuries sustained by him in police custody — Criminal case also initiated against the police officer alleged to be responsible for the death — High Court convicting the police officer under S. 330 IPC — *In appeal before Supreme Court, findings of the Inquiry Commission that there was no reliable and independent material to hold that the deceased was ill treated in police custody and the injuries might have been suffered by him prior to his arrest, held, not binding on the Supreme Court when it arrived at a contrary conclusion on its own independent assessment of evidence. Sham Kant* v. *State of Maharashtra*, 1992 Supp (2) SCC 521: 1992 SCC (Cri) 765: AIR 1992 SC 1879: 1992 Cri LJ 3243.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 15-5-1992]

[8554] — S. 330 — Police assaulting one *V* (arrested in a murder case) in lock-up room — *V* died by hanging himself in police station — *Conviction of police personnel — Propriety — Statement of PW 13 (Police driver) that arrest of V was made by police constables A-2 to A-5 on direction of A-1, who was in charge of police station at the relevant time — PW 1 (brother of V) had seen police assaulting V with sticks — Witnesses were subjected to a lengthy cross-examination but nothing could be elicited to discredit the creditworthiness of the statement-in-chief — Held, conviction of A-1 to A-5 based on said evidence was proper — High Court's order upheld* (Paras 7 to 9). *Sanganagouda A. Veeranagouda* v. *State of Karnataka*, (2005) 12 SCC 468.

Bench Strength 2. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 29-9-2005]

[8555] — S. 330 — Third degree treatment by police to extort confession — *Two persons while in police custody in connection with a theft case tortured inhumanly by appellant Police SI and his men to get clue to the case — Seeing their deteriorating physical condition, period of police custody cut short and judicial remand obtained — After their release on bail, complaint regarding the police atrocities lodged by them in Magistrate's court and while being brought out of the court room one of them collapsed — Surviving victim deposing in detail about the entire happenings which took place during the police custody — Despite incisive and searching cross-examination nothing tangible brought out to discredit his testimony — His testimony corroborated by other witnesses as well as medical evidence — High Court finding the appellant guilty of offence under S. 330 and sentencing him to 9 months' RI with fine of Rs 2000 and in default 4 months' RI — Held, High Court arrived at a proper and just conclusion that the prosecution made out a case under S. 330 against the appellant and no interference therewith called for. Sham Kant* v. *State of Maharashtra*, 1992 Supp (2) SCC 521: 1992 SCC (Cri) 765: AIR 1992 SC 1879: 1992 Cri LJ 3243.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 15-5-1992]

[8556] — Ss. 330 and 331 — Complaint of death due to torture in police custody — Appreciation of evidence — Post-mortem examination — Register containing original entries regarding — Admissibility — *Held, High Court erred in holding that in the absence of the original post-mortem report such register could not be taken note of — Evidence Act, 1872, Ss. 35, 45, 65 and 64 — Register containing original entries regarding post-mortem report — Admissibility* (Paras 29 and 12). *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*, (2003) 7 SCC 749: 2003 SCC (Cri) 1918: AIR 2003 SC 4567.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-9-2003]

Vijender v. State of Delhi, (1997) 6 SCC 171: 1997 SCC (Cri) 857, distinguished

[8557] — Ss. 330 and 331 — Custodial death or police torture — Evidence and proof of — *Generally ocular or other direct evidence not available — Police officials alone can explain the circumstances in which a person in their custody died — Exaggerated adherence to and insistence upon establishment of proof beyond every reasonable doubt improper — Court must adopt a realistic rather than a narrow technical approach — Need to make changes in law, keeping in view recommendations of Law Commission in its 113th Report, stressed — Constitution of India, Art. 21*

Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available. Generally speaking, it would be police officials alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues — and the present case is an apt illustration — as to how one after the other police witnesses feigned ignorance about the whole matter. (Para 16)

The *exaggerated* adherence to and insistence upon the establishment of *proof beyond every reasonable doubt*, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them if an odd prisoner dies in the lock-up *because there would hardly be any evidence available to the prosecution to directly implicate them with the torture*. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad day. (Para 17)

Though Sections 330 and 331 of the Indian Penal Code make punishable those persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows us, have been very few *because the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are*. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court *may presume* that the injury was caused by the police officer having the custody of that person during that period unless the police officer *proves to the contrary*. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed. (Para 18). *State of M.P.* v. *Shyamsunder Trivedi*, (1995) 4 SCC 262: 1995 SCC (Cri) 715.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *M.K. Mukherjee*, JJ. [Date of decision: 9-5-1995]

[8558] — Ss. 330 and 331 — Police atrocities — *Alarming increase in cases of torture, assault and death in police custody and non-availability of direct evidence in such cases normally, noticed with concern — Further noticed, exaggerated adherence to and insistence of proof beyond every reasonable doubt by the prosecution and sometimes by the courts in such cases often results in miscarriage of justice — Custodial torture, held, violates the basic rights of citizens — Therefore, the courts advised to deal with such cases in a realistic manner and with the sensitivity they deserve so that the truth may be found and the guilty may not escape — Moreover, the Government and the Legislature directed to give serious thought to the recommendation in Law Commission's 113th Report to amend the Evidence Act to provide that injury received by a person during police custody may be presumed to have been caused by the police officer having the custody of that person during that period — However, it should be carefully examined whether the allegations of custodial violence are genuine or false and designed to gain undeserved benefit — Evidence Act, 1872, Ss. 101 and 114 — CrPC, 1973, Ch. V (Ss. 41 to 60) — Arrest — Universal Declaration of Human Rights, 1948, Art. 5 — Constitution of India, Arts. 21, 20(3) and 22* (Paras 1 to 8). *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*, (2003) 7 SCC 749: 2003 SCC (Cri) 1918: AIR 2003 SC 4567.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-9-2003]

[8559] — Ss. 330 and 331 — Police atrocities — Third degree method adopted by police to extort confession — *Violates human rights — Exemplary compensation can be awarded to the victim in appropriate cases — Evidence Act, 1872, S. 24 — Constitution of India, Art. 21*

Per majority

In cases of police brutality and atrocities, committed, in utter disregard and in all breaches of humanitarian law and universal human rights as well as in total negation of the constitutional guarantees and human decency, the Supreme Court is committed to uphold human rights even as a part of long standing heritage and as enshrined in our constitutional law. This perspective needs to be kept in view by every law-enforcing authority because the recognition of the inherent dignity and of the equal and inalienable rights of the citizens is the foundation of freedom, justice and peace in the world. If the human rights are outraged, then the court should set its face against such violation of human rights by exercising its majestic judicial authority.

The Constitution as well as the statutory procedural law and law of Evidence condemn the conduct of any official in extorting a confession or information under compulsion by using any third degree methods. If it is shown to the court that a confession has been extorted by illegal means such as inducement, threat or promise as contemplated under S. 24 of the Evidence Act the confession thus obtained from an accused person would become irrelevant and cannot be used in a criminal proceeding as against the maker. Sections 330 and 331 of the Indian Penal Code provide punishment to one who voluntarily causes hurt or grievous hurt as the case may be to extort the confession or any information which may lead to the detection of an offence or misconduct.

The oppressive behaviour and the most degrading and despicable practice adopted by some of the police officers is much depressing, though no general and sweeping condemnation can be made. Courts have frequently dealt with cases of atrocity and brutality practised by some overzealous police officers resorting to inhuman, barbaric, archaic and drastic method of treating the suspects in their anxiety to collect evidence by hook or by crook and wrenching a decision in their favour. We remorsefully like to state that on few occasions even custodial deaths caused during interrogation are brought to our notice. The Supreme Court on several occasions has awarded exemplary compensation to the victims at the hands of the police officials which can be testified by a series of pronouncements of the Supreme Court.

Per K. Ramaswamy, J.

The expression "life or personal liberty" in Art. 21 of the Constitution includes right to live with human dignity which would include guarantee against torture and assault by the State. Article 21 guarantees protection against torture and assault by the State while a person is in custody. It is a legitimate right of the police to arrest a suspect on receiving some credible information or material, but the arrest must be in accordance with law and the interrogation should not be accompanied with torture or use of third degree methods. The interrogation and investigation should be in true sense purposeful to make the investigation effective. Torture or beating of arrested person in the lock-up is generally carried on behind the closed doors and no member of the public is permitted to be there and instances are not wanting that even the family members of the arrested persons are not allowed to meet the suspect.

Custodial interrogation exposes the suspect to the risk of abuse of his person or dignity as well as distortion or manipulation of his self-incrimination in the crime. No one should be subjected to physical violence of the person as well as to torture. Infringement thereof undermines the peoples' faith in the efficacy of criminal justice system. Interrogation in police lock-up are often done under conditions of pressure and tension and the suspect could be exposed to great strain even if he is innocent, while the culprit in custody to hide or suppress may be doubly susceptible to confusion and manipulation. A delicate balance has, therefore, to be maintained to protect the innocent from conviction and the need of the society to see the offender punished. Equally everyone has right against self-incrimination and a right to be silent under Art. 20(3) which implies his freedom from police or anybody else. But when the police interrogates a suspect, they abuse their authority having unbridled opportunity to exploit his moral position and authority inducing the captive to confess against his better judgment. Silence on the part of the frightened captive seems to his ears to call for vengeance and induces a belief that confession holds out a chance to avoid torture or to get bail or a promise of lesser punishment. The resourceful investigator adopts all successful tactics to elicit confession. *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: 1994 Cri LJ 3139.

Bench Strength 5. Coram: **S. Ratnavel Pandian**[1], *M.M. Punchhi*[1], **K. Ramaswamy**[2], *S.C. Agrawal*[1] and **R.M. Sahai**[3], JJ. [Date of decision: 11-3-1994]

[8560] — Ss. 330, 342 and 306 — Compensation for custodial death — Entitlement to relief, prior to adjudication of question of custodial death — *Petitioner's son allegedly committing suicide inside police lock-up — FIR lodged, police officials concerned arrested, charge-sheet for offences under Ss. 330, 342 and 306 IPC filed, cognizance taken by court and bail applications rejected — Held, no compensation can be granted in the absence of any adjudication on the issue as to whether there was custodial death — Universal Declaration of Human Rights, 1948, Art. 5 — CrPC, 1973, S. 197 — Constitution of India, Arts. 32, 21 and 22*

The petitioner lodged an FIR for the custodial death of his son. The police alleged that the deceased who had been arrested for the theft of some mobile phone committed suicide inside the lockup. Allegedly attempts by the petitioner to have an impartial post-mortem of the body of the deceased were thwarted by the police who was insisting on the theory of the suicide by hanging with the help of a shirt. It was alleged that the external injuries all over the body of the deceased were not explained and in fact the post-mortem report itself was not accurate as compared with the photographs. The petitioner and his other family members gave a statement setting out the facts.

Pursuant to notice issued in this case, the State filed its response that an FIR had been registered and certain police officials had been charged for commission of offences punishable under Sections 330, 342 and 306 IPC. Sanction for prosecution had been given and the charge-sheet had been filed. The accused persons had surrendered before the CJM and their bail applications had been rejected. Cognizance of the aforesaid offences had been taken. It was submitted that the police after investigation had not found any evidence of murder and, therefore, the charge-sheet had been filed accordingly. Counsel for the petitioner submitted that it was a clear case of custodial torture and death and by giving a colour of Section 306 IPC, an attempt was being made to protect the erring police officials. It was also stated that the compensation should be paid.

Disposing of the petition in the terms below,

Held :

No compensation can be granted in the absence of any adjudication on the issue as to whether there was custodial death. In view of the fact that sanction for prosecution had been granted, charge-sheet had been filed and cognizance had been taken, no further direction at present is necessary. If at any point of time, evidence surfaces before the court concerned to show that some other offences appear to have been committed, necessary orders can be passed. (Paras 14 and 15). *Dalbir Singh* v. *State of U.P.*, (2009) 11 SCC 376: (2009) 3 SCC (Cri) 1388: AIR 2009 SC 1674: 2009 Cri LJ 1543: (2009) 75 AIC 115 (SC): (2009) 2 All LJ 661: (2009) 1 APLJ 110 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 3-2-2009]

Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749, relied on

— S. 331 *See also* Ss. 166, 330, 331 and 304 Pt. II

See also Ss. 220, 330 and 331

See also Ss. 330 and 331

[8561] — Ss. 331/34 — Sentence — Police Head Constable causing grievous hurt to extort confession — *Having regard to severity and cruelty of beating four years' RI imposed by High Court not unduly severe — The fact that co-accused had already served out their sentence and were no longer in jail cannot be taken into consideration. Sidram Basawanneppa Hugar* v. *State of Bombay*, Criminal Appeal No. 126 of 1956.

Bench Strength 3. Coram: *B.P. Sinha*, **Syed Jafer Imam** and *K. Subba Rao*, JJ. [Date of decision: 11-3-1958]

— S. 332 *See also* Ss. 99, 186 and 332

See also Ss. 149 and 332

See also Ss. 302, 307, 325, 332 and 333

See also Ss. 353, 332 and 333

See also Ss. 395, 216, 224, 147, 201 and 332

[8562] — S. 332 — Sentence — *Sentence of 3 months' RI reduced to 29 days already undergone and unexpired portion of the sentence converted into a fine of Rs 1500 in addition to the fine of Rs 500 already imposed. Narayan Singh Nathu Singh* v. *Natvarlal Harilal Thakkar*, (1981) 4 SCC 507: 1981 SCC (Cri) 859.

Bench Strength 2. Coram: **A.D. Koshal** and *E.S. Venkataramiah*, JJ. [Date of decision: 27-3-1981]

[8563] — Ss. 332 and 323 — Assault having no real nexus or causal connection or consequential relation with the performance of duty by the complainant as public servant — *No evidence to show that intent of the assailants was to prevent or deter the complainant from discharge of his duty — Conviction altered to that under S. 323 — Fine of Rs 200 to be paid to the complainant. D. Chattaiah* v. *State of A.P.*, (1979) 1 SCC 128: 1978 SCC (Cri) 569: AIR 1978 SC 1441: 1978 Cri LJ 1473.

Bench Strength 2. Coram: **R.S. Sarkaria** and *P.S. Kailasam*, JJ. [Date of decision: 21-7-1978]

[8564] — Ss. 332, 353, 504 and 506 — Reasoned order/Speaking order — Necessity of — High Court summarily dismissing revision petition by a non-speaking order — Unsustainability — *Held, reasons introduce clarity in an order — On plainest consideration of justice, High Court ought to have set forth its reasons, howsoever brief, in its order, indicative of an application of its mind — Absence of reasons rendered High Court's judgment unsustainable — CrPC, 1973, S. 397 r/w S. 401* (Paras 2, 9 and 11). *Jagtamba Devi* v. *Hem Ram*, (2008) 3 SCC 509: (2008) 2 SCC (Cri) 103: 2008 Cri LJ 1623.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 4-2-2008]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547, followed

[8565] — Ss. 332 and 392 — Accused acquitted in a trial under S. 7, Essential Supplies (Temporary Powers) Act, 1946 — Subsequent trial under Ss. 332 and 392, IPC — *S. 403(2), CrPC, 1898 applies and the trial is not barred*

Three bullock carts belonging to the appellants carrying rice and ghee while crossing a river on the Madhya Pradesh and Uttar Pradesh border were seized by the police and were brought back to Madhya Pradesh. When they reached a jungle the police constable was beaten and the goods were forcibly carried away by the appellants. The appellants were first charged under S. 7, Essential Supplies (Temporary Powers) Act for exporting rice and ghee from Madhya Pradesh to another State in contravention of S. 7. Although they were convicted by the Magistrate they were acquitted on appeal by the Sessions Judge. Later, on the same facts they were charged under Ss. 332 and 392, IPC.

Held :

Neither S. 236, CrPC which deals with a case where there is a doubt as to which offence has been committed nor S. 237, CrPC which entitles the Court to convict a person of an offence which he is shown to have committed although he was not charged with it, applies. Sub-section (2) of S. 403 furnishes a complete answer to the contention raised on behalf of the appellants. The appellants were not tried again for the same offence as contemplated under S. 403(1) but for a distinct offence as contemplated by sub-section (2). It is true that in order to sustain the charge under Ss. 332 and 392, IPC, the Court had to consider whether the seizure was legal and was made by a public servant in the discharge of his duty but once that was found against the appellants the further question to be determined was as to whether they committed the offence of robbing the Head Constable of the goods lawfully seized and whether they voluntarily caused hurt to him while he was acting in the discharge of his duties as a public servant. *Kunjilal* v. *State of M.P.*, AIR 1955 SC 280: (1955) 1 SCR 872: 1955 Cri LJ 730.

Bench Strength **3**. Coram: *S.R. Das*, **Ghulam Hasan** and *N.H. Bhagwati*, JJ. [Date of decision: 8-10-1954]

— S. 333 *See also* Ss. 302, 307, 325, 332 and 333

See also Ss. 307 and 333

See also Ss. 353, 332 and 333

[8566] — S. 333 — Offence, held, made out where the accused tried to enter the cabin of the complainant driver's bus despite his objection and abused and kicked him causing grievous injury — *Driver was, in stopping the accused, discharging his duties as a public servant even though the bus was standing still — However, punishment of 1 year's RI not justified — Reduced to six months only and fine remitted. Manumiya* v. *State of Gujarat*, (1979) 4 SCC 717: 1980 SCC (Cri) 157: AIR 1979 SC 1706: 1979 Cri LJ 1384.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 6-2-1979]

[8567] — Ss. 333, 506 Pt. II — Sentence — Accused giving fist blow to the victim, an Assistant Surgeon in Govt. hospital resulting in dislocation of his tooth — Benefit of probation cannot be extended — However, in view of the fact that the occurrence took place 14 years ago sentence reduced to the period already undergone with a fine of Rs 50,000 to be paid to the victim. *Siyasaran* v. *State of M.P.*, 1995 Cri LJ 2126.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 14-12-1994]

— S. 333 r/w S. 34 *See also* S. 307 r/w S. 34 and S. 333 r/w S. 34

[8568] — S. 334 — Voluntarily causing hurt on provocation — Sentence — Reduction of — Sentence exceeding statutory maximum — *One year's RI with a fine of Rs 500 with the default stipulation imposed by High Court — Held, since maximum sentence permissible for offence under S. 334 is one month, sentence awarded by High Court reduced to one month while maintaining the fine amount with default stipulation* (Paras 7 and 8). *Ahmed Ali* v. *State of Tripura*, (2009) 6 SCC 704: (2009) 3 SCC (Cri) 12: (2009) 79 AIC 132 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 29-4-2009]

— S. 335 *See also* Ss. 326 and 335

[8569] — S. 335 — Voluntarily causing grievous hurt on provocation — Sentence — Reduction of — *Two years' RI and a fine of Rs 1000 with default stipulation awarded by High Court to the accused — Accused was stated to be of tender age at the time of the occurrence — Maximum sentence permissible for offence under S. 335 is four years — Held, sentence reduced to three months while maintaining the fine amount with default stipulation* (Para 8). *Ahmed Ali* v. *State of Tripura*, (2009) 6 SCC 704: (2009) 3 SCC (Cri) 12: (2009) 79 AIC 132 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 29-4-2009]

— S. 336 *See also* Ss. 149, 302/149, 327, 336, 449 and 147

See also Ss. 302/149, 325/149, 324/149, 323/149, 336 and 148

See also Ss. 304 Pt. II, 326, 324 and 429 and 304-A, 336, 337 and 338

See also Ss. 304-A, 336 and 337

— Ss. 336/34 *See also* Ss. 376/34 and 336/34

— S. 337 *See also* Ss. 279 and 337

See also Ss. 304 Pt. II, 326, 324 and 429 and 304-A, 336, 337 and 338

See also S. 304-A

[8570] — Ss. 337 and 338 — *Trial court acquitting the accused but High Court convicting him under, and imposing sentence of 6 months' SI and fine of Rs 1500 — As a special case Supreme Court exempting the accused from surrendering to the sentence and suggesting enhancement of fine to Rs 5000 waiving the imprisonment after hearing the respondent as well as the victim — Accused accepting the suggestion. Ram Kishan* v. *UT, Delhi*, 1987 Supp SCC 60: 1987 SCC (Cri) 624.

Bench Strength **2**. Coram: *Ranganath Misra* and *M.M. Dutt*, JJ. [Date of decision: 20-11-1986]

[8571] — Ss. 337, 338 and 304-A — Negligent or rash driving — Onus of proof — Negligent or rash driving of truck — *Held, has to be established by the prosecution and cannot be automatically presumed on the basis of res ipsa loquitur — Mere driving of the truck at a "high speed", held, did not lead to the inference that negligent or rash driving had caused the accident resulting in death of, and injuries to, a number of persons — Hence, in absence of evidence to establish "negligence" or "rashness" in driving, order of acquittal passed by High Court, held, called for no interference*

The respondent was driving a truck which turned turtle, resulting in the death of 15 persons and injuries to 18 persons. The trial court and the appellate court held the respondent guilty under Sections 337, 338 and 304-A IPC on the ground that he was driving the truck at a "high speed". The said courts did not record any finding as to negligent or rash driving by the respondent but relied on the doctrine of res ipsa loquitur. However, the High Court acquitted the respondent of all the offences. Dismissing the State's appeal,

Held :

Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "*res ipsa loquitur*". There being no evidence on the record to establish "negligence" or "rashness" in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the respondent is a perverse view. Hence, the same calls for no interference. *State of Karnataka* v. *Satish*, (1998) 8 SCC 493: 1998 SCC (Cri) 1508.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *S.B. Majmudar*, JJ. [Date of decision: 13-3-1996]

— S. 338 *See also* Ss. 40, 304-A and 338

See also Ss. 304 Pt. II, 326, 324 and 429 and 304-A, 336, 337 and 338

See also S. 304-A

See also Ss. 337 and 338

See also Ss. 337, 338 and 304-A

[8572] — S. 338 — Professional negligence — Mistake committed by doctor — When amounts to negligence — Surgery — Need of post-operative institutional care — Cataract operations conducted by surgeon in eye camp organised by voluntary social organisation — *Patients developing post-operative infection of intra ocular cavities causing complete damage to the operated eyes — Liability of the surgeon — In case of contamination in saline bought and used by the surgeon to irrigate the eyes during the surgery, 'product liability' of the manufacturer and the surgeon's liability if he fails to conduct tests before mass use of the saline — Whether guidelines laid down by government on the basis of which permission to organise the eye camp was granted followed, a considering factor — Questions involving technical matters for professional medical assessments and based on evidence, not examined on merits in proceedings under Art. 32 and no final opinion expressed against the doctor and his team in view of pendency of case under S. 338 against them — Constitution of India, Arts. 32 and 21*

The necessity of maintenance of the highest standards of aseptic and sterile conditions at places where Ophthalmic surgery — or any surgery — is conducted cannot be overemphasised. It is not merely on the formulation of the theoretical standards but really on the professional commitment with which the prescriptions are implemented that the ultimate result rests. Governments, States and Union, incur enormous expenditure of public money on health care. But, the standards of cleanliness and hygiene in public hospitals unfortunately, leave greatly to be desired. The maintenance of sterile, aseptic conditions in hospitals to prevent cross-infections should be ordinary, routine and minimal incidents of maintenance of hospitals. Purity of the drugs and medicines intended for man-use would have to be ensured by prior tests and inspection. But, owing to a general air of cynical irreverence towards values that has, unfortunately, developed and to the mood of complacence with the continuing deterioration of standards, the every concept of standards and the imperative of their observance tend to be impaired. This is a disturbing feature. The remedy lies in a ruthless adherence to the virtue of method and laying down practical procedures in the minutest of detail and by exacting — not merely expecting — strict adherence to these procedures.

The law recognises the dangers which are inherent in surgical operations. Mistakes will occur on occasions despite the exercise of reasonable skill and care. Where the operation is a race against time, the Court will make greater allowance for mistakes on the part of the surgeon or his assistants, taking into account the 'Risk-benefit' test. However, a mistake by a medical practitioner which no reasonably competent and a careful practitioner would have committed is a negligent one.

How far the lack of intensive post-operative institutional care contributed to the infection or the aggravation of its effects is a matter which cannot be decided in these proceedings. These are technical matters for professional medical assessments. But the guidelines prescribed by government do not, prima facie, seem to encourage such compliance in regard to the imperatives of post-operative care.

The explanation of the doctors appears to be that the infection occurred despite all precaution. The drift of the explanation is that the saline, used to irrigate the eyes during surgery to maintain turgidity of the operational surface, which was purchased from a reputed manufacturer might be the source of the contamination. If that be so, the question of the liability of the manufacturer for what is called "product liability" and the further questions whether in such cases of mass use, a pre-test for safety and purity of the article was necessary and whether failure to do so would be actionable would arise. These questions are necessarily to be answered on evidence. In these proceedings neither the Court had full evidence nor does the scope of the proceedings permit such findings to be recorded conclusively. *A.S. Mittal* v. *State of U.P.*, (1989) 3 SCC 223: 1989 SCC (Cri) 539: AIR 1989 SC 1570.

Bench Strength 2. Coram: *Ranganath Misra* and *M.N. Venkatachaliah*, JJ. [Date of decision: 12-5-1989]

Jackson and Powell on 'Professional Negligence', 1982 edn., p. 232; Street on Torts (1983, 7th edn., p. 126); Charlsworth and Percy on 'Negligence', p. 546, referred to

— S. 339 *See also* Ss. 95 and 339

See also Ss. 220, 339, 340 and 166

See also Ss. 341 and 339

[8573] — **S. 339 — Applicability — Allegation under S. 339 of wrongful restraint by co-sharer preventing him from enjoying his property — Maintainability** — *Held, right of a co-sharer to enjoy the joint family property is a civil right — Such a right, if denied by the other co-sharers for one reason or the other, must be enforced by taking recourse to the remedies available under the civil laws — Criminal proceedings cannot be taken recourse to for enforcing such a civil right — Specific Relief Act, 1963, Ss. 5, 6 and 34* (Paras 9 and 10). *Rajinder Singh Katoch* v. *Chandigarh Admn.*, (2007) 10 SCC 69: (2007) 4 KLT 877: (2007) 60 AIC 194 (SC): (2007) 144 DLT 241.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

[8574] — **S. 339 — Criminal proceedings not appropriate to enforce right of co-sharer to enjoy joint family property — Applicability — Allegation under S. 339 IPC of wrongful restraint by co-sharer preventing him from enjoying his property — Maintainability** — *Held, right of a co-sharer to enjoy the joint family property is a civil right — Such a right, if denied by the other co-sharers for one reason or the other, must be enforced by taking recourse to the remedies available under the civil laws — Criminal proceedings cannot be taken recourse to for enforcing such a civil right — Criminal proceedings not appropriate to enforce right of co-sharer to enjoy joint family property — Specific Relief Act, 1963, Ss. 5, 6 and 34* (Paras 9 and 10). *Rajinder Singh Katoch* v. *Chandigarh Admn.*, (2007) 10 SCC 69: (2007) 4 KLT 877: (2007) 60 AIC 194 (SC): (2007) 144 DLT 241.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

[8575] — **S. 339 Exception thereto and S. 341 — Wrongful restraint — Significance of the word "voluntary" in S. 339 — Held, connotes direct physical restraint** — *There should be restriction on normal movement of a person — Where accused persons had taken only a decision on behalf of a limited company to get a road repaired and repair might have caused some inconvenience but not physical obstruction to first respondent, held, no offence was committed under Ss. 339 and 341*

Appellants were Managing Director and Directors of a limited company which owned a villa. The villa was occupied by first respondent. The appellants as Managing Director and Directors took a decision on behalf of the Company to get the access road leading to villa repaired through a contractor. First respondent was opposed to this decision and therefore when repair work was started by spraying tar on the road, he went to police station with the complaint that appellants and other persons who were involved in repair of road should be stopped from doing this. Police authorities too instructed appellants to stop work but they did not stop, and proceeded with repair of access road. First respondent subsequently initiated criminal proceedings against Managing Director and Directors of the Company, and also against Architect, on the ground that they had committed offence of wrongful restraint under Sections 339 and 341, Penal Code, 1860, because first respondent and his family members were obstructed due to alleged illegal repair of road.

Appellants moved the High Court under Section 482 CrPC, for quashing of criminal proceedings against them but High Court rejected their petition.

One of the issues before the Supreme Court was whether appellants in their capacity as office-holders of a limited company, were criminally liable under Sections 339 and 341, Penal Code, even though they did not physically obstruct first respondent.

Allowing the appeal,

Held :

It is one thing to say that the Company had asked Accused 6 (Architect) to do construction but only because Accused 1 to 5 were its Directors, the same would not be sufficient to fasten any criminal liability on them for commission of an offence under Section 341 IPC or otherwise. The word "voluntary" in Section 339 connotes that obstruction should be direct. The obstruction must be a restriction on normal movement of a person. It should be physical one. The accused persons should have common intention to cause obstruction. Appellants were not at the site. They did not carry out any work. No overt act or physical obstruction on their part is attributed. In spite of the fact that road was under construction, the first respondent was not obstructed inasmuch as he was able to go to police station three times. It cannot therefore be said in a situation of this nature that Managing Director and Directors of the Company and Architect have committed an offence under Section 341 IPC. (Paras 11, 14 and 15). *Keki Hormusji Gharda* v. *Mehervan Rustom Irani*, (2009) 6 SCC 475: (2009) 2 SCC (Cri) 1113: 2009 Cri LJ 3733: (2009) 78 AIC 108 (SC): (2009) 150 Comp Cas 70.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

— S. 340 *See also* Ss. 220, 339, 340 and 166

[8576] — S. 340 — Damages for — Prosecution if on facts malicious — Test to determine — Prosecution launched by police officers under instructions from State Government, even though ultimately failing, held, could not be said to be malicious or without reasonable or probable cause — *The test is whether the prosecutor had not acted honestly believing the person concerned to be guilty and not the result of the criminal trial — On facts the prosecution for alleged violation of Assam Foodgrains (Licensing and Control) Order, 1961, although ending in acquittal, held, was not malicious — Constitution of India, Art. 21 — Essential Commodities Act, 1955, S. 3 — Noti. N.S.O. 696(E) dated 30-9-1977 — Assam Foodgrains (Licensing and Control) Order, 1961*

On 1-10-1977 the appellant's stock of paddy and rice was seized and the appellant was arrested for allegedly violating the Assam Foodgrains (Licensing and Control) Order, 1961. The seized stock was sold. The criminal prosecution launched against the appellant ended in discharge on the ground that the Assam Control Order of 1961 was not in force at the time of search, seizure and arrest of the appellant on 1-10-1977 but that it had expired on 30-9-1977. The appellant filed a suit against the State and certain police officers for damages towards mental pain, social and public humiliation, wrongful confinement and expenses incurred in defending the criminal cases (hereinafter "non-pecuniary damages") as well as for the value of the seized stock (hereinafter "pecuniary damages"). The High Court held the defendants to be guilty of malicious prosecution, abuse of power and unauthorised action and granted relief only in regard to pecuniary damages but, on the ground of vagueness of pleadings and evidence, dismissed the suit in respect of non-pecuniary damages. The plaintiff filed the instant appeal for non-pecuniary damages. The defendants did not file any appeal in regard to the amount decreed for pecuniary damages. Opposing the appeal, the respondent-defendants contended that the finding of the High Court in regard to the prosecution being without reasonable and probable cause or that it was malicious etc. was not correct and that hence no decree could be passed for the non-pecuniary damages. On the other hand, the appellant-plaintiff contended that the decree for pecuniary damages was based on the same finding and that neither the decree for pecuniary damages nor the adverse findings regarding absence of reasonable and probable cause, malice etc. were questioned by the respondents by way of an appeal or by cross-objections and that therefore the said findings could not be attacked by the respondents under Order 41 Rule 22 as amended in 1976. That the findings on which the decree for pecuniary damages was based had become final and operated as res judicata.

Dismissing the appeal,

Held :

The notification of the Central Government dated 30-9-1977 [S.O. 696(E)], Ministry of Agriculture & Irrigation [Gazette of India Part II Sec. 3(ii), Extra.] dated 30-9-1977 no doubt states that "in exercise of power conferred by Section 3 of the Essential Commodities Act, 1955 (Act 10 of 1955), the Central Government hereby rescinds the Assam Foodgrains (Licensing and Control) Order, 1961 w.e.f. 1-10-1977". The search, seizure and arrest operations were conducted on 1-10-1977 but, as noticed by the trial court, the Assam Government had issued a Wireless Message No. 363773 dated 30-9-1977 to various officers that the Government of India's procurement policy dated 29-9-1977 did not state that the existing restriction on movement of paddy/rice was withdrawn w.e.f. 1-10-1977 as reported in the press. Moreover, mentioning that the 1961 order had not been repealed, the message directed them to continue to enforce the said order.

The record also shows that this was communicated to officers lower down on 3-10-1977. This aspect was not given due importance by the High Court. (Para 25)

Newspaper reports regarding the Central Government decision could not be any basis for the respondents to stop action under the Assam Control Order of 1961. The presumption of genuineness attached under Section 81 of the Evidence Act to newspaper reports cannot be treated as proof of the facts stated therein. The statements of fact in newspapers are merely hearsay. (Para 26)

Now if the police officers of the Assam Government acted upon the instructions of the Assam Government and proceeded to apply the Control Order even on 1-10-1977, they cannot be said to have acted without reasonable or probable cause. The remedy of suit for damages for false imprisonment is part of the law of torts in India. Under the law of torts the defendant can claim to be judged not of the real facts but of those which he honestly, and however erroneously, believes. (Para 27)

The question is not whether the plaintiff was ultimately found guilty but the question is whether the prosecutor acted honestly and believed that the plaintiff was guilty. In prosecutions initiated by police officers, the fact that they did so upon advice or instruction of superior officers is one of the relevant facts unless it is proved that the particular police officer did not himself honestly believe that the plaintiff was guilty of an offence. (Para 28)

The High Court was wrong in concluding that there was absence of reasonable and probable cause because the action, in view of the notification of the Central Government, was unauthorised or illegal. Illegality does not by itself lead to such a conclusion. As to the contention that the appellant and the owners of paddy showed permits to Defendants 2 and 3, there is not sufficient pleading on this aspect. In any case no question was put when Defendant 2 was cross-examined. The 3rd defendant was asked and he denied the suggestion. Therefore, the plea of showing permits has not been properly substantiated. (Paras 29 and 30)

The finding of the High Court regarding malice or the absence of reasonable and probable cause cannot be accepted, notwithstanding the fact that such a finding was the basis for granting pecuniary damages which decree has become final. If that be so, the respondents can sustain the dismissal of the suit in regard to the non-pecuniary damages. (Para 31). *Ravinder Kumar Sharma* v. *State of Assam*, (1999) 7 SCC 435: AIR 1999 SC 3571.

Bench Strength **2**. Coram: **M. Jagannadha Rao** and *M. Srinivasan*, JJ. [Date of decision: 14-9-1999]

Nishambhu Jana v. Sova Guha, (1984-85) 86 CWN 685; Tej Kumar Jain v. Purshottam, AIR 1981 MP 55, approved

ADM, Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521, 579; Glinski v. McIver, 1962 AC 726, 776: (1962) 1 All ER 696, relied on

[8577] — S. 340 — Registry must place before the Court for orders cases of very serious nature and importance forthwith — *Delay of two and a half months in placing before the Court a letter containing complaint of illegal confinement of a lady against her wishes strongly deprecated — Matter directed to be placed before Chief Justice for taking suitable action against the concerned officials responsible for the delay — Constitution of India, Art. 32. Nilima Priyadarshini* v. *State of Bihar*, 1987 Supp SCC 732: 1988 SCC (Cri) 138: AIR 1987 SC 2021.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 27-3-1987]

[8578] — S. 340-A — Order of termination passed under R. 7(2)(b) after the bus driver of the State Roadways, having caused an accident resulting in death of one person and injury to another, was convicted under S. 340-A IPC — *Such order, although preceded by an order of reduction of pay following the passing of an award by Motor Accidents Claims Tribunal for a huge amount against the State Roadways for the same accident, held, did not attract the bar under Art. 20(2) — Constitution of India, Art. 20(2) — Haryana Civil Services (Punishment and Appeal) Rules, 1987, Rr. 7(2)(b) & 7(1)*

The respondent was a bus-driver under Haryana Roadways. In an accident caused by his rash and negligent driving, one person died and another was injured. An award passed by the Motor Accidents Claims Tribunal in that matter resulted in the loss of a huge sum to the State. Consequently, a departmental enquiry under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short "the Rules") was initiated against him and ultimately by an order dated 12-3-1990 punishment of reduction of pay to the minimum of the pay scale was imposed on him. On account of causing the same accident, he was convicted by a court under Section 340-A IPC. Based on that conviction, the Department by an order dated 17-9-1992 terminated his services. His suit challenging the termination order, though initially unsuccessful, was in second appeal decreed by the High Court only on the ground that an employee could not be punished twice for the same offence in view of Article 20(2).

Allowing the State's appeal,

Held :

The High Court was not right in equating the departmental enquiries held on different grounds to prosecution in a criminal case. The High Court also has failed to see that the two orders passed against the respondent were on different grounds and were on different cause of actions. (Para 4)

In the present case, the first order was passed on 12-3-1990 reducing the pay to the minimum of time scale under Rule 7(1) of the Rules. The second order terminating his services was passed on 17-9-1992 under Rule 7(2)(*b*). When a major penalty is proposed to be imposed upon a person on the ground of conduct which led to his conviction on a criminal charge compliance with the provisions contained in Rules 7(1) and (2) is not required. Rule 7 itself makes a distinction in regard to the punishment to be imposed depending on the grounds. (Para 5)

Therefore, there was no question of the respondent suffering a double jeopardy. The aid of Article 20(2) was wrongly taken. That article does not get attracted to the facts of the present case. The High Court committed a serious error in holding that the respondent was prosecuted and punished for the same offence twice. (Para 7). *State of Haryana* v. *Balwant Singh*, (2003) 3 SCC 362: 2003 SCC (L&S) 279: AIR 2003 SC 1253: (2003) 2 LLN 349: (2003) 2 LLJ 527.

Bench Strength **2**. Coram: **Shivaraj V. Patil** and *Arijit Pasayat*, JJ. [Date of decision: 4-3-2003]

(2000) 3 SCT 617 (P&H), reversed

Union of India v. P.D. Yadav, (2002) 1 SCC 405: 2002 SCC (L&S) 149, followed

— S. 341 *See also* Ss. 120-B, 364-A and 341

See also Ss. 120-B, 384, 388, 342, 341, 193, 201, 218, 466 and 420

See also Ss. 143, 147, 148, 341, 323, 324 and 302 r/w S. 149

See also Ss. 143, 147, 341, 307, 326 and 149

See also Ss. 147, 148, 341 and 302 r/w S. 149

See also S. 149 [Ss. 302/149 and 307/149] and S. 148 and S. 341

See also under Ss. 299 to 304

See also Ss. 307 and 341

See also Ss. 339 Exception thereto and S. 341

See also Ss. 342 and 341

See also Ss. 396, 506, 341 and 379

See also Ss. 447, 341, 323 and 427

See also S. 498-A and Ss. 406, 341, 323 & 120-B

See also S. 498-A and Ss. 406, 341, 323 & 120-B and Ss. 3 & 4, Dowry Prohibition Act, 1961

[8579] — Ss. 341, 323, 504/34 and 120-B — Quashing of criminal proceedings — Cognizance taken long after a period of three years — *Occurrence on 24-9-1994 — Cognizance taken by CJM on 4-2-2000 — Proceedings, held on facts, clearly barred by S. 468(2) CrPC — High Court erred in not quashing the same under S. 482 CrPC — CrPC, 1973, Ss. 482, 190, 468(2) and 473*

There is no dispute that cognizance was taken of the offences by the learned Magistrate long after a period of three years. The Magistrate condoned the delay on the ground that the proceedings were stayed by the High Court till 5-10-1999. On 11-11-1994, further proceedings had been specifically stayed but by the order dated 6-2-1995, the order dated 11-11-1994 was modified in effect to vacating the earlier order staying further proceedings. This position is abundantly clear by a bare perusal of the orders dated 11-11-1994 and 6-2-1995. When the order of 11-11-1994 was specifically modified, there was no reason to understand the orders otherwise. It was not correct for the learned Magistrate to say that there was stay of further proceedings till 5-10-1999 in the face of order dated 6-2-1995 read with the order dated 11-11-1994. (Para 12)

No other reason or ground is given in the order of the Magistrate to condone the delay under Section 473 of the Code. If the discretion is exercised on relevant considerations, possibly no fault could be found with such discretion. The High Court although noticed in the impugned order as to the effect of the order dated 6-2-1995 and found that there was an error committed by the Magistrate but took the view that it was not a serious one. Added to this, the proceedings are of the year 1994. Having regard to the facts and circumstances of the case, the CJM as well as the High Court committed serious error in upholding taking cognizance when it is clearly barred by Section 468(2) of the Code. (Para 12)

Thus, the impugned order is set aside and the criminal proceedings are quashed. (Para 13). *Ramesh Chandra Sinha* v. *State of Bihar*, (2003) 7 SCC 254: 2003 SCC (Cri) 1613: AIR 2003 SC 3635.

Bench Strength **2**. Coram: **Shivaraj V. Patil** and *Brijesh Kumar*, JJ. [Date of decision: 18-8-2003]

[8580] — Ss. 341, 323 and 506 — Existence of prima facie case upon inquiry — *Magistrate initially not entertaining private complaint but later entertaining it because: (1) Sessions Court in revision finding prima facie case and directing further inquiry and High Court in revision clarifying that the inquiry should be under S. 398, and (2) Magistrate on holding such further inquiry by recording depositions of three witnesses finding that allegations were supported by evidence — High Court not interfering under S. 482 by holding that there was concurrent finding that complaint revealed a prima face case — Held, High Court committed no error in declining to interfere under S. 482 — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 3(1)(x) and (2)(vii) — CrPC, 1973, Ss. 482, 398 and 274*

The High Court by the impugned order held that since the two courts below had concurrently held that a prima facie case under Sections 341, 323 and 506 IPC and Sections 3(*1*)(*x*) and 2(*vii*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 had been made out against the petitioner (the appellant herein) it was not a fit case in which the proceedings before the Magistrate could be quashed.

Dismissing the appeal,

Held :

The High Court committed no error in declining to interfere under Section 482 CrPC. So long as the Magistrate was satisfied that a prima facie case had been made out, he was competent to issue summons to the accused. A plain reading of the complaint filed by the complainant in the instant case makes out a case against the accused. Not only that, the depositions of the three witnesses examined by the complainant in support of his complaint also support the allegations made in the complaint. The Magistrate was, therefore, justified in taking cognizance against the appellant and the co-accused. (Paras 7 and 1)

Inasmuch as the Magistrate in the instant case summoned the witnesses and examined them afresh, he may have gone beyond what was legally necessary to do but that is no reason to hold that the recording of evidence by the Magistrate as a part of the further enquiry directed by the High Court would vitiate the proceedings before him or the conclusion drawn on the basis of any such enquiry. The High Court clarified that the direction issued by Sessions Judge was a direction for a further enquiry to be conducted by the CJM under Section 398 CrPC. (Paras 9 and 4)

The complaint which was first dismissed by CJM was returned by Sessions Court for further inquiry on ground that it revealed a prima facie case. That direction did not necessarily oblige the Magistrate to record any further evidence in the case. The nature of the inquiry was in the discretion of the Magistrate which may or may not have included recording of further evidence on behalf of the complainant. The Magistrate could without recording any further evidence in the matter reappraise the averments made in the complaint and the material already on record to determine whether a prima facie case was made out against the accused persons. (Para 9). *Subrata Das* v. *State of Jharkhand*, (2010) 10 SCC 798.

Bench Strength **2**. Coram: *Markandey Katju* and **T.S. Thakur**, JJ. [Date of decision: 22-10-2010]

[8581] — Ss. 341, 326, 504, & 506 r/w S. 34 and Ss. 324 & 325 r/w S. 34 — Part allowing of appeal against acquittal — Approach — *High Court upholding acquittal for offences under Ss. 341, 326, 504 and 506 r/w S. 34 IPC and setting aside acquittal for offences under Ss. 324 and 325 r/w S. 34 IPC without assigning distinct reason — PWs 1 to 3 were attacked and injured with stones and wooden sticks and PW 1 was threatened due to past hostility — High Court in an appeal against acquittal partly allowed the appeal by simply observing that benefit of doubt could not be given because the inconsistencies and contradictions were minor and there was past hostility between the parties — Matter therefore, remanded to High Court for proper appreciation of evidence — Constitution of India, Art. 136 — CrPC, 1973, Ss. 386 and 376*

The appellant-accused along with others attacked a couple (PWs 1 and 3) and their coolie (PW 2) with stones and wooden sticks. The complainant also threatened to kill the husband (PW 1, complainant). The prosecution examined two doctors (PWs 4 and 5). The Magistrate acquitted all the accused along with the appellant-accused by finding discrepancies in medical and ocular evidence and contradictions in the deposition of witnesses. The High Court allowed the appeal under Section 378 CrPC by relying on medical certificate, past hostility (due to long standing civil dispute), and by observing that the inconsistencies and contradictions were minor and that it was a case of extenuating circumstance and not a case where benefit of doubt could have been given. By the impugned order the High Court upheld the acquittal for offences under Sections 341, 326, 504 and 506 read with Section 34 IPC and set aside the acquittal and recorded conviction for offences under Sections 324 and 325 read with Section 34 IPC without assigning any reason.

Allowing the appeal,

Held:

In a brief order, the High Court partly allowed the appeal, but there was no reasoning or basis as to what weighed with the High Court in confirming the order of acquittal recorded in favour of the appellant-accused for offences (under Sections 341, 326, 504 and 506 read with Section 34 IPC) and for setting aside the order of acquittal and ordering conviction of the accused for the offences punishable under Sections 324 and 325 read with Section 34 IPC. The High Court was exercising appellate power as the first appellate court. It was, therefore, expected of the High Court to consider the evidence of the prosecution witnesses, particularly because the three eyewitnesses (PWs 1 to 3) were also injured witnesses. The High Court failed to discharge its duty of exercising appellate power as a regular court of appeal. The order passed by the High Court, therefore, deserves to be set aside by remitting the matter for fresh disposal in accordance with law. (Paras 15 to 17). *Manjunath Ganesh Hegde* v. *State of Karnataka*, (2008) 14 SCC 555: (2009) 2 SCC (Cri) 1129: (2009) 73 AIC 263 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 5-11-2008]

[8582] — Ss. 341 and 339 — 'Wrongful restraint' — Accused standing so close in front of a woman that she had to move backward — *Held, act does not constitute offence under S. 341*

(*See* facts under S. 354 IPC)

Regarding the offence of wrongful confinement punishable under Section 342 IPC there is not an iota of material in the FIR; and so far as the offence under Section 341 IPC is concerned, the only allegation relating to the same is that the respondent stood in front of the appellant in such a manner that she had to move backward. From such act alone it cannot be said that he "wrongfully restrained" her within the meaning of Section 339 IPC to make him liable under Section 341 IPC. (Para 18). *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194: 1995 SCC (Cri) 1059: AIR 1996 SC 309.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-10-1995]

[8583] — Ss. 341 and 339 — Wrongful restraint — Complainant in occupation of a room as licensee in the campus of a school — Accused, Principal Manager of school, locking the door after revoking the licence — Civil Court refusing to grant injunction in favour of the complainant describing her as a trespasser — *Held, the complainant being a trespasser had no right to proceed in the direction in question and therefore, action of the accused did not amount to wrongful restraint — Material on record not showing that the accused had in any way appropriated or stolen the belongings of the complainant which were in the room and therefore no damages can be awarded for the same. Vijay Kumari Magee* v. *S.M. Rao*, (1996) 7 SCC 148: 1996 SCC (Cri) 236: AIR 1996 SC 1058.

Bench Strength **2**. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 11-1-1996]

[8584] — Ss. 341, 342, 363, 392 and 504 r/w S. 34 — FIR and investigation — Interference by Chief Minister of State (CM) — Invalidity and unwarrantedness — FIR alleging illegal moneylending under 1946 Bombay Act — *CM and his PS instructing Collector and police station concerned respectively not to lodge FIR and not to initiate action on any complaint lodged against an MLA and his family members and to seek legal opinion from Government Pleader — Said instructions and interference, held (per curiam), illegal, unwarranted, against equality and social justice — CM should have understood necessity of implementing Moneylenders Act and ground realities that many farmers were committing suicide due to atrocities of moneylenders — Said instructions therefore, condemned and set aside — Exemplary costs of Rs 10 lakhs imposed on State — Bombay Moneylenders Act, 1946 (31 of 1947), S. 32-B — CrPC, 1973, Ss. 155 to 159*

The Collector in his order dated 5-6-2006 to the District Superintendent of Police referred to the meeting and instructions of the Chief Minister on 1-6-2006 and accordingly directed that if any complaint is received against a specified MLA or his family members, the said matter/complaint be placed for decision before the District Anti-Moneylending Committee and the said Committee should obtain the legal opinion of the District Government Pleader and then only take decision on the same and take appropriate legal action accordingly.

A complaint was lodged by Respondent 1 against the said MLA/family members under Sections 341, 342, 363, 392, 504 read with Section 34 IPC and Section 32-B of the Bombay Moneylenders Act, 1946. Station diary entry of the police station concerned where complaint had been lodged revealed that PS to the Chief Minister telephoned twice to the police station and directed that no action should be taken as instructed by the Chief Minister and that no offence should be registered.

The High Court after examining the provisions of the Bombay Moneylenders Act and also the materials on record held that the letter dated 5-6-2006 and the telephonic message recorded in the station diary entry exhibited gross abuse of power by the authority concerned and struck down both the communications.

Dismissing the appeal with costs of Rs 10 lakhs, *Held* :

Per A.K. Ganguly, J. (for Singhvi, J. and himself)

The instruction of the Chief Minister to the Collector in their meeting dated 1-6-2006 as reflected in the Collector's order dated 5-6-2006 to the District Superintendent of Police has no warrant in law and is unconstitutional and is quashed. The order of the High Court is affirmed. Such instructions should not have come from the Chief Minister of a State which is governed under a Constitution which resolves to constitute India into a socialist, secular, democratic republic. The Chief Minister's instructions are so incongruous and anachronistic, being in defiance of all logic and reason, that it deeply disturbs the conscience. The same is condemned in no uncertain terms. (Paras 47 and 46)

If the information lodged with the police discloses cognizable offence, the police shall record the same in accordance with and under Section 154 CrPC. The police officer's power to investigate in case of a cognizable offence without order of the Magistrate is statutorily recognised under Section 156 CrPC. The police officer in charge of a police station, on the basis of information received or otherwise, can start investigation if he has reasons to suspect the commission of any cognizable offence. This is subject to Section 157 provisos (*a*) and (*b*) CrPC which leave discretion with the police officer in charge of police station to consider if the information is not of a serious nature, he may depute a subordinate officer to investigate and if it appears to the officer-in-charge that there does not exist sufficient ground, he shall not investigate. (Paras 29 and 30)

The law does not accord any special treatment to any person in respect of any complaint having been filed against him when it discloses the commission of any cognizable offence. It is a vital component of the rule of law. (Para 31)

The direction of the then Chief Minister to give special treatment to the MLA concerned and his family about registering of complaint filed against them is totally unwarranted in law. The way interference was caused first from the office of the Chief Minister by his Private Secretary by two telephone calls on 31-5-2006 and the manner in which the District Collector was summoned by the Chief Minister on the very next day i.e. 1-6-2006 for giving instructions to specially treat any complaints filed against the said MLA and his family has no precedent either in law or in public administration. (Paras 31 and 28)

From the affidavit filed by the Police Inspector concerned it is clear that 34 cases were filed against the said MLA and his family in respect of allegation of moneylending. From the communication of the Collector containing the instructions of the then Chief Minister, it is clear that the Chief Minister was aware of the various complaints. Even then the Chief Minister passed an order for special treatment in favour of the said family which is unknown to law and which is not available to other similarly placed persons. The Chief Minister was acting solely on political considerations to screen the family of the said MLA from the normal process of law. (Paras 32 to 34 and 20)

The argument that some of the cases in which complaints were filed against the family of the said MLA, were investigated and charge-sheets were filed, is a poor consolation and does not justify the issuing of the wholly unauthorised and unconstitutional instructions to the Collector. It is not known in how many cases investigation has been totally scuttled in view of the impugned directions. Records disclosed in this case show that out of 74 cases only in seven cases were charge-sheets filed and the rest of the cases were either compromised or withdrawn. How can poor farmers sustain their complaints in the face of such directions and how can the subordinate police officers carry on investigation ignoring such instructions of the Chief Minister? Therefore, the instructions of the Chief Minister have completely subverted the rule of law. (Paras 40 and 41)

The Chief Minister of the State of Maharashtra was expected to know that the farmers of the State specially those in the Vidarbha region are going through a great deal of suffering and hardship in the hands of moneylenders. (Para 31)

This being the ground reality, the Chief Minister of the State who holding a position of great responsibility as a high constitutional functionary, certainly acted beyond all legal norms by giving the impugned directions to the Collector to protect members of a particular family who are dealing in moneylending business, from the normal process of law. This amounts to bestowing special favour to some chosen few at the cost of the vast number of poor people who as farmers have taken loans and who have come to the authorities of law and order to register their complaints against torture and atrocities by the moneylenders. The instructions of the Chief Minister will certainly impede their access to legal redress and bring about a failure of the due process. (Para 38)

The aforesaid action of the Chief Minister is completely contrary to and inconsistent with the constitutional promise of equality and also the Preambular resolve of social and economic justice. As the Chief Minister of the State, he had taken a solemn oath of allegiance to the Constitution but the directions which he gave are wholly unconstitutional and seek to subvert the constitutional norms of equality and social justice. (Para 39)

Per G.S. Singhvi, J. (supplementing)

The instructions given by the Chief Minister to District Collector were *ex facie ultra vires* the provisions of the Act which do not envisage any role of the Chief Minister in cases involving violation of the provisions of the Act and amounted to an unwanted interference with the functioning of the authorities entrusted with the task of enforcing the Act enacted for regulating, controlling transactions of moneylending and protecting unsuspecting borrowers against oppression and harassment at the hands of unscrupulous moneylenders. The District Anti-Moneylending Committee was constituted by the Government of Maharashtra for protecting the farmers against unscrupulous moneylenders and not for protecting the wrong-doers, but in total disregard of the scheme of the Act, the Chief Minister gave instructions which had the effect of frustrating the object of the legislation enacted for protection of the farmers. (Para 71)

The camouflage of sophistry used by the Chief Minister in the instructions given by him and the affidavit filed before the Supreme Court is clearly misleading. The message to the authorities was loud and clear i.e. they were not to take the complaints against the family concerned seriously and not to proceed against them. The District Magistrate, the District Superintendent of Police and officers subordinate to them were bound to comply with the same in their letter and spirit. They could disregard those instructions at their own peril and none of them was expected to do so. (Para 70). *State of Maharashtra* v. *Sarangdharsingh Shivdassingh Chavan*, (2011) 1 SCC 577.

Bench Strength **2**. Coram: **G.S. Singhvi**[2] and **A.K. Ganguly**[1], JJ. [Date of decision: 14-12-2010]

Lalita Kumari v. Govt. of U.P., (2008) 14 SCC 337: (2009) 2 SCC (Cri) 812, distinguished

[**Ed.**: *See also* Criminal Procedure Code, 1973, Ss. 155 to 159, '(5) Refusal to investigate or Improper investigation — Monitoring of investigation and Role of court', pp. 404 et seq. in **Vol. 16**; and

S. 154, '(4)(i) — Powers, Role and Duty of police in respect of FIR — Generally', pp. 367 et seq. also in **Vol. 16**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

— S. 341 r/w S. 149 *See also* Ss. 147, 148, 341, 504, 506, 324, 326 r/w S. 149

See also Ss. 302, 307, 326, and 341 r/w Ss. 148 and 149

[8585] — Ss. 341/149/34 — Appeal before High Court against acquittal by trial court — *Held, even if High Court disagreed with the conclusion of the trial court, it was not justified in remanding the case for retrial after a lapse of six years, particularly in view of the offences alleged being of trivial nature (under S.341, Indian Penal Code and S. 36-AD of Banking Regulation Act, 1949) committed pursuant to a call of strike — CrPC, 1973, Ss. 482, 386 and 378*

The High Court should have directed the dropping of the proceedings in exercise of its inherent powers under S. 482, CrPC even if it disagreed with the view taken by the trial court with regard to the gist of the offence punishable under S. 341, IPC, having regard to the inordinate delay of nearly six years that had ensued after the judgment of acquittal, the nature and magnitude of the offences alleged to have been committed by the appellants and the difficulties that may have to be encountered in securing the presence of witnesses in a case of this nature nearly 7 years after the incident. A fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process. The termination of the criminal proceedings in that way would secure the ends of justice as it would bring about reconciliation between the management and the employees and also put an end to a stale criminal proceeding in which the public had no longer sufficient interest. *S. Guin* v. *Grindlays Bank Ltd.*, (1986) 1 SCC 654: 1986 SCC (Cri) 64: AIR 1986 SC 289: 1986 Cri LJ 255: (1986) 1 LLN 471.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision: 11-12-1985]

S. Veerabadran Chettiar v. E.V. Ramaswami Naicker, 1959 SCR 1211: AIR 1958 SC 1032: 1958 Cri LJ 1565, followed

— S. 342 *See also* Ss. 120-B, 384, 388, 342, 341, 193, 201, 218, 466 and 420

See also Ss. 120-B r/w 326, 342, 417, 465, 473, 506 and 307

See also Ss. 148, 365, 342, 323, 324 and 302/149

See also Ss. 218, 323 and 342

See also under Ss. 299 to 304

See also Ss. 302, 364, 342 and 201

See also Ss. 323 and 342

See also Ss. 326/335, S. 326 r/w S. 120-B and S. 342

See also Ss. 330, 342 and 306

See also Ss. 364-A, 342 and 120-B

See also Ss. 375 and 376

See also Ss. 376, 375, 148, 452, 149, 342, 323, 366 and 506

See also Ss. 376, 375, 148, 452, 149, 342, 323 and 506

See also Ss. 376 and 342

See also S. 376 and proviso thereto and Ss. 342, 363 and 366

See also Ss. 376/149, 375, 148, 452, 342, 323, 366 and 506

See also Ss. 384, 365, 342 and 120-B

See also Ss. 397 and 342

See also Ss. 461, 379, 403, 342, 166 and 167

See also Ss. 498-A, 342, 506 and 406 r/w S. 34

[8586] — S. 342 — Expression "any offence under the Indian Penal Code" in S. 562(1-A) CrPC, 1898 — *Covers an offence under S. 342, IPC — Offence referred not confined to those sections of IPC where property is directly or indirectly involved — S. 562(1-A) is capable of dealing with all offences punishable with not more than 2 years' imprisonment. Akarapu Katta Mallu* v. *Purna Chandra Rao*, AIR 1967 SC 1363: (1967) 2 SCR 309: (1967) 2 MLJ (SC) 65: 1967 Cri LJ 1212.

Bench Strength **3**. Coram: **M. Hidayatullah**, *V. Bhargava* and *G.K. Mitter*, JJ. [Date of decision: 16-12-1966]

[8587] — S. 342 — Wrongful confinement — Conviction of SHO of police station therefor, restored — *Sh was SHO of police station where* ***J*** *was locked up from 2-2-1994 to 5-2-1994 and subjected to third-degree measures (amongst other acts of torture,* ***J****'s penis was cut off) without producing him before Magistrate — Evidence also indicating that* ***Sh*** *was present at police station when* ***J*** *was brought there and had also slapped him — Held,* ***Sh*** *being SHO must have been aware of activities in police station and was also guilty of omitting to produce* ***J*** *before Magistrate within 24 hours of arrest, as required — Hence,* ***Sh*** *guilty under S. 342 and sentenced to six months' SI and fine of Rs 10,000 with default stipulation of one month's SI — CrPC, 1973, S. 57 — Constitution of India — Art. 22(2)* (Paras 17, 18 and 27)

The victim *J* was an employee of accused *B* and was also residing in *B*'s house. *B* suspected that *J* was having illicit affair with his wife and eldest daughter. Constable *K* was relative of *B*. On 2-2-1994 at about 8 p.m. *J* was carrying a bottle of liquor when *K* met him and snatched the bottle. In ensuing scuffle, the bottle fell down and broke. *K* then took *J* to police station where accused SHO *Sh* allegedly slapped him. *J* was locked in police station from 2-2-1994 to 5-2-1994 and beaten without producing him before Magistrate. He was repeatedly questioned about his illicit relationship. On 5-2-1994, *J* admitted that he had relations with *B*'s wife whereupon accused ASI *S* held him by the neck while *K* chopped off *J*'s penis with a razor. *J* was taken to a hospital. An FIR was registered under Sections 307/326, 343 and 120-B IPC.

B died during pendency of trial. The trial court convicted *K* under Sections 326, 308, 323 and 343, *Sh* was convicted under Sections 323 and 343, while *S* was convicted under Sections 326/114, 308/114 and 120-B IPC. In appeal, the High Court acquitted *Sh* and *S* and reduced sentence of *K* to period undergone for offence under Section 326, while conviction under Section 343 was altered to Section 342. Hence, instant appeal.

Allowing the appeal, the Supreme Court held as above. *CBI* v. *Kishore Singh*, (2011) 6 SCC 369.

Bench Strength **2**. Coram : **Markandey Katju** and *T.S. Thakur*, JJ. [Date of decision : 25-10-2010]

Matthew, 5, Mark 9.50 and Luke 14.34-35, referred to

[8588] — S. 342 — "Wrongful confinement" — Essential ingredients to constitute offence of — *Appellant* ***R*** *bringing the victim* ***C*** *at night to the house of A-4 under a false pretext — Daughter of* ***C*** *was already taken to the house of A-4 by* ***R*** *— In this way* ***R*** *making it compulsory for* ***C*** *to go to the said house — A-2 closing the door of the house from outside — Thus, forcing* ***C*** *to remain in the house with A-4 and* ***R*** *—* ***C*** *was able to come out of the house on the next day — Held,* ***R*** *guilty of offence under S. 342*

The essential ingredients of the offence "wrongful confinement" are that the accused should have wrongfully confined the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribed limits beyond which he/she has a right to proceed. (Para 10)

It is established by the evidence on record that the victim was taken to A-4's place by the appellant in the night of the date of occurrence and she was able to come out of the confinement on the next day. Thus, the factual scenario clearly establishes commission by the appellant of the offence punishable under Section 342 IPC. (Para 10). *Raju Pandurang Mahale* v. *State of Maharashtra*, (2004) 4 SCC 371: 2004 SCC (Cri) 1259: AIR 2004 SC 1677: 2004 Cri LJ 1441.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 11-2-2004]

Shyam Lal Sharma v. State of M.P., (1972) 1 SCC 764: 1972 SCC (Cri) 470, relied on

[8589] — S. 342 — Wrongful confinement — Explained — Not restricted to public servants

Section 342, IPC is not confined to offences against public servants but is a general section and makes a person who wrongfully restrains another guilty of the offence under that section.

Wrongful confinement is a wrongful restraint in such a manner as to prevent that person from proceeding beyond certain circumscribed limits and this offence has nothing to do with the illegality of the investigation or search. *Shyam Lal Sharma* v. *State of M.P.*, (1972) 1 SCC 764: 1972 SCC (Cri) 470: AIR 1972 SC 886: (1972) 3 SCR 422: 1972 Cri LJ 638: 1973 ALJ 366.

Bench Strength **2**. Coram: **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 9-2-1972]

[8590] — Ss. 342 and 302 — Suspension of sentence pending appeal and release on bail — Factors that may be considered — Murder trial — *Appellant nearly 70 years old and in jail for nearly one year, and on bail during trial — He directed to be released on bail on his furnishing the stipulated security — However, clarified that release of Appellant 1 was only directed on considering his age and not on consideration of merits of the case — CrPC, 1973, S. 389* (Paras 2, 7 and 8). *Anil Ari* v. *State of W.B.*, (2009) 11 SCC 363: (2009) 3 SCC (Cri) 1377: AIR 2009 SC 1564: 2009 Cri LJ 1328: (2009) 75 AIC 107 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 9-2-2009]

Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281: 2005 SCC (Cri) 1052; Gomti v. Thakurdas, (2007) 11 SCC 160: (2008) 1 SCC (Cri) 644, relied on

[8591] — Ss. 342 and 341 — Conviction and sentence under — *An Assistant Sub-Inspector of Police sentenced under S. 342 with six years' R.I. for confining some persons illegally — Correctness of charge contested — Charge contained no date — No independent evidence of wrongful confinement — Evidence of restraint established — Conviction altered to that under S. 341 with a fine of Rs 250. Raja Ram* v. *State of Haryana*, (1971) 3 SCC 945: 1972 SCC (Cri) 193.

Bench Strength **3**. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 26-3-1970]

[8592] — Ss. 342, 343 and 366 — Several persons variously charged for abduction and wrongful confining of the prosecutrix against her will — *For several days she was taken openly from place to place — Her testimony showing she never protested even once to anyone despite opportunity to do so — Her testimony not natural and not acceptable — Convictions therefore not maintainable. Hari Ram* v. *State of Rajasthan*, 1991 Supp (2) SCC 475: 1991 SCC (Cri) 1071.

Bench Strength **3**. Coram: *A.M. Ahmadi*, *V. Ramaswami* and *M. Fathima Beevi*, JJ. [Date of decision: 5-3-1991]

[8593] — Ss. 342 & 353 — Illegality of search would not justify wrongful confinement of public officer or prevent discharge of his duties

An obstruction during the course of an irregular search not conducted in conformity with the provisions of S. 165, Criminal Procedure Code, might be justified, but that is no warrant for further preventing a public servant from discharging his duties. That constitutes an offence.

To say merely because the search was illegal the obstruction would be justified and those who caused it would be entitled to take law into their hands would result in conferring licence and afford them an unwarranted excuse to commit each and every criminal act.

Obstruction to search is to the act of the person conducting the search. It is a defensive act, but where search has ended and the persons conducting the search have left the premises, to bring them back and make them do things against their will is not an obstruction to an act, but a compulsion to make them act. *Shyam Lal Sharma* v. *State of M.P.*, (1972) 1 SCC 764: 1972 SCC (Cri) 470: AIR 1972 SC 886: (1972) 3 SCR 422: 1972 Cri LJ 638: 1973 ALJ 366.

Bench Strength **2**. Coram: **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 9-2-1972]

See also AIR 1960 SC 210: 1960 Cri LJ 286

[8594] — Ss. 342, 389, 469, 471 and 120-B — Sanction for prosecution of appellant police officer for conducting a search without warrant (though other procedures followed) — Need for — *Search of residential premises of R-2 conducted by police team headed by appellant on basis of report received by appellant as to commission of dacoity, in which R-2's son was implicated, with a view to arrest the said son — Alleging that search was motivated and was for purpose of humiliating* *and harassing R-2 and his son, as no search warrant had been obtained, complaint filed by R-2 — Whereupon, Magistrate taking cognizance of offences under Ss. 342, 389, 469, 471 and 120-B IPC against appellant, without sanction under S. 197 having been obtained — Order of Magistrate upheld by High Court — Sustainability — Held, High Court was not justified in holding that S. 197 was not applicable — It only focussed on absence of search warrant and totally ignored other relevant aspects, which had a determinative role in the issue — Hence order of Magistrate taking cognizance set aside — CrPC, 1973, S. 197* (Paras 21 and 22). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 38 AIC 13 (SC): (2006) 1 KLJ 405: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29; P. Arulswami v. State of Madras, (1967) 1 SCR 201: AIR 1967 SC 776: 1967 Cri LJ 665; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, relied on

— S. 342 r/w S. 34 *See also* Ss. 302, 307, 323 and 342 r/w S. 34

See also Ss. 302 and 342 r/w S. 34

— S. 342 r/w S. 120-B *See also* Ss. 365, 384, 342 r/w S. 120-B and S. 120-B

— S. 342 r/w S. 149 *See also* Ss. 302, 143, 147, 148, 341 and 342 r/w 149

— Ss. 342/34 *See also* Ss. 375 Thirdly, 376/34 and 342/34

See also Ss. 376(2)(g), 376/34 and 342/34

See also Ss. 376/34 and 342/34

— Ss. 342/365 *See also* Ss. 120-B and 342/365

— S. 343 *See also* Ss. 342, 343 and 366

See also Ss. 376, 302, 304, 120-B, 354, 312, 343, 201, 506, 109 and 34

— Ss. 343/120-B *See also* Ss. 365, 364-A, 343/120-B and 346/120-B

See also Ss. 365/120-B, 343/120-B and 346/120-B

— S. 344 *See also* Ss. 366-A, 372, 376 and 344

— S. 346 *See also* Ss. 376, 346 and 366

— Ss. 346/120-B *See also* Ss. 365, 364-A, 343/120-B and 346/120-B

See also Ss. 365/120-B, 343/120-B and 346/120-B

[8595] — Ss. 347, 161, 167, 385 and 511 — Inherent power — Quashing of criminal proceedings to prevent the abuse of process of court and secure the ends of justice — Grounds for — *Mala fide criminal proceedings on vague assertions due to private and personal grudge of Respondent 1 (complainant) against appellant-accused — Respondent 1 arrested on account of the FIR lodged by appellants for theft of electricity — Respondent 1 instituting complaint case for bribery to wreak vengeance on the raiding party members (appellants) of the Bihar State Electricity Board — Complaint case lodged in February after Respondent 1 (complainant) was released on bail — Respondent 1 (complainant) not specifying date when the bribery was demanded by the appellants — Respondent 1 (complainant) not showing reason as to why he did not choose to proceed against one of the four co-accused (appellants) initially named — Institution of complaint case on account of private and personal grudge, held, is a fit case under Category (7) of* Bhajan Lal case, *1992 Supp (1) SCC 335 for quashing a complaint case in exercise of powers under S. 482 CrPC to prevent the abuse of process of court and secure the ends of justice — Constitution of India, Art. 226 — CrPC, 1973, Ss. 482, 154 and 157*

On the basis of an FIR lodged by the raiding party of Bihar State Electricity Board, Respondent 1 was arrested for committing theft of electricity. After being released on bail on 7-1-1994, Respondent 1 filed a complaint case before the Magistrate on 11-2-1994 against the appellants and *R* (all members of the raiding party) alleging that they had demanded illegal gratification. Interestingly, no date of such demand was indicated in the complaint. When the Judicial Magistrate took the cognizance of the offences punishable under Sections 347, 161, 167, 385 and 511 IPC, the appellants and *R* filed petitions before the High Court questioning correctness of the order. The High Court dismissed the application filed by *R* while the application filed by appellants was pending. *R* moved the Supreme Court in SLP (Crl.) No. 3045 of 1996.

Supreme Court granted stay on 23-9-1996 and, therefore, proceedings before the trial court remained stayed. The special leave petition was disposed of on 17-7-1997. Since a statement was made before the Supreme Court by the complainant that he did not want to proceed against the petitioner in the special leave petition but he would like to continue the proceedings so far as the others are concerned, the proceedings were accordingly quashed qua the petitioner in the SLP. So far as the present appellants are concerned the High Court by the impugned order held that the Supreme Court had interfered because of the concession made and, therefore, no case for interference was made out.

Allowing the appeal,

Held :

Where a criminal proceeding (relating to cognizable offences) is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge it would come within Category (7) of rarest of rare cases as laid down in *Bhajan Lal case*, 1992 Supp (1) SCC 335 where the High Court may exercise its power under Section 482 CrPC to prevent abuse of process of any court or otherwise to secure the ends of justice. The backgrounds clearly show that the proceedings instituted were mala fide, based on vague assertions and were initiated with mala fide intents and constitute sheer abuse of process of law. No reason was shown before the High Court as to why the complainant chose not to proceed against one of the four persons initially named. The High Court did not attach importance to the fact that the complaint was lodged in February 1994 and there was no date indicated as to when the alleged demand was made. The cases at hand fit in with Category (7) of *Bhajan Lal case*, 1992 Supp (1) SCC 335. (Paras 7, 8 and 5). *Baijnath Jha* v. *Sita Ram*, (2008) 8 SCC 77: (2008) 3 SCC (Cri) 428: AIR 2008 SC 2778.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 12-6-2008]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89, relied on

[8596] — Ss. 347, 386 and 365 — Sentence — *High Court enhancing the sentence to 3 years' Rigorous Imprisonment under S. 347, IPC and to 8 years' Rigorous Imprisonment under S. 386, IPC and awarding 7 years' rigorous imprisonment under S. 365, IPC — High Court justified in enhancing the sentences*

The Sessions Judge held that the accused was guilty of a grave and heinous crime and it is surprising that he should have sentenced the accused to undergo rigorous imprisonment for one year under S. 347, 2 years under S. 365 and 3½ years under S. 386, IPC, and direct the sentences to run concurrently. When the Sessions Judge gave such disproportionately lenient sentences it was the duty of the High Court to rectify such an obvious error. The learned Judges of the High Court rightly enhanced the sentence imposed on the appellant. *Deep Chand* v. *State of Rajasthan*, AIR 1961 SC 1527: (1962) 1 SCR 662: (1961) 2 Cri LJ 705, 709: (1962) 2 MLJ 1 (SC).

Bench Strength **2**. Coram: **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 30-3-1961]

— S. 348 *See also* Ss. 302/34, 330, 348 and 201

See also Ss. 302/34, 348 and 201/34

[8597] — S. 348 — Assistant Commissioner of Police refusing to grant bail unless a condition, which could not be legally imposed, was fulfilled — His prosecution under S. 348 — *Sanction is necessary. Somchand Sanghvi* v. *Bibhuti Bhusan Chakravarty*, AIR 1965 SC 588: (1964) 6 SCR 275: (1965) 1 Cri LJ 499.

Bench Strength **2**. Coram: *K. Subba Rao* and **J.R. Mudholkar**, JJ. [Date of decision: 21-1-1964]

[8598] — S. 348 — Public servant illegally exercising his discretion as a public servant — *Sanction is necessary — Assistant Commr. of Police refusing to grant bail unless a condition which could not be legally imposed, was fulfilled — His prosecution under S. 348 IPC — Sanction is necessary — CrPC, 1898, S. 197*

Complainant lodged a complaint against the appellant under S. 120-B and S. 420 IPC. He was arrested and produced before the Assistant Commissioner of Police who refused to release him on bail unless he paid Rs 5, 000.00 to the complainant. The appellant after his release preferred a complaint against the Assistant Commissioner of Police under Ss. 348 and 220 IPC and S. 13-C Calcutta Police Act. Process was issued against him under S. 348 IPC alone. High Court quashed the process on the ground that before the Assistant Commissioner could be proceeded against sanction under S. 197 CrPC was necessary. Appellant appealed to the Supreme Court.

Held :

Whether a person charged with an offence should or should not be released on bail was a matter within the discretion of the respondent and if while exercising a discretion he acted illegally by saying that bail would not be granted unless the appellant did something which the appellant was not bound to do, the respondent cannot be said to have acted otherwise than in his capacity as a public servant. For this reason the sanction of the appropriate authority for the respondent's prosecution was necessary under S. 179 CrPC. *Somchand Sanghvi* v. *Bibhuti Bhusan Chakravarty*, AIR 1965 SC 588: (1964) 6 SCR 275: (1965) 1 Cri LJ 499.

Bench Strength **2**. Coram: *K. Subba Rao* and **J.R. Mudholkar**, JJ. [Date of decision: 21-1-1964]

[8599] — S. 348 — Wrongful confinement by police personnel — One *V*, who was arrested on direction of A-1 (officer-in-charge of police station) on 19-10-1988 at 9.30 a.m., died by hanging himself in police station on 20-10-1988 at about 5.30 p.m. — *V not produced before nearest Magistrate within 24 hours of his arrest, as required by CrPC — Held, the accused police personnel (including A-1) were guilty of offence under S. 348 — Contention that duty to produce the accused before the nearest Magistrate was of IO and not of A-1, rejected* (Para 10). *Sanganagouda A. Veeranagouda* v. *State of Karnataka*, (2005) 12 SCC 468.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 29-9-2005]

— S. 349 *See also* Ss. 353 and 349

[8600] — Ss. 349 and 353 — Resisting search, inspection and seizure of books of account etc. on a surprise visit by Sales Tax officials — Shirt of sales tax peon torn in scuffle — *Held, amounted to use of force punishable under Ss. 349 and 353, IPC — Also act of snatching the account books was punishable under S. 26(1)(h) — Choosing to prosecute under the graver offence out of the two was not a colourable exercise of power — Bihar Sales Tax Act, 1947 (19 of 1947), Ss. 26(1)(h) and 17*

Merely holding books found lying in the premises for perusing them cannot properly be regarded as seizure because seizure implies doing something over and above holding an article in one's hand. According to the Shorter Oxford Dictionary, seizure, among other things, means "...confiscation or forcible taking possession (land or goods); a sudden and forcible taking hold". *Chandrika Sao* v. *State of Bihar*, AIR 1967 SC 170: 1963 Supp (1) SCR 419: (1964) 14 STC 398: 1967 Cri LJ 261.

Bench Strength **3**. Coram: *Syed Jafer Imam*, *N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 27-9-1962]

[8601] — S. 351 — "Assault" — Meaning and scope — Infliction of injury — Not necessary — Conviction under — Acquittal by High Court — Propriety — *Accused-respondents (all armed) surrounding the deceased and assaulting him — On facts, held, assembly was patently unlawful — Common object established — Plea that eyewitnesses stated about assaults by five persons, but there was only one injury on deceased, held, unacceptable in view of the definition of "assault" in S. 351 IPC — Rejection of evidence of eyewitnesses (PWs 3 and 5) by High Court, held on facts, not proper — It passed the judgment more on surmises and conjectures than analysing the evidence on record — Hence, acquittal set aside — Conviction by trial court restored* (Paras 8 and 19). *Chanakya Dhibar* v. *State of W.B.*, (2004) 12 SCC 398.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 19-12-2003]

— S. 352 *See also* Ss. 302, 34, 352 and 323

See also Ss. 354 and 352

[8602] — S. 352 — Offence under, is a minor offence and is included in the offence under S. 354

The offence under Section 352 need not be taken notice of for the offence under Section 354 IPC includes the ingredients of the former. In other words, Section 352 IPC constitutes a minor offence in relation to the other. *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194: 1995 SCC (Cri) 1059: AIR 1996 SC 309.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-10-1995]

[8603] — S. 352 — Sentence — Accused adding insult to injury — *Requires maximum punishment*

Accused being a railway officer of some status it was his duty to behave fairly and courteously to passengers. His conduct in forcibly trying to occupy the seat occupied by a lady passenger and her baby and assaulting her when she resisted, calls for censure, and where in the trial he has added insult to injury in casting aspersions on her character he must be awarded the maximum sentence permissible under S. 352. *Ram Dass* v. *State of W.B.*, AIR 1954 SC 711: 1954 Cri LJ 1793, 1796.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *B. Jagannadhadas* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 24-2-1954]

— S. 353 *See also* Ss. 21, 353 and 355

See also Ss. 96, 100, 147, 353, 447 and 307 r/w S. 145

See also Ss. 100, 147, 353, 447 and 307 r/w S. 149

See also Ss. 186 and 353

See also Ss. 302, 307, 147 to 149 and 353

See also Ss. 302/149, 307/149, 353 and 379

See also Ss. 307 and 353

See also Ss. 332, 353, 504 and 506

See also Ss. 342 and 353

See also Ss. 349 and 353

[8604] — S. 353 — Accused alleged to have pushed the Food Inspector — Charge not corroborated — *Accused also acquitted of the charge under Prevention of Food Adulteration Act — But in view of concurrent findings of the lower courts, con-*

viction under S. 353 confirmed — However, the substantive sentence as well as fine imposed on the accused by the lower courts set aside — Accused directed to be released on bond of good behaviour. Bhagirath v. *State of M.P.*, 1981 Supp SCC 70: 1982 SCC (Cri) 131(2).

Bench Strength **2**. Coram: *Y.V. Chandrachud, C.J.* and *V.D. Tulzapurkar*, J. [Date of decision: 15-1-1980]

[8605] — S. 353 — Sentence — *Two months' imprisonment out of total period of 6 months already undergone by appellant-bus conductor — In view of long lapse of time and chances of loss of job, appellant released on benefit of Probation of Offenders Act, 1958 on furnishing bond and a surety — Probation of Offenders Act, 1958. B.S. Narayanan* v. *State of A.P.*, 1987 Supp SCC 172: 1987 SCC (Cri) 791.

Bench Strength **2**. Coram: *G.L. Oza* and *M.M. Dutt*, JJ. [Date of decision: 23-1-1987]

[8606] — Ss. 353, 34 and 120-B — Bail — Grant of — Relevant considerations for reiterated — *Held, the same are (1) nature of accusation, severity of punishment in case of conviction and nature of supporting evidence, (2) reasonable apprehension of tampering with witness and apprehension of threat to complainant, (3) prima facie satisfaction of the court in support of the charge — Reasons to be given while granting bail — Respondents booked under Unlawful Activities (Prevention) Act, 1967, Arms Act, 1959 and Penal Code, 1860 — Bail granted by High Court observing that charge-sheet did not disclose as to what were the imputations of acts done by respondents under Arms Act and other offences but relevant considerations as stated above, not kept in view — High Court's bail order set aside — Unlawful Activities (Prevention) Act, 1967, Ss. 10, 13, 18 and 20 — Arms Act, 1959, Ss. 3 and 4 — CrPC, 1973, Ss. 437 and 439* (Paras 5 and 8). *State of Maharashtra* v. *Dhanendra Shriram Bhurle*, (2009) 11 SCC 541: (2009) 3 SCC (Cri) 1480: AIR 2009 SC 1706: (2009) 76 AIC 197 (SC): 2009 Cri LJ 1546: (2009) 2 All LJ 124.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 11-2-2009]

Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41; Lokesh Singh v. State of U.P., (2008) 16 SCC 753, relied on

[8607] — Ss. 353, 332 and 333 — Sentence — *Inspectors of Municipal Corporation, without serving prior notice, demanding immediate payment of milk tax from appellant and trying to seize his buffalo under misconception about the mode of action under the Delhi Municipal Corporation Act — Appellant not refusing to pay but pleading that he had no ready money — Appellant to prevent them from seizing his buffalo giving a blow on the nose of one of the Inspectors resulting in bleeding and fracture — High Court sentencing him to R.I. for one year on each count and also imposing fine of Rs 400 — Held, sentence excessive. Kesho Ram* v. *Delhi Admn.*, (1974) 4 SCC 509: 1974 SCC (Cri) 545: AIR 1974 SC 1158: (1974) 3 SCR 827: 1974 Cri LJ 814: 1974 MLJ (Cri) 567.

Bench Strength **2**. Coram: **M.H. Beg** and *R.S. Sarkaria*, JJ. [Date of decision: 3-4-1974]

[8608] — Ss. 353 and 349 — Force — Interpretation and meaning of — *Assistant Superintendent of Commercial Taxes paying surprise visit to shop of accused — Officer finding two sets of account books — Accused snatching account books from his hands — Held, action of accused amounted to use of force — Accused, held, guilty under S. 353*

The Assistant Supdt. of Commercial Taxes while paying a surprise visit to the shop of accused and finding that two sets of account books were kept started looking into those books. The appellant (accused) snatched away both the books and passed them over to one of his servants who made them over to another servant who was on the upper floor. When Assistant Supdt. directed the orderly peon to recover the books the accused prevented him to go to the place where the account books had been taken and in the scuffle the shirt of the peon was torn.

Held :

One person can be said to have used force against another if he causes motion, change of motion or cessation of motion to that other. By snatching away the books which the officer was holding the appellant necessarily caused a jerk to the hand or hands of the officer in which he was holding the books. His act, therefore, may be said to have caused motion to the officer's hand or hands. Further, the natural effect of snatching the books from the hand or hands of the officer would be to affect the sense of feeling of the hand or hands of the officer. There is no doubt that the action of the appellant amounts to use of force as contemplated by S. 349, IPC.

Mere use of force, however, is not enough to bring an act within the terms of S. 353, IPC. It has further to be shown that force was used intentionally to any person without that person's consent in order to commit an offence or with the intention or with the knowledge that the use of force will cause injury, fear or annoyance to the person against whom the force is used.

Under S. 17 of the Sales Tax Act, 1947 and R. 50 of the rules framed under the Act, the Assistant Supdt. of Commercial Taxes was entitled to pay a surprise visit to the shop of the accused and was also entitled to examine the account books. He was, therefore, lawfully in possession of the account books when he took them up in the shop and started perusing them. The appellant had no justification in law to snatch the books of accounts from him. To feel annoyed at this action of the appellant would be the natural reaction of the officer and, therefore, the appellant's act must be held to amount to use of criminal force.

The accused is guilty under S. 353, IPC. *Chandrika Sao* v. *State of Bihar*, AIR 1967 SC 170: 1963 Supp (1) SCR 419: (1964) 14 STC 398: 1967 Cri LJ 261.

Bench Strength **3**. Coram: *Syed Jafer Imam, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 27-9-1962]

— S. 353 r/w S. 34 *See also* Ss. 302, 307 and 353 r/w S. 34

[8609] — Ss. 353/34 and 438/34 — Vessel on high seas exhibiting "not under command" lights and not flying any flag indicating its nationality — Indian Naval Officers demanding boarding of the vessel but the accused refusing the same — *Indian Naval Officers firing warning shots to make them surrender and divert their attention for facilitating the boarding operation — Accused firing retaliatory shots — Held, in the facts and circumstances of the case, the accused used criminal force against the Indian Naval Officers with intent to prevent or deter them from discharging their duty and, therefore, they are liable to be punished under Ss. 353/34 — Held, further that finding of the Designated Judge that the accused's vessel was hit by a shot fired by an Indian Naval Officer and, therefore, caught fire and got destroyed is against the weight of evidence on record — Circumstances establishing that the accused themselves destroyed their ship in order to avoid detection of the true state of affairs and consequential action and thereby committed offence under Ss. 338/34 — Acquittal of accused under Ss. 353 and 438 set aside — Prosecution failed to establish offences under TADA or Explosives Act or Arms Act — U.N. Convention on Law of Seas, 1982, Arts. 91, 92 and 110. State* v. *V. Jayachandra*, (1997) 10 SCC 70: 1997 SCC (Cri) 783.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 13-3-1997]

— S. 354 *See also* Ss. 302 and 354 and Ss. 376/511

See also Ss. 304 Pt. II, 300 Exceptions 1 and 4, 201 and 34 and S. 354

See also Ss. 323, 506, 427, 354 and 452

See also Ss. 355 and 354

See also Ss. 375 and 376

See also Ss. 448 and 354

See also Ss. 452, 354, 323, 506 Pt. II r/w S. 34

See also Ss. 452, 451 and 354

See also Ss. 457 and 354

[8610] — S. 354 — Approach to be followed by Court while dealing with a case under — *Nature and ingredients of offence under — Nature of intention and knowledge required to make out the offence — Existence of such intention or knowledge how to be ascertained — Status of victim of molestation and indignation under S. 354 CrPC, 1973, as witness*

A charge under Section 354 is one which is very easy to make and is very difficult to rebut. A careful approach has to be adopted by the Court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under Section 354 IPC are as under:

(*i*) that the person assaulted must be a woman;

(*ii*) that the accused must have used criminal force on her, and

(*iii*) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

There is no abstract conception of modesty that can apply to all cases. (Paras 8 and 9)

In order to constitute the offence under Section 354 mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. (Paras 9 and 10)

In the instant case after careful consideration of the evidence, the trial court and the High Court have found the accused guilty. (Para 10). *Vidyadharan* v.

State of Kerala, (2004) 1 SCC 215: 2004 SCC (Cri) 260: AIR 2004 SC 536: (2004) 1 KLT 105: 2004 Cri LJ 605: (2004) 2 MPLJ 251.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 14-11-2003]

[8611] — S. 354 — Assault or criminal force on a woman with intent to outrage her modesty — Test to determine whether modesty of woman outraged, assaulted or insulted — *Meaning of word "modesty" — Case-law referred to in this regard* (Paras 41 to 43). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[8612] — S. 354 — Criminal assault on a school-going girl aged 9 years — Her evidence corroborated by her father and other witnesses — *Absence of explanation by the accused as to why a young girl and her father would implicate himself falsely — Conviction maintained. S.I. (Jem) Pramodh Singh* v. *State of J&K*, AIR 1995 SC 1964: 1995 Cri LJ 3620.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 11-1-1995]

[8613] — S. 354 — Falsus in uno, falsus in omnibus — Applicability — Held, though not applicable in India but evidence led by the parties must be appreciated keeping in view the entirety of the situation — *On facts, since the evidence of the prosecution witnesses was found by the trial court to be incorrect and unreliable, the statements of the said witnesses with regard to commission of an offence under S. 354 IPC should have been considered by it, keeping in view the extent of falsity in their statements — Moreover, they having failed to substantiate the other allegations and having implicated three persons falsely, their statements should have been accepted with a pinch of salt and keeping in view the admitted animosity between the parties*

The doctrine "*falsus in uno, falsus in omnibus*" is not applicable in India but the evidence led by the parties must be appreciated keeping in view the entirety of the situation. The trial Judge came to the conclusion that most of the statements made by PW 2 and PW 3 were incorrect and no reliance could be placed thereon. The statements of the said witnesses with regard to commission of an offence by the appellant under Section 354 IPC should have been considered keeping in view the extent of falsity in their statements. PW 2 and PW 3 not only failed to substantiate the allegations as regards commission of offences under Sections 323, 504, 506 read with Section 34 IPC but also implicated the three persons falsely. The statements of the said witnesses should have been accepted with a pinch of salt and keeping in view the admitted animosity between the parties. The background of the case vis-à-vis continuous animosity between the complainant and her husband, on the one hand, and the appellant and his other tenants could not have been lost sight of by the learned trial Judge. (Para 20). *Pandurang Sitaram Bhagwat* v. *State of Maharashtra*, (2005) 9 SCC 44: 2005 SCC (Cri) 1198: AIR 2005 SC 643: 2005 Cri LJ 880.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **S.B. Sinha**, JJ. [Date of decision: 17-12-2004]

[8614] — S. 354 — Gravity of offence and persistent offensive conduct and behaviour of the accused are factors against grant of probation under — *Probation of Offenders Act, 1958, S. 4. Chander Kala* v. *Ram Kishan*, (1985) 4 SCC 212: 1985 SCC (Cri) 491: AIR 1985 SC 1268: 1985 Cri LJ 1490.

Bench Strength **3**. Coram: **V.D. Tulzapurkar**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 1-5-1985]

[8615] — S. 354 — Nature of offence under S. 3(1)(xi), SC & ST Act — Comparison with offence under S. 354 — *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(1)(xi)*

As rightly observed by the courts below, Section 3(1)(*xi*) of the Act which deals with assaults or use of force to any woman belonging to a Scheduled Caste or Scheduled Tribe with the intent to dishonour or outrage her modesty is an aggravated form of the offence under Section 354 IPC. The only difference between Section 3(1)(*xi*) and Section 354 is essentially the caste or the tribe to which the victim belongs. If she belongs to a Scheduled Caste or Scheduled Tribe, Section 3(1)(*xi*) applies. The other difference is that in Section 3(1)(*xi*) dishonour of such victim is also made an offence. (Para 10). *Vidyadharan* v. *State of Kerala*, (2004) 1 SCC 215: 2004 SCC (Cri) 260: AIR 2004 SC 536: (2004) 1 KLT 105: 2004 Cri LJ 605: (2004) 2 MPLJ 251.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 14-11-2003]

[8616] — S. 354 — New allegations and overt acts attributed to the accused at the trial which were not mentioned in the FIR — *Held, should not have been believed where the FIR had been filed after due deliberation, the complainant being a* *mature educated woman — On facts, no offence under S. 354, Indian Penal Code made out. K. Lakshmana Rao* v. *Public Prosecutor, State of A.P.*, (1979) 4 SCC 638: 1980 SCC (Cri) 147: AIR 1979 SC 1324: 1979 Cri LJ 1067.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 30-1-1979]

[8617] — S. 354 — Offence under — Essential ingredients — "Modesty" — Meaning of — *"Outrage to modesty of a woman", what constitutes — Knowledge that modesty is likely to be outraged, held, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object*

The essential ingredients of the offence punishable under Section 354 IPC are that the person assaulted must be a woman, and the accused must have used criminal force on her intending thereby to outrage her modesty. (Para 13)

Modesty can be described as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. (Para 14)

What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her dress coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman, and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. (Para 13). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

See also (2004) 4 SCC 371

[8618] — S. 354 — Offence under — Proof of — Corroboration of evidence — *Complainant wife's conduct of immediately narrating the incident to her husband and lodging FIR on the same day, held on facts, corroborated her version against accused. Chander Kala* v. *Ram Kishan*, (1985) 4 SCC 212: 1985 SCC (Cri) 491: AIR 1985 SC 1268: 1985 Cri LJ 1490.

Bench Strength 3. Coram: **V.D. Tulzapurkar**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 1-5-1985]

[8619] — S. 354 — Outraging modesty of woman — Complainant PW 1, a trainee-officer, molested by appellant (Collector of Customs and Excise) when she was in his chamber — Conviction of appellant — Propriety — *No reason to file false complaint against appellant — Fact that on the night of the incident PW 1 called her superior and informed him about the incident, probabilising the prosecution case — Contention that much time was taken for filing the complaint, not sustainable — Minor contradictions, not serious in nature — Evidence of PW 1 found reliable — Held, High Court rightly convicted the appellant for offence punishable under S. 354* (Para 8)

The case against the appellant, who was the Collector of Customs and Excise, was initiated on the basis of information furnished by PW 1, the complainant, who was a member of the Indian Revenue Services and who was undergoing training as a Probationary Officer. PW 1 alleged that she was molested by the appellant while she was in his chamber. According to her, the accused led her to his chamber and switched on a VCR and displayed a film relating to seizure of some contraband gold. When this film was being viewed, the complainant was seated on a sofa and the appellant was standing behind. Suddenly, the appellant caught hold of her hand and pushed her down in the sofa. Though PW 1 wanted to get out of the room, the appellant caught hold of her and pushed her down and put the entire weight of his body on her and made a statement that he wanted to have sexual relationship with her. PW 1 came out of the room and wanted to get back to her hostel. But, when she came to the exit point and desired to have a taxi, the appellant came and pushed her inside the official car which was standing there at that place. Because of insistence of PW 1 she was dropped at the railway station. It was alleged that while PW 1 was in the car the appellant touched her body and thereby outraged her modesty. PW 1 thereafter reached her room in the hostel. She telephonically contacted PW 10, the Director General of National Academy of Customs, Excise and Narcotics and gave the details of the entire incident that had happened in the office. She also informed her husband who was working at Hyderabad. The written complaint in the present case was filed by PW 1 after two days of the incident. The trial court acquitted the appellant. But in appeal, the High Court convicted him under Section 354 IPC and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs 25,000.

Dismissing the appeal, the Supreme Court decided as above. *Satyaendra Dayal Khare* v. *State of Maharashtra*, (2005) 12 SCC 485.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *D.M. Dharmadhikari*, JJ. [Date of decision: 2-8-2005]

[8620] — S. 354 — Outraging the modesty of a woman — Conviction by the trial court — Propriety — *Trial court disbelieving the other allegations made by the complainant and acquitting all the accused of all charges framed against them but convicting the appellant-accused alone under S. 354 on ground that ordinarily a lady would not "put her character at stake" and falsely implicate a person — Held, such approach by the trial court may not be wrong but cannot be universally applied — Each case has to be determined on the touchstone of the factual matrix thereof — That ordinarily a woman by making false allegation of acts committed against her would not "put her character at stake", Rule not of universal application*

The approach of the trial court that ordinarily a lady would not "put her character at stake" may not be wrong but cannot be applied universally. Each case has to be determined on the touchstone of the factual matrix thereof. The law reports are replete with decisions where charges under Sections 376 and 354 IPC have been found to have been falsely advanced. (Para 16). *Pandurang Sitaram Bhagwat* v. *State of Maharashtra*, (2005) 9 SCC 44: 2005 SCC (Cri) 1198: AIR 2005 SC 643: 2005 Cri LJ 880.

Bench Strength 2. Coram: *N. Santosh Hegde* and **S.B. Sinha**, JJ. [Date of decision: 17-12-2004]

[8621] — S. 354 — Outraging the modesty of a woman — Culpable intention as an ingredient — *Has to be proved like any other ingredient — But in absence of direct evidence, can be inferred from attending circumstances — Slapping on the posterior of a woman, considered along with other overtures in the sequence of events, held, prima facie involved requisite intention on the part of the accused*

(*See* facts in the other note under S. 354 IPC)

The contention that the other ingredient of Section 354 viz. intention to outrage the modesty of respondent was lacking in this case cannot be accepted. It is true that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case. Since, however, the present case is at the incipient stage, it has to be ascertained, only prima facie, whether the respondent had the requisite intention. The sequence of events indicates that the slapping was the finale to the earlier overtures of the respondent, which considered together, constitute the requisite culpable intention. Even presuming that he had no such intention he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising the elite of the society — as the names and designations of the people given in the FIR indicate. Moreover, there is nothing in the FIR to indicate, even remotely, that the indecent act was committed by the respondent accidentally or by mistake or it was a slip. Thus apart from the offence under Section 354 IPC — an offence under Section 509 IPC has been made out on the allegations contained in the FIR as the words used and gestures made by the respondent were intended to insult the modesty of the appellant. (Para 17). *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194: 1995 SCC (Cri) 1059: AIR 1996 SC 309.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-10-1995]

[8622] — S. 354 — Outraging the modesty of a woman — Essentials to constitute offence of — *Held, intention to outrage modesty of a woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence — The reaction of the woman is very relevant, but its absence is not always decisive — Appellant forcibly taking prosecutrix/victim (aged about 12 years) to his gumti with intention of committing illicit intercourse — But, before he could do anything, hearing alarm raised by prosecutrix, the father of prosecutrix and other villagers assembling there and rescuing the prosecutrix — Held, offence committed squarely covered under S. 354 — Hence, appellant convicted thereunder — Sentenced to 2 years' RI*

So far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of a woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. (Paras 39 and 40)

Therefore, on evaluation of the entire evidence and documents on record, the appellant is clearly guilty of the offences under Sections 366 and 354 IPC. He is sentenced to undergo five years' imprisonment under Section 366 IPC and two years' RI under Section 354 IPC. (Para 59). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength 2. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[8623] — S. 354 — Outraging the modesty of a woman — Offence of — Conviction — Propriety — Animosity between both parties — False implication — *Complainant (PW 2) and her husband (PW 3) tenants in house of the appellant — Due to quarrels between other tenants of appellant on one hand and PWs 2 and 3 on the other, appellant asking PW 3 to vacate the tenanted premises — Allegation that when PW 2 was watching TV with her two sons, appellant entering her room, embracing her from back side and touching her breasts — Appellant and three others charged for offences under Ss. 354, 323, 504 and 506 r/w S. 34 IPC — Prosecution failing to substantiate allegations as regards commission of offences under Ss. 323, 504 and 506 r/w S. 34 — Acquittal of all the accused in relation to all the said charges except conviction of appellant under S. 354 — Discrepancy as to place and manner of occurrence of offence alleged — In view of the above facts, held, it was not safe to rely upon the prosecution case — Appellant entitled to benefit of doubt — Hence, acquitted*

The strained relationship between the parties is not in dispute. If the contention of the first informant and her husband to the effect that they had already taken a decision to shift from the tenanted premises is believed, there does not appear to be a plausible reason as to why the appellant and three other accused would trespass into the house and assault them. The trial court disbelieved the prosecution case as regards: (*i*) threatening of the first informant and her husband by the accused persons, (*ii*) hurling abuses at them, and (*iii*) assaulting them by bricks and stones. (Paras 14 and 15)

The exact place of occurrence and the manner in which the purported offence of outraging the modesty was committed by the appellant, furthermore, materially differ. Whereas PW 2 asserted that the appellant came inside the house and embraced her from the back, when she was watching TV sitting; PW 4 (son of PW 2) stated that the incident took place when she was proceeding towards the kitchen. The said discrepancy even if ordinarily could not have been the basis of passing a judgment of acquittal, but in this case, the conduct of both PW 2 and PW 3 being suspect, it would not be safe to rely on a part of their statements as prosecution witnesses. (Para 21). *Pandurang Sitaram Bhagwat* v. *State of Maharashtra*, (2005) 9 SCC 44: 2005 SCC (Cri) 1198: AIR 2005 SC 643: 2005 Cri LJ 880.

Bench Strength 2. Coram: *N. Santosh Hegde* and **S.B. Sinha**, JJ. [Date of decision: 17-12-2004]

[8624] — S. 354 — Outraging the modesty of a woman — Test to determine — 'Modesty' — Meaning — Feminine decency and dignity — *Slapping on the posterior of a woman in public gaze, having regard to sequence of events, held, prima facie amounted to outraging her modesty*

The appellant, a lady IAS Officer belonging to Punjab Cadre then working as Special Secretary, Finance lodged a complaint on 29-7-1988 with the IG Police U.T. of Chandigarh alleging commission of offences under Sections 341, 342, 352, 354 and 509 IPC by the respondent, the DG Police, Punjab which was treated as an FIR. According to the appellant, in the evening of 18-7-1988 she along with her husband had gone to the residence of their colleague in response to an invitation for dinner, where other senior government officers and their wives were also present. The party had been arranged in the lawn where ladies were sitting in a separate group. Around 10 p.m. the respondent walked across to and sat in the ladies' circle. The appellant, who was then talking with some other ladies, was requested by the respondent to come and sit near him as he wanted to talk to her about something. When in response the appellant went to sit in a chair next to him, the respondent suddenly pulled that chair close to his chair. Feeling a bit surprised, when she put that chair at its original place and was about to sit down, the respondent again pulled the chair close to his chair. Realising something was wrong, she immediately left the place and went back to sit with other ladies. After about 10 minutes, the respondent came and stood in front of her so close that his legs were about 4" from her knees. He then by an action with the crook of his finger asked her to "get up immediately" and come along with him. When she strongly objected to his behaviour and asked him to go away from there he repeated his earlier command which shocked the ladies present there. Being apprehensive and frightened she tried to leave the place but could not as he had blocked her way. Finding no other alternative when she drew her chair back and turned backwards, he slapped her on the posterior in the full presence of the ladies and guests. On the basis of the FIR, a case was registered.

Held :

The allegations contained in the FIR constitute offences under Section 354 IPC. (Para 29)

The word 'modesty' has not been defined in the Indian Penal Code. From the dictionary meaning of 'modesty' and the interpretation given to that word by the Supreme Court in *Major Singh case* it appears that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. When the above test is applied in the present case, keeping in view the total fact situation, it must be held that the alleged act of the respondent in slapping the appellant on her posterior amounted to "outraging of her modesty" for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady — "sexual overtones" or not, notwithstanding. (Paras 14 and 15). *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194: 1995 SCC (Cri) 1059: AIR 1996 SC 309.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-10-1995]

State of Punjab v. Major Singh, AIR 1967 SC 63: 1967 Cri LJ 1: 1966 Supp SCR 286, relied on

Shorter Oxford English Dictionary (3rd Edn.); Webster's Third New International Dictionary of the English language; Oxford English Dictionary (1933 Edn.), relied on

[8625] — S. 354 — Right to privacy — Woman of easy virtue equally entitled to — *Constitution of India, Art. 21*

Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. (Para 8). *State of Maharashtra* v. *Madhukar Narayan Mardikar*, (1991) 1 SCC 57: 1991 SCC (Cri) 1: AIR 1991 SC 207: (1991) 1 LLJ 269: (1991) 1 SLJ 164: (1991) 1 SLR 140.

Bench Strength **2**. Coram: *K. Jagannatha Shetty* and **A.M. Ahmadi**, JJ. [Date of decision: 23-10-1990]

[8626] — S. 354 — Sentence of six months' RI imposed under — Reduction of — Incident took place about 13 years back — *Accused who was a government servant continuing in suspension — Considering these facts and the nature of offence, held, sentence of two months already undergone by the accused would be sufficient to meet the ends of justice — However, fine of Rs 25,000 imposed by High Court, maintained* (Para 9). *Satyaendra Dayal Khare* v. *State of Maharashtra*, (2005) 12 SCC 485.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *D.M. Dharmadhikari*, JJ. [Date of decision: 2-8-2005]

[8627] — Ss. 354 and 10 — Outraging woman's modesty — Reaction of woman concerned not relevant — *Accused causing injury to the private part of a female child giving vent to his unnatural lust — Held, guilty under S. 354*

Per Mudholkar, J.

When any act is done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that act must fall within the mischief of S. 354, Penal Code.

When the action of the accused in interfering with the vagina of the child was deliberate he must be deemed to have intended to outrage her modesty and is guilty under S. 354, Penal Code.

The words used in the section are that the act has to be done "intending to outrage or knowing it to be likely that he will thereby outrage her modesty". This intention or knowledge is the ingredient of the offence and not the woman's feelings.

Per Bachawat, J.

The essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force on her with intent to outrage her modesty commits an offence punishable under S. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless the offender is punishable under the section. Where the victim is a baby seven-and-a-half months' old, she has not yet developed a sense of shame and has no awareness of sex. Nevertheless, from her very birth she possesses the modesty which is the attribute of her sex.

The accused is guilty under S. 354, Penal Code.

Per A.K. Sarkar, C.J. (dissenting)

In order that a reasonable man may think that an act was intended or must be taken to have been known likely, to outrage modesty, he has to consider whether the woman concerned had developed a sense of modesty and also the standard of that modesty. Without an idea of these he cannot decide whether the alleged offender intended to outrage the woman's modesty or his act was likely to do so.

To say that every female of whatever age is possessed of modesty capable of being outraged seems to be laying down too rigid a rule which may be divorced from reality. There obviously is no universal standard of modesty.

A female child of 7½ months is not possessed of womanly modesty. If she had not, there could be no question of the respondent having intended to outrage her modesty or having known that his act was likely to have that result.

The accused was not guilty under S. 354, Penal Code. *State of Punjab* v. *Major Singh*, AIR 1967 SC 63: 1966 Supp SCR 286: 1967 Cri LJ 1.

Bench Strength **3**. Coram: **A.K. Sarkar, C.J.**[1] and **J.R. Mudholkar**[2] and **R.S. Bachawat**[3], JJ. [Date of decision: 28-4-1966]

Girdhar Gopal v. State, AIR 1953 MB 147: 1953 Cri LJ 964; Soko v. Emperor, AIR 1933 Cal 142: 34 Cri LJ 308; Chempa Pasin v. Emperor, AIR 1928 Pat 326: 29 Cri LJ 325, overruled

AIR 1963 Punj 443: 1963 (2) Cri LJ 300, reversed

[8628] — Ss. 354, 323, 504 and 506 — Revision — Refusal by High Court to exercise revisional jurisdiction on ground that no question of law had arisen therein — Legality — *Held, was not justified as in terms of S. 397, the correctness, legality or propriety of any finding, sentence or order may fall for consideration of the revisional court — Hence, in revision filed by the appellant challenging his conviction under S. 354 IPC, the High Court should have tested the prosecution case from the angle that the trial Judge had acquitted all the three accused who were said to have shared a common intention with the appellant not only in relation to the offences under Ss. 323, 504 and 506 IPC but also in relation to offence under S. 354 — CrPC, 1973, S. 397* (Para 22). *Pandurang Sitaram Bhagwat* v. *State of Maharashtra*, (2005) 9 SCC 44: 2005 SCC (Cri) 1198: AIR 2005 SC 643: 2005 Cri LJ 880.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **S.B. Sinha**, JJ. [Date of decision: 17-12-2004]

[8629] — Ss. 354 and 352 — Conviction for offence under S. 354 — Requirements of

Where in a trial for an offence under S. 354, IPC an assault is proved, the next question is whether he did so with intent to outrage the modesty of the complainant, or with the knowledge that it would be outraged. The story of a person trying to outrage the modesty of two women in the presence of two gentlemen is so unnatural, that there must be clear and unimpeachable evidence before it can be accepted.

Having gone through the entire evidence the Supreme Court held that the accused was not guilty of an offence under S. 354 but under S. 352 for assault. *Ram Dass* v. *State of W.B.*, AIR 1954 SC 711: 1954 Cri LJ 1793, 1794.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *B. Jagannadhadas* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 24-2-1954]

[8630] — Ss. 354 and 352 — Police atrocities — Compensation to victims — *Police officers taking petitioners to police station for doing some work without labour charges — On demand they were beaten and one of them succumbed to injuries — One female also stripped of her clothes and thrashed in police station — Directions made for payment of compensation to victims and family of deceased — This amount to be recovered out of salaries of guilty officers after giving them opportunity to show-cause — Constitution of India, Art. 32. People's Union for Democratic Rights* v. *Police Commr.*, (1989) 4 SCC 730: 1990 SCC (Cri) 75.

Bench Strength **2**. Coram: *G.L. Oza* and *K.N. Saikia*, JJ. [Date of decision: 13-1-1989]

[8631] — Ss. 354 and 376 — Outraging modesty (or rape) of a village girl — *Testimony of the victim normally acceptable*

Normally, in a village no woman would come forward, unless it is true, with a plea that her modesty was outraged. By such statement, her very honour was at stake. Coming as she does from a cloistered society her whole future would become bleak. When it has not been shown that there was any enmity between her and the accused, characterisation that her evidence does not inspire confidence is wrong. *State of T.N.* v. *Karuppusamy*, 1993 Supp (1) SCC 78: 1993 SCC (Cri) 123.

Bench Strength **2**. Coram: *A.M. Ahmadi* and **S. Mohan**, JJ. [Date of decision: 31-3-1992]

[8632] — Ss. 354 and 376/511 — Child abuse — Framing of charge — Whether there was sufficient ground for proceeding against the accused — Test to be applied — *Court not debarred from looking into any material produced by the accused at that stage — Hearing of accused not confined to oral arguments — Accusation by wife against her husband that he molested their infant child — Wife's attitude towards her husband found to be vengeful — In the circumstances of the case, possibility of the wife manipulating child's genitals in order to concoct medical evidence against the accused cannot be ruled out — Proceedings and charge framed by the Sessions Judge quashed and accused discharged — CrPC, 1973, Ss. 227, 228, 239, 240 & 226 and 482*

The appellant and his wife Anita were living in New York ever since their marriage. Before and after the birth of the children relationship between husband and wife was far from cordial. Husband alleged that his wife, in conspiracy with her father, had siphoned off a whopping sum from his bank deposits in India by forging his signature. He also alleged that his wife is suffering from some peculiar psychiatric condition. He approached a court at New York for securing custody of his children. On 31-10-1992 his wife left his house with the children and then filed a complaint with Saffolk Country Police Station (United States) alleging that her husband had sexually abused Nikita who was then aged four. United States police at the local level moved into action, but after conducting detailed investigation concluded that the allegations of incestuous abuse were untrue. The appellant's wife returned to India with her children. In the meanwhile Family Court at New York has ordered that custody of the children be given to the husband and a warrant of arrest was issued against Anita for implementation of the said order. The appellant's wife came back to India and lodged an FIR on 14-8-1993 against her husband who had returned to India on 12-7-1993 and had filed a petition for a writ of habeas corpus for securing the custody of the children. On the basis of the FIR filed by the wife a case was charge-sheeted by the police. The Sessions Judge framed charges on two counts. First count in the charge was that appellant had outraged the modesty of his minor daughter aged about 3 years sometime during March and July 1991 at New Delhi by fondling with her vagina and also by inserting a bottle into it and thereby committed the offence under Section 354 of the IPC. Second count in the charge was that he made an attempt to commit rape on the said infant child (time and place being the same) and thereby committed the offence under Section 376 read with Section 511 of the IPC. Allowing the appeal by the special leave

Held :

Consideration which should weigh with the Sessions Court at the stage of framing of charge have been well designed by Parliament through Section 227 CrPC. Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is "sufficient ground for proceeding".

An incidental question which emerges in this context is whether the Sessions Judge can look into any material other than those produced by the prosecution. Section 226 of the Code obliges the prosecution to describe the charge brought against the accused and to state by what evidence the guilt of the accused would be proved. The next provision enjoins on the Sessions Judge to decide whether there is sufficient ground to proceed against the accused. In so deciding the Judge has to consider (1) the record of the case, and (2) the documents produced therewith. He has then to hear the submissions of the accused as well as the prosecution on the limited question whether there is sufficient ground to proceed. What is the scope of hearing the submissions? Should it be confined to hearing oral arguments alone?

Similar situation arises under Section 239 of the Code (which deals with trial of warrant cases on police report). In that situation the Magistrate has to afford the prosecution and the accused an opportunity of being heard besides considering the police report and the documents sent therewith. At these two stages the Code enjoins on the court to give audience to the accused for deciding whether it is necessary to proceed to the next stage. It is a matter of exercise of judicial mind. There is nothing in the Code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the court at that stage. Here the 'ground' may be any valid ground including insufficiency of evidence to prove the charge.

The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, the Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. Most of the Sessions Courts in India are under heavy pressure of workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself.

In the instant case the complaint made by the wife with the New York police that her husband committed sexual offences against her 18 months' old female child was investigated by the New York police who found the complaint bereft of truth hook, line and sinker. The present charge is that the appellant committed such offences against the same child at New Delhi sometime during March to July 1991. There is now no case of what happened in United States. The Sessions Judge should have noted that appellant's wife has not even remotely alleged in the complaint filed by her on 19-3-1993 before CAW Cell, New Delhi that the appellant has done anything like that while he was in India. Even the other complaint petition (on which basis the FIR was prepared) is totally silent about a case that the appellant did anything against his daughter anywhere in India.

Her attitude to the appellant, even dehors the allegation involving the child, was vengeful. The Court can take into account the assertion of the petitioner that the present story involving the child was concocted by his wife to wreak her vengeance by embroiling him in serious criminal cases in India so that he could be nailed down here and prevent him from going back to USA.

Even overlooking all the inherent infirmities shrouding the testimony of a tiny tot speaking about what her father did when she was aged 3 and even ignoring the appellant's persistent submission that the little child was briskly tutored by her mother to speak to the present version, there is no reasonable prospect of the Sessions Court relying on such a testimony to reach the conclusion that the prosecution succeeded in proving the offence charged beyond all reasonable doubt.

Therefore, the proceedings and the charge framed by the Sessions Judge are quashed and the appellant is discharged. *Satish Mehra* v. *Delhi Admn.*, (1996) 9 SCC 766.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K.T. Thomas**, JJ. [Date of decision: 31-7-1996]

Doubted in State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711, 715

***Finally overruled in** State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568*

***Held, overruled in** Bharat Parikh v. CBI, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609*

[8633] — Ss. 354, 452, 323, 506 Pt. II r/w S. 34 — Outraging modesty of a tribal woman — Appreciation of evidence — Plea based on inferiority of tribal people that they live in torn clothes or no proper clothes, held, is not admissible — *Mentality of persons who regard tribal people as inferior or sub-humans is totally unacceptable in modern India* (Para 13). *Kailas* v. *State of Maharashtra*, (2011) 1 SCC 793.

Bench Strength **2**. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 5-1-2011]

[8634] — Ss. 354, 452, 323, 506 Pt. II r/w S. 34 — Outraging modesty of a tribal woman — Need for harsher punishment and special protection to tribals, stressed — *Surprise expressed over State Government not preferring appeal for imposition of harsher punishment — Surprise expressed over setting aside of conviction on hypertechnical grounds for offences under SC & ST Act — But said acquittal not interfered with as no appeal preferred thereagainst — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3*

Instances like the present one deserve total condemnation and harsh punishment. The parade of a naked tribal woman on the village road in broad daylight is shameful, shocking and outrageous. (Paras 31 and 12)

It is surprising that the State Government did not file any appeal for enhancement of the punishment awarded by the Additional Sessions Judge. (Para 12)

It is surprising that the conviction of the accused under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set aside on hypertechnical grounds that the caste certificate was not produced and investigation by a police officer of the rank of Deputy Superintendent of Police was not done. These appear to be the only technicalities and hardly a ground for acquittal, but since no appeal has been filed against that part of the High Court judgment, it need not be gone into. (Para 8). *Kailas* v. *State of Maharashtra*, (2011) 1 SCC 793.

Bench Strength **2**. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 5-1-2011]

[8635] — Ss. 354 and 509 — Compensation awarded to the victim lady against the person found guilty of offences under Ss. 354 and 509 IPC — Disposal of amount on refusal of victim to accept the same — *The victim lady refusing to accept the amount of compensation and requesting the same to be given to any women's organisation engaged in doing service for the cause of women —*

Relief — Since the amount was lying in the court deposit with the High Court, the matter left to the Chief Justice of High Court to deal with that amount in an appropriate manner as requested by the said lady — CrPC, 1973, S. 357 (Para 7). *Kanwar Pal Singh Gill* v. *State*, (2005) 6 SCC 161: 2005 SCC (Cri) 1420: AIR 2005 SC 3104: 2005 Cri LJ 3443.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 27-7-2005]

[8636] — Ss. 354 and 509 — Infraction of person of lady outraging her modesty despite her objection, with culpable intention — Conviction under, held on facts, was justified — *Senior police officer (DGP in the present case) despite objection from a lady gently slapping her on her posterior in the presence of guests at a dinner party — By doing so with culpable intention, held, he committed the offence under Ss. 354 and 509 IPC — Since immediately thereafter the victim reported the matter to various officers present there and pursued the matter with other authorities including the Chief Secretary and the Governor and after 10 days lodged an FIR with the police but finding those efforts to have gone in vain her husband filed a complaint with the CJM after a period of three/four months, such delay, held, not fatal to the maintainability of the complaint — Moreover, in view of the concurrent findings of fact recorded by two courts and affirmed by High Court in revision, held, High Court's order upholding the conviction could not be set aside on mere assertion by the accused that the whole incident was falsely foisted on him with ulterior motives — CrPC, 1973, S. 190*

On 18-7-1988, a senior IAS officer invited some IAS and IPS officers, advocates and journalists for a dinner at 8.30 p.m. at his residence. Ladies were sitting in a semi-circle slightly away from the male guests. The appellant accused, who was the then DGP of the State of Punjab, allegedly came and occupied a chair which was lying vacant at the place where the ladies were sitting. On the pretext of some intended talks the accused asked the prosecutrix to sit near him and when she intended to do so the accused pulled the chair close to his chair and on resistance from the prosecutrix repeated that act. The prosecutrix then returned to her original seat. The accused again reached there and despite objection from the prosecutrix, pressed her to accompany him. Moreover, the accused blocked her way. The prosecutrix then tried to get away from the place whereupon the accused slapped on the posterior of the prosecutrix in the presence of other guests. The prosecutrix then made a complaint to the host who got the accused gently removed from that place. She thereafter brought the matter to the notice of the Chief Secretary with the request to take suitable action against the accused. She also met the Advisor to the Governor, the Secretary to the Governor as well as the Governor with the same purpose. On 29-7-1988, she gave a written complaint to the police and a case was registered but no further step was taken. After about four months, the husband of the prosecutrix filed a complaint before the CJM. The complaint culminated in conviction of the accused under Sections 354 and 509, IPC. He was sentenced to undergo a sentence of imprisonment and to pay fine but the appellate court directed the accused to be released on probation in lieu of custodial sentence. However, it enhanced the amount of fine to Rs 50,000. The High Court upheld the conviction but enhanced the fine further to Rs 2,00,000, the entire of which was directed to be given to the prosecutrix. The present cross appeals were filed against that judgment.

Denying the correctness of the findings, the appellant accused contended that the entire case was falsely foisted on him. Much emphasis was laid by him on the delay of three months in the filing of the complaint.

On the other hand the complainant in her cross appeal solicited enhancement of the appeal. Moreover, she submitted that the amount of compensation awarded in her favour should instead be given to any women's organisation engaged in doing service for the cause of women.

Dismissing both the appeals, but referring the matter of disposal of the compensation to the High Court,

Held :

Although there was some delay in filing the complaint before the Magistrate, but that by itself was not sufficient to reject the complaint put forward by the prosecutrix. It is important that she recounted the entire incident immediately to the Chief Secretary and other officers and raised objections and also sought for stringent action against the accused. When she failed in all these attempts, she and her husband filed a criminal complaint before the Chief Judicial Magistrate. There is nothing to suggest that the prosecutrix acted in connivance with some others and that she hatched a conspiracy to malign the accused. If the whole incident is viewed in correct perspective, it is clear that the behaviour of the accused on the date of the incident was not consistent with the high standard expected of a top-ranking police officer. The findings of the various courts is to the effect that the accused gently slapped on the posterior of the prosecutrix in the presence of some guests. This act on the part of the accused would certainly constitute the ingredient of Section 354 IPC. It is proved that the accused used criminal force with the intent to outrage the modesty of the complainant and that he knew fully well that gently slapping on the posterior of the prosecutrix in the presence of other guests would embarrass her. Knowledge can be attributed to the accused that he was fully aware that touching the body of the prosecutrix at that place and time would amount to outraging her modesty. Had it been without any culpable intention on the part of the accused, nobody would have taken notice of the incident. The prosecutrix made such a hue and cry immediately after the incident and the reaction of the prosecutrix is very much relevant to take note of the whole incident. The accused being a police officer of the highest rank should have been exceedingly careful and failure to do so and by touching the body of the complainant with culpable intention he committed the offence punishable under Sections 354 and 509 IPC. In view of the findings of fact recorded by the two courts and affirmed by the High Court in revision, the order of the High Court cannot be set aside on mere assertion by the accused that the whole incident was falsely foisted on him with ulterior motives. (Para 4)

As regards the appeal filed by the complainant, it is relevant that the incident happened in 1988. Despite the accused holding a high position in the State police, the various courts found him guilty of the offence punishable under Sections 354 and 509 IPC and that by itself is setting a model for others and would enhance the faith in the judicial system. The accused has completed the period of probation. There was no occasion for any complaint or violation of any of the terms of the bond. At this juncture, it would not be just and proper to resort to any other punishment. (Para 6). *Kanwar Pal Singh Gill* v. *State*, (2005) 6 SCC 161: 2005 SCC (Cri) 1420: AIR 2005 SC 3104: 2005 Cri LJ 3443.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 27-7-2005]

[8637] — Ss. 354 and 509 — Quantum of sentence under — Propriety — *Senior police officer (DGP in the present case) found guilty under Ss. 354 and 509 for gently slapping on the posterior of a lady in the presence of guests at a dinner party — Sessions Court enhancing the sentence of fine to Rs 50,000 but altering the sentence of imprisonment and directing the accused instead to be released on probation — High Court enhancing the fine to Rs 2,00,000 — Incident about 17 long years old — Accused completing the period of probation without violating any terms of the bond — In such circumstances, the appeal of the prosecutrix seeking enhancement of the punishment rejected — CrPC, 1973, S. 360*

As regards the appeal filed by the complainant, it is relevant that the incident happened in 1988. Despite the accused holding a high position in the State police, the various courts found him guilty of the offence punishable under Sections 354 and 509 IPC and that by itself is setting a model for others and would enhance the faith in the judicial system. The accused has completed the period of probation. There was no occasion for any complaint or violation of any of the terms of the bond. At this juncture, it would not be just and proper to resort to any other punishment. (Para 6). *Kanwar Pal Singh Gill* v. *State*, (2005) 6 SCC 161: 2005 SCC (Cri) 1420: AIR 2005 SC 3104: 2005 Cri LJ 3443.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 27-7-2005]

[8638] — Ss. 354 and 511 — Intercourse — When takes place — Genital of appellant-accused penetrating genital of prosecutrix and blood oozing from her private parts — *Doctor, after examining the prosecutrix finding superficial laceration just at the bottom of labia majora and labia minora, hymen torn, and vaginal orifice admitting one finger with difficulty — Submission by accused that offence under S. 354 or S. 511 made out, and not S. 376 — Held, "intercourse" envisaged under S. 375 means sexual connection — On facts held, act of the accused fell well within the purview of the provision — Hence, accused guilty of commission of actual rape and not of outraging modesty of woman or attempt to rape* (Paras 3, 8, 9, 10 and 11). *Ramkripal* v. *State of M.P.*, (2007) 11 SCC 265: (2007) 54 AIC 131 (SC): 2007 Cri LJ 2302.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-3-2007]

Raju Pandurang Mahale v. State of Maharashtra, (2004) 4 SCC 371: 2004 SCC (Cri) 1259, relied on

[8639] — S. 354 r/w S. 34 — Offence under S. 354 — Essential ingredients — "Modesty" — Meaning — *"Outrage the modesty of a woman", what constitutes — Knowledge that modesty is likely to be outraged, held, sufficient to constitute the offence without any deliberate intention having such outrage alone for its object — Appellant* ***R*** *bringing the victim* ***C*** *at night to the house of A-4 under a false pretext — A-2 locking the door of the house from outside — Thus, forcing* ***C*** *to remain in house with A-4 and* ***R*** *—* ***C*** *forcibly made to consume liquor by* ***R*** *and A-4 — Rape committed on* ***C***

*by A-4 in presence of **R** — Nude photographs taken by A-3 — In view of the above, held, **R** guilty of offence under S. 354 — S. 34 also rightly pressed into service*

Section 354 IPC makes penal the assault or use of criminal force on a woman to outrage her modesty. The essential ingredients of offence under Section 354 IPC are:

(*a*) That the assault must be on a woman.

(*b*) That the accused must have used criminal force on her.

(*c*) That the criminal force must have been used on the woman intending thereby to outrage her modesty. (Para 11)

Modesty is defined as the quality of being modest; and in relation to a woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. (Para 13)

What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. (Para 12)

In *Rupan Deol Bajaj case*, (1995) 6 SCC 194, it was observed that the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. When the above test is applied in the present case, keeping in view the total fact situation, the inevitable conclusion is that the acts of the accused-appellant and the concrete role he consistently played from the beginning proved combination of persons and minds as well and as such amounted to "outraging of her modesty" for it was an affront to the normal sense of feminine decency. It is further to be noted that Section 34 has been rightly pressed into service in the case to fasten guilt on the accused-appellant, for the active assistance he rendered and the role played by him, at all times sharing the common intention with A-4 and A-2 as well, till they completed effectively the crime of which the others were also found guilty. (Para 15). *Raju Pandurang Mahale* v. *State of Maharashtra*, (2004) 4 SCC 371: 2004 SCC (Cri) 1259: AIR 2004 SC 1677: 2004 Cri LJ 1441.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 11-2-2004]

Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, followed

Shorter Oxford Dictionary (3rd Edn.); Oxford English Dictionary (1933 Edn.); Webster's Third New International Dictionary, referred to

— S. 355 *See also* Ss. 21, 353 and 355

[8640] — Ss. 355 and 354 — Acquittal of co-accused — Appellant convicted while co-accused acquitted — Co-extensive and identical evidence found against two accused but one accused acquitted on benefit of doubt while the other (appellant) convicted — *There being no difference between the cases of the two accused, the accused must also be acquitted — Constitution of India — Art. 14. Ram Chander* v. *State of Punjab*, 1983 SCC (Cri) 316.

Bench Strength 2. Coram: *A.C. Gupta* and *O. Chinnappa Reddy*, JJ. [Date of decision: 3-4-1981]

See also 1987 Supp SCC 65: 1987 SCC (Cri) 631

— S. 359 *See also* Ss. 364, 359 and 362

[8641] — S. 359 — Intention for kidnapping — Factors for ascertaining — *Held, the intention for which a person is kidnapped must be gathered from circumstances attending prior to, at the time of and subsequent to the commission of the offence — A kidnapping per se may not lead to any inference as to for what purpose or with what intent the person was kidnapped* (Para 13). *Badshah* v. *State of U.P.*, (2008) 3 SCC 681: (2008) 2 SCC (Cri) 712: 2008 Cri LJ 1950: (2008) 3 All LJ 524: (2008) 65 AIC 183 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-2-2008]

[8642] — Ss. 359 to 363 — Inaction of police to record FIRs, and in cases FIR recorded on court directions, apathy to investigate the case — Notice issued by Supreme Court on PIL in regard to — *Such an instance brought to the notice of the Court — In order to curb this malady, the Court proposing to issue stringent directions pinning responsibility on police authorities to act promptly, or else to face contempt/disciplinary proceedings including suspension — Notices therefore issued to all State Govts./UTs and DGs of Police/Commissioners of Police for ascertaining their views before issuing directions — Constitution of India, Arts. 21 and 14 — Contempt of Courts Act, 1971, S. 2(b) — CrPC, 1973, Ss. 154(1), 154(2), 154(3), 157(1), 190(1)(a) and 200* (Paras 4 to 8).

Lalita Kumari v. *Govt. of U.P.*, (2008) 7 SCC 164: (2008) 2 SCC (L&S) 401: (2008) 3 SCC (Cri) 17: (2008) 4 KLT 130.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 14-7-2008]

— S. 360 *See also* Ss. 359 to 363

— S. 361 *See also* Ss. 359 to 363

See also Ss. 363, 361 and 366

See also Ss. 366 and 361

[8643] — S. 361 — Object

The object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. *State of Haryana* v. *Raja Ram*, (1973) 1 SCC 544: 1973 SCC (Cri) 428: AIR 1973 SC 819: (1973) 2 SCR 728: 1973 Cri LJ 651.

Bench Strength **3**. Coram: *J.M. Shelat*, *Y.V. Chandrachud* and **I.D. Dua**, JJ. [Date of decision: 27-10-1972]

See also (1973) 2 SCC 413, 421: 1973 SCC (Cri) 835

[8644] — S. 361 — Object of, restated — Necessary requirements for applicability of said section — *Held, the gravamen of the offence under S. 361 lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian — It is only the guardian's consent which takes the case out of the purview of S. 361 — Consent of the minor who is taken or enticed is wholly immaterial — Taking or enticing need not be shown to have been by means of force or fraud — Persuasion by accused which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian, held, is enough to attract S. 361*

The object of Section 361 seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words "takes or entices any minor ... out of the keeping of the lawful guardian of such minor" in Section 361, are significant. On plain reading of this section it is clear that the consent of the minor who is taken or enticed is wholly immaterial; it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section. (Para 7). *Parkash* v. *State of Haryana*, (2004) 1 SCC 339: 2004 SCC (Cri) 290: AIR 2004 SC 227: 2004 Cri LJ 595.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 2-12-2003]

State of Haryana v. Raja Ram, (1973) 1 SCC 544: 1973 SCC (Cri) 428; Thakorlal D. Vadgama v. State of Gujarat, (1973) 2 SCC 413: 1973 SCC (Cri) 835, relied on

[8645] — S. 361 — Complaint alleging kidnapping of minor girl by her own father lodged by girl's maternal grandfather with whom she was living in view of strained relations between the girl's parents — *Magistrate directing the father of the girl to hand over the child to police for restoration of her custody to the complainant otherwise police would register a case against him and proceed to declare him a proclaimed offender — Petition filed under S. 482 by the father — Held, High Court justified in quashing the order of the Magistrate on the finding that the father, being the natural guardian of the child, could not be charged with the offence of kidnapping. Chandrakala Menon* v. *Vipin Menon (Capt.)*, (1993) 2 SCC 6: 1993 SCC (Cri) 485: (1993) 1 Crimes 556: (1993) 1 BLJR 536.

Bench Strength **2**. Coram: *Kuldip Singh* and *B.P. Jeevan Reddy*, JJ. [Date of decision: 14-1-1993]

[8646] — S. 361 — Expression "takes or entices any minor ... out of the keeping of the lawful guardian of such minor" — Word "keeping" used therein, meaning of — *Held, connotes the idea of charge, protection, maintenance and control — Further, the guardian's charge and control, held, is compatible with the independence of action and movement of the minor, the guardian's protection and control of the minor being available, whenever necessity arises* (Para 7). *Parkash* v. *State of Haryana*, (2004) 1 SCC 339: 2004 SCC (Cri) 290: AIR 2004 SC 227: 2004 Cri LJ 595.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 2-12-2003]

[8647] — S. 361 — "Kidnapping a minor from lawful guardianship — "Enticement" — *Whether necessary to prove any active part played by accused immediately prior to the minor leaving her lawful guardian — Held, if the accused played some role at any stage by which he either solicited or persuaded the minor to abandon the legal* *guardianship, that is sufficient to hold him guilty* (Para 8). *Moniram Hazarika* v. *State of Assam*, (2004) 5 SCC 120: 2004 SCC (Cri) 1545: 2004 Cri LJ 2553.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 13-4-2004]

S. Varadarajan v. State of Madras, AIR 1965 SC 942: (1965) 2 Cri LJ 33, followed

[8648] — S. 361 — Kidnapping a minor from lawful guardianship — "Enticement" — What amounts to — *Promise of marriage made to PW 2 (a minor girl) by accused — PW 2 leaving the house of her lawful guardian on the basis of — Held, said promise amounted to enticement* (Para 5). *Moniram Hazarika* v. *State of Assam*, (2004) 5 SCC 120: 2004 SCC (Cri) 1545: 2004 Cri LJ 2553.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 13-4-2004]

[8649] — S. 361 — Kidnapping of minor girl for illicit relations — Where earlier allurements proved, the fact that on day of occurrence she left home and joined the accused voluntarily is no defence

The statutory language suggests that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in S. 361, IPC. But if the guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed with her in leaving her guardian's custody or keeping and going to the guilty party, then prima facie it would be difficult for him to plead innocence on the ground that the minor had voluntarily come to him. If he had at an earlier stage solicited or induced her in any manner to leave her father's protection, by conveying or indicating or encouraging suggestion that he would give her shelter, then the mere circumstance that his act was not the immediate cause of her leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him. The question truly falls for determination on the facts and circumstances of each case.

In the present case there is ample material showing earlier allurements and even of the appellant's participation in the formation of prosecutrix's intention and resolve to leave her father's house. The conviction was therefore proper. *Thakorlal D. Vadgama* v. *State of Gujarat*, (1973) 2 SCC 413: 1973 SCC (Cri) 835: AIR 1973 SC 2313: (1974) 1 SCR 178: 1973 Cri LJ 1541.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 2-5-1973]

S. Varadarajan v. State of Madras, (1965) 1 SCR 243: AIR 1965 SC 942: 1965 (2) Cri LJ 33, distinguished

[8650] — S. 361 — Lawful guardianship — What is — Father having custody of minor child by virtue of stay granted by High Court against order passed by lower court in favour of mother — *Held, on facts, father was having lawful custody of child until any further order was passed by court of competent jurisdiction — Clarified, law in India shall be governed by provisions of IPC and not 1993 US Act — International Parental Kidnapping Crime Act, 1993 (US) — Guardians and Wards Act, 1890, S. 25* (Paras 115 and 111). *Bhavesh Jayanti Lakhani* v. *State of Maharashtra*, (2009) 9 SCC 551.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-8-2009]

[8651] — S. 361 — Taking, enticing — Meanings of — *Educated girl on the verge of attaining majority accompanying the accused to Sub-Registrar's office — Getting agreement of marriage registered there without any inducement or threat — Keen desire on her part to become wife of accused — Insistence of marriage coming from her own side — Accused, held, not guilty of taking her away out of keeping of her guardian*

Taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping.

In the present case the girl herself telephoned the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to one and other places. Further, she has stated that she had decided to marry the appellant. There is no suggestion that the appellant took her to the Sub-Registrar's office and got the agreement of marriage registered there (thinking that this was sufficient in law to make them man and wife) by force or blandishments or anything like that. On the other hand the evidence of the girl leaves no doubt that the insistence of marriage came from her side. The appellant, by complying with her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardian. After the registration of the agreement both the appellant and the girl lived as man and wife and visited different places. There is no suggestion in girl's evidence, who had attained the age of discretion and was on the verge of attaining majority that she was made by the appellant to accompany him by administering any threat to her or by any blandishments. The fact of her accompanying the appellant all along is quite consistent with her own desire to be the wife of the appellant in which the desire of accompanying him wherever he went of course was implicit. In these circumstances there is nothing from which an inference could be drawn that the appellant had been guilty of taking away the girl out of the keeping of her father.

The minor girl just about to reach majority, left her father's protection knowingly and voluntarily joined the accused. In this case the accused cannot be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

It would be sufficient that though no active part was played by the accused immediately prior to the minor leaving the father's protection he had at some earlier stage solicited or persuaded the minor to do so.

No doubt the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to 'taking'.

While Ss. 497 and 498, IPC are meant essentially for the protection of the rights of the husband, S. 361 and other cognate sections of the Indian Penal Code are intended more for the protection of the minors and persons of unsound mind themselves than of the rights of the guardians of such persons.

The word 'taking' occurring in Ss. 497 and 498 of the Penal Code should be given a wide interpretation so as to effectuate the object underlying these provisions. There is no reason for giving to that word a wide meaning in the context of the provisions of S. 361 and cognate sections. *S. Varadarajan* v. *State of Madras*, AIR 1965 SC 942: (1965) 1 SCR 243: (1965) 2 Cri LJ 33, 36,.

Bench Strength **3**. Coram: *K. Subba Rao*, *M. Hidayatullah* and **J.R. Mudholkar**, JJ. [Date of decision: 9-9-1964]

R. v. Christian Olifir, (1866) 10 Cox C.C. 402; R. v. James Jarvis (1903) 20 Cox C.C. 249; State v. Harbansing Kisansing, AIR 1954 Bom 339, approved

Nura v. Rex, AIR 1949 All 710: 51 Cri LJ 29; Chathu v. Govindan Kutty, AIR 1958 Ker 121: ILR 1957 Ker 591: 1958 Cri LJ 637; Rajappan v. State, ILR 1960 Ker 481: 1960 Ker LT 273, ***overruled***

1963 MWN 636, reversed

Followed in (1970) 3 SCC 211: 1971 SCC (Cri) 29

[8652] — S. 361 — Words "takes" and "entices" — Meaning

The expression used in S. 361, IPC is "Whoever takes or entices any minor". The word 'takes' does not necessarily connote taking by force and it is not confined to use of force, actual or constructive. These words merely mean "to cause to go", "to escort" or "to get into possession". No doubt it does not mean physical taking, but not necessarily by use of force or fraud. The word "entice" seems to involve the idea of inducement or allurement by giving rise to hope or desire in the other. This can take many forms, difficult to visualise and describe exhaustively; some of them may be quite subtle, depending for their success on the mental state of the person at the time when inducement is intended to operate. This may work immediately or it may create continuous and gradual but imperceptible impression culminating after some time, in achieving its ultimate purpose of successful inducement. The two words 'takes' and 'entices' are intended to be read together so that each takes to some extent its colour and content from the other. *Thakorlal D. Vadgama* v. *State of Gujarat*, (1973) 2 SCC 413: 1973 SCC (Cri) 835: AIR 1973 SC 2313: (1974) 1 SCR 178: 1973 Cri LJ 1541.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 2-5-1973]

[8653] — S. 361 — Words "takes or entices any minor....out of the keeping of the lawful guardian of such minor" — "Keeping" — Connotation of these words — *Consent of minor immaterial — Persuasion can be given beforehand*

The words "takes or entices any minor...out of the keeping of the lawful guardian of such minor" in S. 361, are significant. The use of the word "keeping" in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises.

On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial. It is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section. The consent or willingness of the minor to accompany the accused is immaterial and it would be equally so even if the proposal to go with the accused had emanated from her.

From English decisions it may be stated that forwardness on the part of the girl would not avail the person taking her away from being guilty of the offence in question and that if by moral force a willingness is created in the girl to go away with the former, the offence would be committed unless her going away is entirely voluntary. Inducement by previous promise or persuasion was held in some English decisions to be sufficient to bring the case within the mischief of the statute. Broadly the same is the position under the Indian law.

In case of kidnapping where the evidence established beyond doubt that the prosecutrix (the minor) had been solicited and persuaded by the accused to leave her father's house for being taken to another place, it was not at all necessary for the accused to have himself gone to the house of the prosecutrix to bring her from there on midnight in question. It was sufficient if he had earlier been soliciting or persuading her to leave her father's house to go with him. *State of Haryana* v. *Raja Ram*, (1973) 1 SCC 544: 1973 SCC (Cri) 428: AIR 1973 SC 819: (1973) 2 SCR 728: 1973 Cri LJ 651.

Bench Strength **3**. Coram: *J.M. Shelat, Y.V. Chandrachud* and **I.D. Dua**, JJ. [Date of decision: 27-10-1972]

English cases discussed and summarised in (1973) 2 SCC 413, 421: 1973 SCC (Cri) 835

[8654] — Ss. 361 and 363 — Age of prosecutrix — Medical evidence that she was between 17 and 18 years at the time of the occurrence — Finding of courts below that the prosecutrix was below 18 years — *Held, in the circumstances of the case finding of courts below needs no interference — She cannot be held to be above 18 by taking into account margin of error of six months. Kuldeep K. Mahato* v. *State of Bihar*, (1998) 6 SCC 420: 1998 SCC (Cri) 1460: AIR 1998 SC 2694.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 6-8-1998]

[8655] — Ss. 361, 363, 363-A, 366A and 375 — Age of accused — Determination of — Evidence regarding — *Entries in school register and admission form, maintained in the course of regular official duty and existing ante litem motam, held, reliable under S. 35, Evidence Act, more so where the school is a reputed public school — Subsequent change in the date of birth by an affidavit with the motive to get some benefit such as admission in higher class, appearance in examination etc. will not affect the authenticity of the original school entries — Horoscope not reliable — Absence of birth entry in municipal records or village Chowkidar's register also not material — Rajasthan Children Act, 1970 (16 of 1970) — Evidence Act, 1872, S. 35*

Ordinarily the oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. Similarly, failure to register date of birth in the municipal record or village Chowkidar's register would not be of much relevance. It is common knowledge that in villages people are not very vigilant in reporting either births or deaths and, therefore an omission of this type cannot be taken to be a most damaging circumstance to demolish the case of the appellant regarding his actual date of birth.

Entries in school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer but all that is required under S. 35 of the Evidence Act is that it should be regularly kept in discharge of official duty. In the present case the entries in the school register were made ante litem motam. Moreover, the school where the documents were maintained was an English Public School enjoying good reputation of authenticity and the record maintained by it was unimpeachable and authentic and could not be suspected or presumed to be tampered with. At the time when the age of the appellant was first mentioned in the admission form, there was absolutely no dispute about the date of birth or for that matter the exact date on which he was born and there could not have been any motive on the part of the parents of the accused to give a false date of birth because it was his first admission to a school at a very early age. If there had been any element of suspicion in giving the date of birth, the admission register and the scholar's register would have been corrected by the Headmistress of the school.

The circumstance that when the accused-appellant was admitted in the school no transfer certificate had been taken by itself is not sufficient to dislodge the case of the appellant unless a transfer certificate was taken and it had shown that the date of birth given there did not tally with the documents.

It is also not uncommon for parents sometimes to change the age of their children in order to get some material benefit either for appearing in examination or for entering a particular service which would be denied to a child as under the original date of birth he would be either underaged or ineligible. Therefore, rejecting the date entered in the original school register merely on the ground of subsequent change made by the father of the accused by an affidavit would be taking a very artificial and technical view of the matter. *Umesh Chandra* v. *State of Rajasthan*, (1982) 2 SCC 202: 1982 SCC (L&S) 200: 1982 SCC (Cri) 396: AIR 1982 SC 1057: 1982 Cri LJ 994.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**, *D.A. Desai* and *A. Varadarajan*, JJ. [Date of decision: 2-4-1982]

Abdul Majid v. Bhargavan, AIR 1963 Ker 18: ILR (1962) 2 Ker 65, approved

[8656] — Ss. 361, 363-A and 375 — Age — Principle for determination of for eligibility where age on a particular date specified — *Day of birth to be included as a whole day — Legal day commences at 12 o'clock at midnight — Expression "must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application" in R. 11-B of Rajasthan State and Subordinate Services (Direct Recruitment by Competitive Examination) Rules, 1962 — Interpretation of — Majority Act, 1875, S. 4 — I.A.S. (Appointment by Competitive Examination) Regulations, 1955, R. 4 — U.P. General Clauses Act, 1904 (1 of 1904), S. 4(11-C)*

In absence of any express provision, while calculating a person's age, the day of his birth must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of his birthday. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. The above principle is in consonance with S. 4 of the Indian Majority Act.

The object and intent in making R. 11-B was to prescribe the age limits upon which the eligibility of a candidate for direct recruitment to the Rajasthan Administrative Service and other allied services is governed. The expression "must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application" in R. 11-B has to be interpreted by applying the principle stated above and cannot proceed upon a different basis adopted by UPSC while interpreting R. 4 of the I.A.S. (Appointment by Competitive Examination) Regulations, 1955 framed by the Central Government in pursuance of R. 7 of the I.A.S. (Recruitment) Rules, 1954.

The last day fixed for receipt of application in this case, was January 1, 1983. First day of January next following that day would be January 1, 1984. The appellant having been born on January 2, 1956, he had not only attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. On the next day i.e. on January 2, 1984, the appellant would be one day more than 28 years.

[The court emphasised the need for a provision like the proviso to R. 4 of the I.A.S. (Appointment by Competitive Examination) Regulations, 1955, conferring the power of relaxation on the State Government under certain conditions without which a deserving candidate would be rendered ineligible for appointment and advised the State Government to consider the question of relaxing the upper age limit in the case of appellant in order to mitigate the hardship, if otherwise permissible]. *Prabhu Dayal Sesma* v. *State of Rajasthan*, (1986) 4 SCC 59: 1986 SCC (L&S) 731: (1986) 1 ATC 341: 1986 SCC (Cri) 411: AIR 1986 SC 1948: (1986) 2 LLN 745: (1986) 3 SLR 48.

Bench Strength **2**. Coram: **A.P. Sen** and *B.C. Ray*, JJ. [Date of decision: 28-8-1986]

[8657] — Ss. 361 and 366 — Amendment of S. 361 in 1949 prescribing outside limit of age of a minor girl to be 18 years — Amendment held not retrospective. *Ram Devi* v. *State of U.P.*, AIR 1955 SC 574: 1955 Cri LJ 1296.

Bench Strength **3**. Coram: *S.R. Das*, **N.H. Bhagwati** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 22-2-1955]

[8658] — Ss. 361 and 375 — Determination of — Non-examination of material witness — *Non-examination of father on the question of date of birth of his daughter, where birth certificate relied upon by her contained erasers and corrections, held on facts, fatal to her case that she was minor at the relevant time — Question regarding date of birth being one of fact, Supreme Court would not differ from the appreciation of evidence made by High Court in that regard. Enuga Lakshmamma* v. *Vennapuse Chinna Malla Reddy*, (1985) 2 SCC 100: AIR 1985 SC 658.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *V. Khalid*, JJ. [Date of decision: 7-2-1985]

[8659] — Ss. 361, 375 and 376 — Eligibility — Age — Date of birth — Proof of — *Entries in scholar's register and secondary school examination records — Held, have no evidentiary value to prove age of a candidate in absence of evidence of any person on whose information the date of birth had been entered in the school records — Representation of the People Act, 1951, Ss. 36 and 80 — Evidence Act, 1872, Ss. 35 and 74*

The entries regarding dates of birth contained in the scholar's register and the secondary school examination have no probative value, if no person on whose information the date of birth of the candidate was mentioned in the school record is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry is made on the basis of the information given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. The truth or otherwise of the facts in issue, namely, the date of birth of the candidate as mentioned in the documents must be proved by admissible evidence i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of the candidate. In the circumstances the dates of birth as mentioned in the documents have no probative value and the dates of birth as mentioned therein could not be accepted. *Birad Mal Singhvi* v. *Anand Purohit*, 1988 Supp SCC 604: AIR 1988 SC 1796.

Bench Strength **2**. Coram: *E.S. Venkataramiah* and **K.N. Singh**, JJ. [Date of decision: 2-8-1988]

— S. 361 Expln. *See also* Ss. 363 and 361 Expln.

— S. 362 *See also* Ss. 96, 100 Fifthly & 362

See also Ss. 302, 362 and 364

See also Ss. 359 to 363

See also Ss. 364, 359 and 362

See also Ss. 364 and 362

[8660] — S. 362 — Abduction by husband — *No use of force or deceit — Whether husband abducted his wife*

Ordinarily there is no question of abduction when a husband takes his wife with him, but if deceit is played upon her or force is applied, it would be a different matter. *Sohan Lal* v. *State of U.P.*, (1971) 1 SCC 498: 1971 SCC (Cri) 206: AIR 1971 SC 2064: 1971 Cri LJ 1458.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and **P. Jaganmohan Reddy** and *I.D. Dua*, JJ. [Date of decision: 9-2-1971]

[8661] — S. 362 — On being persuaded by the accused victim going inside his house and coming properly dressed to accompany the accused — *Held, abduction of the victim by the accused not proved. Vinod Chaturvedi* v. *State of M.P.*, (1984) 2 SCC 350: 1984 SCC (Cri) 250: AIR 1984 SC 911: 1984 Cri LJ 814.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **Ranganath Misra**, JJ. [Date of decision: 5-3-1984]

[8662] — Ss. 362 and 302 r/w S. 34 — Abduction and murder — Circumstantial evidence — *Two persons were taken away by armed assailants from their house at night and their dead bodies, studded with gunshot injuries, were found next morning lying near their house — Incident took place in the wake of terrorist activities in State of Punjab and inmates of deceased's house were suspected by terrorists as police touts — When the abductors withheld the information which was within their exclusive knowledge as to what happened to the deceased after they were abducted, held, a presumption in the circumstances of the case can be drawn that the abductors were responsible for murder of the deceased — Evidence Act, 1872, Ss. 106 and 114*

The following circumstances have been proved against the appellant: (*1*) The incident happened during a period when Punjab was boiling with terrorist activities. (*2*) The house of the deceased was treated by the terrorists as the home of police touts against terrorists. (*3*) The appellant and three others reached the house during the dead of night armed with AK-47 rifles (which are described as "assault rifles") and caught the two sons and even in spite of entreaties made by their mother PW 4, the abductors forcibly took away the two sons into the darkness outside. (*4*) Within a short while they heard the sound of gunshots. (*5*) The two abducted sons did not return to the house during that night. (*6*) On the next morning their dead bodies were spotted on the roadside at a place situated only a short distance away from the house. (*7*) They were killed with AK-47 rifles as the empties of the bullets of such firearm were lying near the dead bodies. (*8*) The appellant did not tell the court as to what happened to the two sons after they abducted them.

Held:

The abductors alone could tell the court as to what happened to the deceased after they were abducted. When the abductors withheld that information from the court there is every justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased. (Para 15)

Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference. (Para 19)

What is frequently happening during these days has to be kept in mind. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle is to be laid down that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, the court would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders from their activities of killing kidnapped innocents outside the ken of others. (Para 21)

In this case a note was recovered by the police from the scene of murder which contained the scribbling purported to have been authored by a group styled as "Babbar Khalsa", owning the two murders of the deceased. That note would not help the appellant unless he shows that he has nothing to do with that self-styled "Babbar Khalsa", even assuming that the note was left by the murderers without any intention to mislead the investigation. At any rate, it is not possible to change the conclusion on the strength of the said note. (Para 22)

Therefore, the appellant's conviction and sentence of life imprisonment under Section 302 read with Section 34 is confirmed. *Sucha Singh* v. *State of Punjab*, (2001) 4 SCC 375: 2001 SCC (Cri) 717: AIR 2001 SC 1436: 2001 Cri LJ 1734.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 22-3-2001]

State of W.B. v. Mir Mohd. Omar, (2000) 8 SCC 382: 2000 SCC (Cri) 1516, explained and relied on

— S. 363 *See also* Ss. 302, 323 and 324 r/w 148, 149, 363, 366 and 376

See also Ss. 302, 363, 376 and 201

See also Ss. 302, 376(2)(f), 377, 363 and 201

See also Ss. 359 to 363

See also Ss. 361 and 363

See also Ss. 361, 363, 363-A, 366-A and 375

See also Ss. 366 and 363

See also Ss. 375 and 376

See also Ss. 376, 302, 363 and 366

See also Ss. 376, 363, 366 and 368

See also S. 376 and proviso thereto and Ss. 342, 363 and 366

See also Ss. 377, 363, 376 r/w S. 511

— Ss. 363/109 *See* Ss. 376, 366 and 363/109

[8663] — S. 363 — "Extradition offence" — Interpretation — Authority competent to determine — Matrimonial dispute relating to custody of child, held, does not constitute an extradition offence — *However, if the offence relates purely to kidnapping of a child, without involving any matrimonial dispute (as under S. 363 IPC), it is an extradition offence — Further held, whether a case involves extradition offence, has to be determined by Magistrate — Extradition Act, 1962, S. 2(c)* (Paras 47, 82, 111 and 112). *Bhavesh Jayanti Lakhani* v. *State of Maharashtra*, (2009) 9 SCC 551.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-8-2009]

[8664] — S. 363 — First appellant the main kidnapper and the two other accused either remained with him or assisted him — *Having regard to the circumstances and the role played by each accused, their conviction confirmed but sentence of four years' RI imposed on each of them reduced to three year's RI in case of first appellant and to one years' RI in case of each of the two co-accused. Tannu Lal* v. *State of U.P.*, 1981 Supp SCC 47: 1981 SCC (Cri) 675.

Bench Strength 2. Coram: **D.A. Desai** and *A.D. Koshal*, JJ. [Date of decision: 2-3-1981]

[8665] — Ss. 363, 361 and 366 — Kidnapping from lawful guardianship and abduction to compel marriage or illicit intercourse — *Prosecutrix below 18 years on the date of the occurrence — Appellant carrying her in a tempo to another place and silenced on showing of dagger — Held, in the circumstances, offence of kidnapping made out — Defence plea that she herself came and sat in tempo not maintainable — However, in absence of evidence to indicate that the appellant kidnapped her with the intention to marry her against her will or in order that she may be forced to illicit intercourse conviction under S. 366 cannot be sustained. Kuldeep K. Mahato* v. *State of Bihar*, (1998) 6 SCC 420: 1998 SCC (Cri) 1460: AIR 1998 SC 2694.

Bench Strength 2. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 6-8-1998]

[8666] — Ss. 363 & 361 Expln. — Kidnapping from lawful guardianship — "Lawful guardian" — Meaning and scope of — *Kidnapping of a minor girl from her school — Held, as per Expln. to S. 361, "lawful guardian" includes any person lawfully entrusted with the care or custody of such minor or other person — In the instant case, the school had been lawfully entrusted with the care or custody of the minor girl — Hence, the offence* *under S. 363 was complete when the accused took the said girl away from her school* (Para 4). *Sajjan Kapar* v. *State of Bihar*, (2005) 9 SCC 426.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *Brijesh Kumar*, JJ. [Date of decision: 7-8-2003]

S. Varadarajan v. State of Madras, AIR 1965 SC 942: (1965) 1 SCR 243: (1965) 2 Cri LJ 33, distinguished on facts

[8667] — Ss. 363, 364, 365, 386 and 387 — Kidnapping of a four-year-old boy for ransom — *Boy seen in the company of the accused persons at several places and never returned home — Evidence of eyewitnesses found to be natural and trustworthy — They correctly identifying the accused persons in the identification parade as well as in the court — No inordinate delay in holding test identification parade — Recovery of shirt of the boy at the instance of one of the accused — Letter demanding ransom sent by the kidnappers under fictitious name to the father of the boy establishing that the boy had been kidnapped from the lawful guardianship of his parents — Admission of guilt by one of the accused in another letter sent to the father of the boy — Contents of the letter establishing the role played by him and also indicating that the boy had been killed — Held, in the circumstances of the case, accused persons rightly convicted by the High Court. Radha Ballabh* v. *State of U.P.*, 1995 Supp (3) SCC 119: 1995 SCC (Cri) 797.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 4-5-1995]

[8668] — Ss. 363 and 366 — Applicability of — Acquittal under S. 363 and conviction under S. 366, held, cannot stand together

Section 361 makes the 'taking' of a minor girl out of the keeping of the lawful guardian without the consent of such guardian an offence. Under S. 363, for such an offence, a person may be punished with imprisonment of either description which may extend to seven years. Section 366 is merely an aggravated form of the offence under S. 363. If a person kidnaps a minor girl with the intention that she may be compelled, or knowing it to be likely that she will compelled, to marry any person against her will, he may be punished with imprisonment of either description for a term which may extend to ten years and also with fine. The basic condition for the applicability of S. 366, Indian Penal Code, is that the person charged under that section should have committed the offence of kidnapping. When a person is acquitted under S. 363, it is manifest that he cannot be committed under S. 366. As in the present case the appellant was acquitted under S. 363, the High Court erred in convicting him under S. 366, Indian Penal Code. The acquittal under S. 363 and the conviction under S. 366 cannot stand together. *Girja Lal* v. *State of Bihar*, Criminal Appeal No. 201 of 1957.

Bench Strength **4**. Coram: *P.B. Gajendragadkar*, *A.K. Sarkar*, **K. Subba Rao** and *Vivian Bose*, JJ. [Date of decision: 20-5-1958]

[8669] — Ss. 363 and 366 — Kidnapping of a girl with intent to seduce her to illicit intercourse — *Lower courts giving convincing and cogent reasons for recording the conviction of the appellant — Held, in the circumstances, no interference by the Supreme Court with conviction of the appellant under S. 366 is called for — However, he could not be convicted under S. 363 which is a minor offence in relation to S. 366 — In facts and circumstances of the case particularly the fact that the appellant has already suffered a substantial period of imprisonment his sentence reduced from four years' RI to the period already undergone. Rajendra* v. *State of Maharashtra*, 1997 SCC (Cri) 840.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 8-5-1997]

[8670] — Ss. 363, 366, 368 & 376 — Age of girl — Proof of — *Certified copies of school certificate and affidavits of the girl and her father amount to evidence under the Act — But report of contents of the medical report not before the Court would be hearsay and therefore inadmissible. Mohd. Ikram Hussain* v. *State of U.P.*, AIR 1964 SC 1625: (1964) 5 SCR 86: (1964) 2 Cri LJ 590: (1964) All Cri R 252.

Bench Strength **2**. Coram: **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 9-10-1963]

[8671] — Ss. 363, 366 and 376 — Allegation of abduction and rape — No inducement offered to PW 3 who left her parents' home voluntarily and accompanied the respondent to several places — *Further, PW 3 denying having had sexual intercourse with respondent — Evidence of PW 3 found unreliable by trial court — Held, on the totality of the matter, the courts below rightly came to the conclusion on broad probabilities of the case that the charges against respondent were not established* (Paras 3 and 4). *State of H.P.* v. *Daulat Ram*, (2007) 15 SCC 563.

Bench Strength **2**. Coram: *S. Rajendra Babu* and *P. Venkatarama Reddi*, JJ. [Date of decision: 8-8-2002]

[8672] — Ss. 363, 366 and 376 — Appeal against conviction — High Court by a cryptic unreasoned order acquitting respondent-accused for offence punishable under Ss. 363, 366 and 376 IPC — Unsustainability — *High Court neither discussing the evidence, nor indicating any basis for departing from conclusions of trial court —*

Matter remanded to High Court for fresh disposal — CrPC, 1973, Ss. 374 and 386 (Paras 1, 2, 6 and 8). *State of U.P.* v. *Munshi*, (2008) 9 SCC 390: (2008) 3 SCC (Cri) 778: (2008) 70 AIC 237 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 28-8-2008]

[8673] — **Ss. 363, 366 and 376 — Respondent-accused along with other co-accused alleged to have kidnapped the prosecutrix, forced her to marry him at knife-point and had sexual intercourse with her — High Court finding that prosecutrix had voluntarily accompanied the accused and was a consenting party to sexual intercourse — Effect** — *Stand of prosecutrix that she was below 16 years and hence her consent, if any, was inconsequential rejected because documentary and oral evidence belied her claim — Hence, held, judgment of High Court directing acquittal of respondent-accused calls for no interference* (Paras 2, 3, 10 and 13). *State of H.P.* v. *Suresh Kumar*, (2008) 10 SCC 104.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 28-8-2008]

[8674] — **Ss. 363, 366 and 376 — When motive is equally balanced, there being motive for the accused to commit the crime as also motive for the prosecution witnesses to falsely implicate the accused, court should look to the surrounding circumstances to find the truth** — *Held, the impelling circumstances attending the case taken in conjunction with the testimony of eyewitnesses unerringly showed that accused-appellants had strong motive to commit the crime. Chandra Mohan Tiwari* v. *State of M.P.*, (1992) 2 SCC 105: 1992 SCC (Cri) 252: AIR 1992 SC 891: 1992 Cri LJ 1091.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 22-1-1992]

[8675] — **Ss. 363, 366, 376, 397 and 302 — Rape and murder of minor girl aged 10 years — Conviction based on circumstantial evidence, on facts, upheld — Rape and murder of a minor girl aged 10 years — Offence whether proved from circumstances** — *Accused allegedly winning confidence of deceased girl prior to the incident — Witnesses deposing that accused seen playing badminton with deceased at 9.00 p.m. on the night of crime — Trial court carefully analysing the evidence of child witness (PW 17) and finding it credible enough for conviction — PW 24 witnessing accused carrying deceased on his cycle at 10.00 p.m. on the night of crime — Parents of deceased returning home at 10.30 p.m. finding deceased missing — Accused a watchman in the apartment in which the deceased stayed (accused living nearby with his family) also found missing on the night of crime — Accused (when found out next morning) making extra-judicial confession of alleged rape and murder — Accused making said confession prior to arrival of police — Dead body, ornaments and school bag of victim and cycle and blood-stained T-shirt of accused were recovered by police at the instance of accused — Effect — On facts, held per curiam, conviction upheld*

The Sessions Court found the appellant-accused guilty for offences punishable under Sections 363, 366, 376, 397 and 302 IPC. He was sentenced to 7 years' imprisonment, 10 years' imprisonment, imprisonment for life, 7 years' imprisonment and the death sentence, respectively for the aforesaid offences. The High Court by the impugned order confirmed the death sentence.

The circumstances highlighted by the trial court and the High Court were as follows:

1. The first circumstance was that the deceased was raped and she died a homicidal death.

2. The second circumstance was that the deceased victim who was aged about 10 years was residing with her parents in Flat No. A/2 of Sanudip Apartment located on Rander Road of Surat City.

3. The third circumstance was that the appellant was serving as a watchman since long and he was residing with his family in a room located on the ground floor of Happy Home Apartments situated opposite Sanudip Apartment, Surat.

4. The fourth circumstance was that the appellant-accused had won the confidence of the victim as a result of which the victim had reposed confidence in the appellant.

5. The fifth circumstance which was sought to be proved is that between 8.45 p.m. and 9.00 p.m. on 17-12-1999 the appellant was last seen playing badminton with the deceased in Sanudip Apartment.

6. The sixth circumstance which was sought to be proved is that on 19-12-1999 at about 10.30 p.m. the parents of the victim returned home and found that the deceased was missing.

7. The seventh circumstance which was sought to be relied upon by the prosecution is that between 9.00 p.m. and 9.30 p.m. on 17-12-1999 *V* (PW 24) had seen the appellant taking the deceased on his cycle near Adajan Patia, Surat.

8. The eighth circumstance was that after PW 24 had disclosed before *S* (PW 6) and others that he had seen the appellant going on a cycle towards

Jakat Naka with the deceased, a search was made and the appellant was found missing.

9. The next circumstance which was sought to be relied upon by the prosecution is that in the morning of December 1999 witness *C* who was going home had seen the accused sitting at an open place near Bhulka Bhavan School and had approached the appellant and on enquiry being made the appellant had made extra-judicial confession before him at that time.

10. The other circumstance which was sought to be proved by the prosecution is that on arrival of police at Sanudip Apartment after being informed by complainant *N* the appellant had shown the place of incident where the dead body of the deceased was found lying.

11. The next circumstance was that at the instance of the appellant-accused his cycle and school bag of the deceased were recovered and the school bag was found containing anklets and earrings belonging to the deceased.

12. Human blood was found from T-shirt of the accused and no explanation was offered by the appellant as to how human blood was found on his T-shirt.

The High Court found the circumstances to be credible, cogent and reliable. Both Pasayat and Ganguly, JJ. agreed that the conviction was to be maintained. However, Pasayat, J. confirmed the death sentence while Ganguly, J. opined that life sentence was to be given.

Referring the matter to a larger Bench only on the question of sentence,

Held :

Per Pasayat, J.

The circumstances highlighted by the trial court and analysed in detail by the High Court unerringly point at the accused to be the author of the crime. So far as the last seen aspect is concerned PWs 4, 5, 6, 17 and 24 had categorically stated that the deceased was seen in the company of the accused just before the time of death. So far as the evidence of PW 24 regarding the last seen aspect is concerned, his evidence has to be read along with the evidence of PWs 5 and 6. Additionally, it is clear from the evidence of the witnesses that the first confession (extra-judicial confession) was not made in the presence of the police. Though PW 17 was a child witness nevertheless the trial court has taken care of analysing his evidence after being satisfied that the child was speaking the truth. (Paras 19 and 20)

One of the other important circumstances is that the appellant-accused had shown the place of incident where the dead body of the deceased was found lying. At the instance of the appellant-accused, his cycle and the school bag of the deceased were recovered and the school bag was found containing anklets and earrings belonging to the deceased. Human blood was found on the T-shirt of the accused. The falsity of defence plea has been regarded as an additional link in the chain of circumstances. (Para 26)

Per Ganguly, J.

I agree with Pasayat, J. that the appellant has to be convicted. (Para 120)

Per curiam

Both of the members of this Bench agree that conviction is to be maintained. (Para 121). *Rameshbhai Chandubhai Rathod* v. *State of Gujarat*, (2009) 5 SCC 740: (2009) 2 SCC (Cri) 881.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat**[1] and **A.K. Ganguly**[2], JJ. [Date of decision: 27-4-2009]

State of U.P. v. Satish, (2005) 3 SCC 114: 2005 SCC (Cri) 642; Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172: (2006) 3 SCC (Cri) 512; Bodhraj v. State of J&K, (2002) 8 SCC 45: 2003 SCC (Cri) 201; Jaswant Gir v. State of Punjab, (2005) 12 SCC 438: (2006) 1 SCC (Cri) 579; Kusuma Ankama Rao v. State of A.P., (2008) 13 SCC 257: (2009) 2 SCC (Cri) 298; Manivel v. State of T.N., (2008) 12 SCC 748: (2009) 2 SCC (Cri) 924; Joseph v. State of Kerala, (2000) 5 SCC 197: 2000 SCC (Cri) 926; Damodar v. State of Karnataka, (2000) 10 SCC 328: 2000 SCC (Cri) 90, relied on

[8676] — Ss. 363, 366 and 376/511 — Victim, a girl of about five years — Alleged to have been called and taken away by appellant *P* who was known to her, for fulfilling his lust — Evidence of eyewitness PW 5 (grandmother of victim) — Conviction — Propriety — *On noticing the absence of victim, PW 5 went out in search of her — On hearing her cries PW 5 rushed to the house of* ***P*** *from where that sound was coming — PW 5 found the victim naked and* ***P*** *lying on top of her while acquitted accused was standing nearby — High Court maintaining conviction of* ***P*** *under Ss. 363 and 366, but setting aside the one under S. 376 r/w S. 511 — Evidence of PW 5, held, reliable — Plea of false implication, not sustainable — Offences under Ss. 363 and 366 made out — Conviction by High Court upheld* (Paras 5 and 10). *Parkash* v. *State of Haryana*, (2004) 1 SCC 339: 2004 SCC (Cri) 290: AIR 2004 SC 227: 2004 Cri LJ 595.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 2-12-2003]

[8677] — **Ss. 363, 366-A and 372 r/w S. 511 — When offence proved included in offence charged — Conviction for** — *Held, a court can convert a case from major offence to minor offence, if a case for conviction under such minor offence is* *made out and even though he was not charged therewith — In the instant case, though chargesheet was submitted against Appellants 1, 2 (parents of Appellant 3) and also 3 under S. 363 IPC by the police but trial court framed charges only under S. 366-A and S. 372 r/w S. 511 IPC — In appeal filed against acquittal of appellants, High Court convicting them under S. 366-A and S. 372 r/w S. 511 IPC — Ingredients of S. 363 IPC involve an act of kidnapping of any person from the lawful guardianship — S. 366-A IPC also envisages similar act of kidnapping but with the intention of committing sexual intercourse — S. 366-A IPC is a major offence whereas S. 363 IPC is a minor offence — So far as Appellants 1 and 2 are concerned no evidence was led to prove that they had any role in the kidnapping — On the other hand, testimony of prosecutrix showed that it was Appellant 3 who kept the prosecutrix confined at a place away from home for 39 long days knowing that she was a minor — But no reliable or cogent evidence led to prove that prosecutrix was kidnapped by accused persons with the intention of making her have sexual intercourse with them or with any other person, or with the intention of selling her for prostitution — No reason for prosecutrix to falsely implicate Appellant 3 — Held, in such circumstances, Appellant 3 liable to be convicted under S. 363 IPC, while Appellants 1 and 2 acquitted of all charges — Since appellants were charged under S. 366-A they knew they had to defend themselves against allegations of taking away a minor out of lawful guardianship — Appellant 3 could be convicted under S. 363, in absence of any specific charge framed thereunder — Considering the fact that incident had occurred 15 years ago, Appellant 3 sentenced to 3 years' RI — CrPC, 1973, Ss. 216 and 222* (Paras 46 to 60). *Sannaia Subba Rao* v. *State of A.P.*, (2008) 17 SCC 225.

Bench Strength **2**. Coram: *R.V. Raveendran* and **Dr. M.K. Sharma**, JJ. [Date of decision: 24-7-2008]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: (1955) 2 SCR 1140; Tarkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556; Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358; State of W.B. v. Laisal Haque, (1989) 3 SCC 166: 1989 SCC (Cri) 513; Kammari Brahmaiah v. Public Prosecutor, High Court of A.P., (1999) 2 SCC 522: 1999 SCC (Cri) 281; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592, relied on

[8678] — Ss. 363 and 368 — Kidnapping of minor girl from her school — Considering the special features of the case and the age of the accused (19 years at the time of occurrence), sentence reduced from 5 years to 3 years — Kidnapping of a minor girl (PW 6) from her school — PW 6 as per her own statement was looked after well at the house of the brother of the accused where she was taken by the accused — *There was no sexual harassment or assault on her — Further, prosecution abandoning its case that the accused made PW 6 write a letter to her father demanding money — Considering the said facts and the age of the accused (19 years at the time of occurrence), sentence for offences under Ss. 363 and 368 reduced from 5 years to 3 years* (Para 8). *Sajjan Kapar* v. *State of Bihar*, (2005) 9 SCC 426.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *Brijesh Kumar*, JJ. [Date of decision: 7-8-2003]

[8679] — Ss. 363 and 368 — Kidnapping of minor girl (PW 6) from lawful guardianship — *Accused going to school of PW 6 and telling her teacher that he had been sent by her father to get her from school since her grandfather was seriously ill — Accused taking the girl to his brother's house in another State — On the way, PW 6 realising that she was not being taken to the hospital but elsewhere — But, she not raising any alarm due to the threat given by the accused — Held, the offence of kidnapping was complete when the accused took the minor girl away from the school — Fact that the accused gave her food on the way or she was well looked after in the house of accused's brother, was of no relevance — Conviction upheld. Sajjan Kapar* v. *State of Bihar*, (2005) 9 SCC 426.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *Brijesh Kumar*, JJ. [Date of decision: 7-8-2003]

[8680] — Ss. 363, 368, 506 and 507 r/w S. 34 — Kidnapping for ransom — *Having regard to the evidence of the victim as also other PWs and facts and circumstances of the case, High Court concluded that the accused persons were responsible for kidnapping and demanding ransom and trial court had erred in rejecting the cogent and credible evidence of the PWs without considering the same in proper perspective and also erred in finding fault in testimony of some of the PWs who apprehended the accused without taking police assistance in view of threat given by accused that person informing police would be done to death — Held, on facts, High Court analysed the evidence in great detail and arrived at correct conclusions — Conviction upheld* (Paras 5 and 9). *Shashidhar Purandhar Hegde* v. *State of Karnataka*, (2004) 12 SCC 492: AIR 2004 SC 5075.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 15-10-2004]

— **S. 363-A** *See also* Ss. 361, 363, 363-A, 366-A and 375

See also Ss. 361, 363-A and 375

—**S. 364** *See also* Ss. 34, 302, 364 and 201

See also Ss. 120-B, 34, 109, 364 and 386

See also Ss. 120-B, 364, 302 and 201

See also under Ss. 299 to 304

See also Ss. 302, 364, 342 and 201

See also Ss. 359 to 363

See also Ss. 362, 364 and 302

See also Ss. 363, 364, 365, 386 and 387

See also Ss. 364-A and 364

See also Ss. 376, 364 and 302

See also Ss. 386 and 364

***See also* Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C.13. Kidnapping', in Vol. 2**

[8681] — S. 364 — Abduction in order to murder — On facts, held, prosecution failed to establish charge against the accused — Acquittal upheld — *No law point discussed. State of M.P.* v. *Amar Singh*, AIR 1994 SC 650: 1994 Cri LJ 619.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *M.M. Punchhi*, JJ. [Date of decision: 14-1-1992]

[8682] — S. 364 — Abduction of a person in order that he may be so disposed of as to be put in danger of being murdered — Evidence regarding — *Evidence of witnesses showing that the victim, one **R** who was proceeding in a camel cart, was pulled out of the cart when the cart was passing by the house of one of the accused **K**, belaboured by the accused persons and dragged inside **K**'s house — One of the accused calling another to bring a lathi to kill **R** — Medical evidence proving that **R** was done to homicidal death — Dead body of **R** later recovered from a nearby place — Held, acts and words imputed to accused when they pulled and belaboured **R** make it clear that their intention was to so dispose of **R** as to put him in danger of being murdered — Hence courts below rightly convicted the accused under S. 364* (Paras 8 to 12). *Murlidhar* v. *State of Rajasthan*, (2005) 11 SCC 133: AIR 2005 SC 2345: 2005 Cri LJ 2608.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **B.N. Srikrishna**, JJ. [Date of decision: 9-5-2005]

State of W.B. v. Mir Mohd. Omar, (2000) 8 SCC 382: 2000 SCC (Cri) 1516, explained

Shambu Nath Mehra v. State of Ajmer, 1956 SCR 199: AIR 1956 SC 404: 1956 Cri LJ 794, relied on

[8683] — S. 364 — Applicability — Appellants charged under for commission of offence of kidnapping and murder of one *S* — *Held, fact that parties were inimically disposed towards each other is beyond any doubt or dispute — Again, fact that appellants were present at the place of occurrence also stands established — Appellants, not only picked up S, but also bodily lifted him away and when some resistance was put, they had also resorted to firing in air — Indisputably, S was not seen and heard of thereafter for the last 27 years — In terms of S. 108, Evidence Act, law presumes him to be dead — In the event of murder of an abducted person, an inference of murder can safely be drawn in respect whereof, either by direct or presumptive evidence, and it would not be necessary to prove the corpus delicti — Hence, in the facts and circumstances, case under S. 364 IPC made out — Evidence Act, 1872, S. 108* (Paras 14, 15, 17, 21 and 22). *Badshah* v. *State of U.P.*, (2008) 3 SCC 681: (2008) 2 SCC (Cri) 712: 2008 Cri LJ 1950: (2008) 3 All LJ 524: (2008) 65 AIC 183 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-2-2008]

Ramjee Rai v. State of Bihar, (2006) 13 SCC 229: (2007) 2 SCC (Cri) 626, relied on

[8684] — S. 364 — Kidnapping — Child snatched from mother's lap — *Conviction of three persons under S. 364 on the basis of testimony of mother of the child, on facts, upheld — There is no merit in the contention that three persons could not have been convicted for kidnapping of a three-year-old child* (Para 11). *Jhapsa Kabari* v. *State of Bihar*, (2001) 10 SCC 94: AIR 2002 SC 312.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Y.K. Sabharwal**, JJ. [Date of decision: 4-12-2001]

[8685] — S. 364 — No question of kidnapping can arise if the person allegedly kidnapped was already dead — *Conviction set aside. Pedda Narayana* v. *State of A.P.*, (1975) 4 SCC 153: 1975 SCC (Cri) 427: AIR 1975 SC 1252: 1975 Cri LJ 1062: (1975) 12 ACC 201: 1975 Cr LR (SC) 335.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 8-4-1975]

[8686] — Ss. 364 and 147 — Sentence of 10 years' imprisonment awarded against appellants — Propriety of — *S. 364 IPC prescribing two alternative punishments — Trial court not awarding the sentence of life imprisonment, but taking a lenient view awarding the alternative punishment of RI for 10 years — Sentence upheld by High Court — Keeping in view the serious allegations made against the appellants and the present one being a case of murder of 3 persons, held, any interference with the sentence awarded by the courts below was not called for. Shankar Mahto* v. *State of Bihar*, (2002) 6 SCC 431: 2002 SCC (Cri) 1346: AIR 2002 SC 2857.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and **B.N. Agrawal**, JJ. [Date of decision: 31-7-2002]

[8687] — Ss. 364 and 201 — Kidnapping of a 5-year-old boy for ransom — Victim subsequently murdered and thereafter his dead body burnt — Two of the three persons involved in the crime committing suicide — *The third one i.e. the appellant, who had worked as a driver in the house of victim, making a disclosure statement as a result of which bones of victim and his burnt clothes etc. were recovered — Medical evidence including DNA test report showing that remnants of body were that of victim — Confession made by appellant before Judicial Magistrate was to the effect that he only kidnapped the boy while the other two killed him — Appellant was seen 5-6 days prior to the incident moving around the house of the victim — Motive for crime was to extort ransom — Considering the above circumstances, the trial court convicted the appellant under Ss. 364-A and 201 IPC and passed death sentence — High Court affirmed the said judgment — Challenge to circumstance of discovery of bones not sustainable — Confession of appellant was recorded after complying with requirements of law and the same was voluntary and truthful in nature — Said confession not retracted during trial — Retraction purported to have been done only during examination of appellant under S. 313 CrPC — In this view, held, appellant was guilty of crime committed — CrPC, 1973, Ss. 164 and 313*

Both PW 2 and PW 3 as also PW 10 gave a vivid description as to the mode and manner in which the appellant pointed out the place whereat the dead body of the victim was burnt, the nalla wherefrom the bones were recovered and the spot where some burnt pieces of cardboard and ashes were seen. (Para 21)

The appellant was not in police custody when a request was made to record his confessional statement. He was in judicial custody. He was produced before the Magistrate on 16-8-2000. The Magistrate took the requisite precaution in not recording his statement on that day. The requirements of Section 164 CrPC have, thus, fully been complied with. The appellant was asked to come on the next day. A note of caution as envisaged in law was again administered. His statement was recorded on 17-8-2000. The questions put to the appellant clearly go to show that the Magistrate took all the requisite precautions before recording the said statement. (Paras 29 and 30)

The confession made by the appellant was voluntary in nature and the same was free from undue influence, coercion and threat. There is a ring of truth in the confession of the appellant. (Para 41)

The confession was not retracted during the course of the trial. It was purported to have been done only in his examination under Section 313 CrPC. (Para 32). *Anil* v. *Admn. of Daman & Diu, Daman*, (2006) 13 SCC 36: (2008) 1 SCC (Cri) 72: (2007) 49 AIC 65 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715; Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129; Palvinder Kaur v. State of Punjab, AIR 1952 SC 354: 1953 SCR 94: 1953 Cri LJ 154; Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217: 1956 Cri LJ 426; Subramania Goundan v. State of Madras, AIR 1958 SC 66: 1958 SCR 428: 1958 Cri LJ 238; Bharat v. State of U.P., (1971) 3 SCC 950: 1972 SCC (Cri) 198; Bhagwan Singh Rana v. State of Haryana, (1976) 3 SCC 101: 1976 SCC (Cri) 373; relied on

[8688] — Ss. 364 & 302 — Abduction and murder — If abduction of deceased by accused is proved and deceased is found murdered soon after the abduction, it is for the accused to satisfy the court as to how else the abducted victim was dealt with by the accused — In absence of any such explanation court may draw a presumption that the abductor was the murderer also — *In view of this legal position matter remitted to High Court for fresh consideration — If conviction is to be maintained High Court has to consider how far the said presumption will apply to the situation of this case — Evidence Act, 1872, Ss. 106 and 114* (Paras 4 and 5). *State of M.P.* v. *Lattora*, (2003) 11 SCC 761.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 13-7-2001]

State of W.B. v. Mir Mohd. Omar, (2000) 8 SCC 382: 2000 SCC (Cri) 1516; Sucha Singh v. State of Punjab, (2001) 4 SCC 375: 2001 SCC (Cri) 717, followed

[8689] — Ss. 364 and 302 — Applicability — Abduction and murder — Failure to discharge burden of proof by the abductors — Inference — *Prosecution case that after assaulting the victim accused persons carried away the body — Victim not seen alive since then — No explanation given by the accused as to what they did with the victim thereafter — Accused abductors, who had special knowledge in this regard, having withheld the information, held, an inference can be drawn that they had murdered the victim — Evidence Act, 1872, S. 106*

The prosecution case was that a boy was brutally assaulted and when one of the accused-appellants declared that the boy was still alive and he should be killed, a chhura-blow was inflicted on his chest. The appellants then carried away the boy. The boy had since not been seen alive. However, the appellants gave no explanation as to what they did after they took away the boy.

Held :

In the absence of an explanation, and considering the fact that the appellants were suspecting that the boy (victim of the crime) had kidnapped and killed a child of the family of the appellants, it was for the appellants to have explained what they did with the boy after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference. (Para 24). *Ram Gulam Chaudhary* v. *State of Bihar*, (2001) 8 SCC 311: 2001 SCC (Cri) 1546: AIR 2001 SC 2842.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 25-9-2001]

[8690] — Ss. 364 & 302 — Prosecution case be based on deceased's statement in his dying declarations that the two accused dragged him inside the 'baithak' of one of them and then fired gunshots at him — *Statement of the deceased of being forcibly dragged disbelieved and no conviction recorded under S. 364 — Whether conviction under S. 302 based on the same dying declarations proper — Effect of an allegation not being substantiated*

The effect of the acquittal of the two accused for the offence under S. 364, IPC is that in arriving at the conclusion whether the accused are guilty of the offence of murder or not, the court should proceed upon the assumption that the prosecution allegation that the accused had forcibly taken the deceased inside the 'baithak' has not been substantiated. The prosecution would have to bring the charge home to the accused independently of that allegation. If, however, the prosecution establishes the charge against the accused independently of the allegation, there would be no legal impediment or infirmity in the conviction of the accused.

The fact that an allegation has not been substantiated does not necessarily go to show that the allegation is false. An allegation may be correct and still it may not be substantiated at the trial. The effect of the acquittal of the accused under S. 364, IPC would only be that for the charge of murder the prosecution cannot rely upon the evidence that the deceased was dragged inside the 'baithak' by the two accused. *Godhu* v. *State of Rajasthan*, (1975) 3 SCC 241: 1974 SCC (Cri) 859: AIR 1974 SC 2188: 1974 ACC 361: 1975 MLJ (Cri) 38: 1974 Cri LJ 1500.

Bench Strength **3**. Coram: **H.R. Khanna**, *Y.V. Chandrachud* and *P.K. Goswami*, JJ. [Date of decision: 27-8-1974]

[8691] — Ss. 364, 302, 201 and 34 — Case of kidnapping and murder — Circumstantial evidence — Conduct of accused — When relevant for determining guilt of accused — *Trial court convicting six accused, out of seven, including present appellants (A-1 and A-2) — High Court upholding conviction of appellants, except that conviction modified to that under Ss. 302, 364, 201 and 34 — Sustainability — Held, criminal trial is not an enquiry into conduct of accused for any purpose other than to determine his guilt — Undisputedly, piece of conduct which is not connected with guilt of accused is not relevant — However, unnatural, abnormal or unusual behaviour of accused after the offence may be relevant circumstance against him — Such conduct is inconsistent with his innocence — Therefore, conduct which destroys presumption of innocence can be considered as relevant and material — Herein, presence of accused for a whole day in a specific place and misleading PWs to search for kidnapped son of complainant in other places and not allowing them to search in a specific place, certainly creates a cast iron cloud over innocence of accused persons — The circumstances clearly established the accusations against A-1 but not sufficient to fasten guilt on A-2* (Paras 22 and 24). *Joydeep Neogi* v. *State of W.B.*, (2009) 15 SCC 83.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 8-5-2009]

[8692] — Ss. 364, 302 and 201 r/w S. 34 — Murder trial — Benefit of doubt — All accused charged for same offence, but only appellant singled out for conviction — Propriety — *Charges under Ss. 364/302/201 r/w S. 34 IPC framed against appellant and other accused — Entire prosecution case, apart from the recovery, based on the evidence of the PWs — Whereas, other accused given benefit of doubt, appellant convicted for offences punishable under Ss. 364/302 and 201 IPC and S. 25 of the Arms Act and sentenced thereunder — Appeal preferred thereagainst dismissed by High Court — Appellant assailing the judgment on the grounds that (1) trial court and High Court failing* *to consider the fact that recovery of articles at the appellant's behest was not free from doubt, (2) trial court having disbelieved testimony of PW 11 being wholly unreliable, could not have connected appellant with the crime on the basis of statements of PW 10 whose evidence also not free from doubt, (3) the identification of dead body itself doubtful as the colour of the clothes, the basis for identification, as disclosed in the FIR and the evidence of the investigating officer in his inquest report, were different — Glaring inconsistencies and discrepancies in the evidence/testimonies — While other accused acquitted on recoveries of articles, appellant held guilty — Also, while other accused were also last seen with the deceased but only appellant got convicted — Held, in the peculiar facts and circumstances of the case, the appellant could not have been convicted for commission of murder, particularly when on the same evidence other persons have been given benefit of doubt — Hence, appellant is entitled for the same benefit — Therefore, impugned judgment of High Court set aside — Arms Act, 1959, S. 25* (Paras 4, 5, 7, 9, 25 and 32 to 34). *Hatti Singh* v. *State of Haryana*, (2007) 12 SCC 471: (2008) 3 SCC (Cri) 246: (2007) 54 AIC 70 (SC): 2007 Cri LJ 2726.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 17-4-2007]

[8693] — Ss. 364, 302 and 323 r/w S. 34 — Abduction and murder — Property dispute between appellants and deceased — Acquittal of co-accused — Conviction of appellants — *Propriety — None of the eyewitnesses (including the injured one) supported the prosecution version — Dying declaration on the basis of which conviction passed, held, not reliable — Injuries could not have been caused by weapons recovered at the instance of appellant* ***H*** *— Number of the car used in crime differently described during trial — Same evidence against all accused without any distinct or reasonably distinguishable features — Conviction of appellants, held, liable to be set aside*

There was a series of litigations between the two appellants (*H* and *N*) and the deceased in respect of some properties. The deceased was going with his advocate (PW 15) when the four accused persons came in a Maruti van and forcibly put the deceased in the car and took him away. Though PW 7 tried to save the deceased, he was assaulted by A-3 (*H*). PW 15 immediately reported the matter to police. The FIR was registered at about 10.50 a.m. and the investigation was undertaken. Police officials went in search of the deceased who was found in an old house in Village Bharawas. The statement of the deceased was recorded under Section 161 CrPC which was treated subsequently to be the dying declaration. The deceased was brought to doctor *V* (PW 12) who examined him at 12.00 noon. Thereafter the deceased was taken to Jeypore Hospital but on the way he breathed his last in the afternoon.

During trial, none of the alleged eyewitnesses supported the prosecution version. Therefore, the prosecution relied on the dying declaration purported to have been made by the deceased. The trial court found that the dying declaration was acceptable and, therefore, convicted and sentenced the accused persons on the basis thereof. All the four accused persons preferred appeal before the High Court which came to hold that the dying declaration was not sufficient to hold A-2 and A-4 to be guilty. However, the High Court held that since the appellants had a motive to murder the deceased and the dying declaration was acceptable in relation to them, they were liable to be convicted and sentenced in respect of offences punishable under Sections 364, 302 and 323 read with Section 34 IPC. The appellants challenged the said judgment of the High Court by filing the instant appeal before the Supreme Court.

Allowing the appeal,

Held :

There are some circumstances which assume importance in view of the fact that the informant (PW 15) who was advocate of the deceased has departed from the statement supposed to have been given during investigation, and in the first information report. Similar is the position of the witness who is supposed to have received injuries. In the dying declaration, specific roles were attributed to all the accused persons. The High Court found the roles attributed to A-4 to be unacceptable, as he was not found present when the police arrived at the house from where the deceased was supposedly recovered. Similar is the situation so far as appellant *H* is concerned. In the dying declaration the deceased had said that it was A-2 and appellant *N* who were trying to kill him. The High Court found that since A-2 would not have benefited from the death, he cannot be convicted. The reasoning is fallacious. A definite role was attributed to A-2 and it was stated that he wanted to kill the deceased. On mere surmise that there was no motive, a different approach was adopted. Further, when the so-called dying declaration was itself not proved, the question of acting on it did not arise. There is no evidence to establish kidnapping and/or murder to attract Section 364 IPC and Section 302 IPC. PW 7 allegedly suffered injuries at the hands of the appellants for which they were convicted in terms of

Sections 323/34 IPC. PW 7 himself did not support the prosecution version in this regard. (Paras 8 and 9). *Narain Singh* v. *State of Haryana*, 2005 SCC (Cri) 185: AIR 2004 SC 1616: 2004 Cri LJ 1409.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-2-2004]

[8694] — Ss. 364, 302 & 323 r/w 120-B — Reappreciation of evidence — Series of kidnapping of children and their murder — Approver's evidence — Fully corroborated by other evidence — *Sessions Judge after meticulously considering each item of evidence, held the accused-appellants guilty — High Court also, on reappreciation of each item of evidence, confirmed the findings of Sessions Judge — On further reappreciation of evidence held, evidence adduced by prosecution proved beyond reasonable doubt guilt of the appellants — Hence conviction confirmed* (Paras 25, 27, 29 and 30). *Renuka Bai* v. *State of Maharashtra*, (2006) 7 SCC 442: (2006) 3 SCC (Cri) 290: AIR 2006 SC 3056.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *G.P. Mathur*, JJ. [Date of decision: 31-8-2006]

[8695] — S. 364 and S. 302 r/w S. 34 — Conviction justified — *Respondent-accused S, **P** and **R** alleged to have visited the house of PW 7 and asked deceased to accompany them — Soon thereafter when PWs 7 and 5 had gone to inspect the fields they saw **P** and **R** holding the deceased and grappling with him, while **S** took out a pistol from his waist and fired at deceased — Testimonies of PWs 4 to 7, who were eyewitnesses corroborating each other and also supported by evidence of PWs 1 to 3 — Submission by defence that PW 7 could not have witnessed the alleged occurrence as he was standing at a distance and there was obstruction by bushes, plants and crops standing in the field rejected — Place of occurrence was a terrace of about 2 ft and hence, it was possible for the informant to witness the occurrence from the place where he was stationed which was not far off — Even otherwise, if a person is well known to the other, then the probability of identification of the said person even from a faraway place is much higher — Further, testimonies of eyewitnesses were corroborated by medical evidence — Delay in filing FIR satisfactorily explained — As far as applicability of S. 34 is concerned, **P** and **R** were instrumental in bringing the deceased from his house and were holding the deceased which enabled **S** to fire at him and which showed their common intention to murder the deceased — Impugned judgment of acquittal passed by High Court set aside — Conviction by trial court restored* (Paras 1 to 4, 12 to 14, 16 to 26). *Rangnath Sharma* v. *Satendra Sharma*, (2008) 12 SCC 259: (2008) 69 AIC 3 (SC).

Bench Strength **2**. Coram: *Dr. Arijit Pasayat* and **Dr. M.K. Sharma**, JJ. [Date of decision: 20-8-2008]

Ram Tahal v. State of U.P., (1972) 1 SCC 136: 1972 SCC (Cri) 80; Ramesh Singh v. State of A.P., (2004) 11 SCC 305; Israr v. State of U.P., (2005) 9 SCC 616: 2005 SCC (Cri) 1260, relied on

[8696] — S. 364 and Ss. 302/34 — Abduction and murder — Propriety of conviction — *Prosecution itself proceeding on footing that there were eyewitnesses to murder and taking upon itself the burden of proving the same — High Court, though finding the evidence of these witnesses unreliable, applying S. 106 of the Evidence Act and holding that once it was established that the appellants were the abductors and they failed to offer any explanation as to what transpired after abduction, it could be inferred that they had murdered the victim — Hence convicting the appellants under S. 364 and Ss. 302/34 — Held, High Court erred in doing so — S. 106 of the Evidence Act applicable only when the facts are "especially within the knowledge of the accused" and it would be difficult for the prosecution to establish those facts — In the instant case, prosecution did not proceed on such footing and moreover applicability of S. 106 was also never pleaded — Hence while maintaining conviction under S. 364, conviction under Ss. 302/34 set aside — Evidence Act, 1872, S. 106* (Paras 18 to 23). *Murlidhar* v. *State of Rajasthan*, (2005) 11 SCC 133: AIR 2005 SC 2345: 2005 Cri LJ 2608.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **B.N. Srikrishna**, JJ. [Date of decision: 9-5-2005]

State of W.B. v. Mir Mohd. Omar, (2000) 8 SCC 382: 2000 SCC (Cri) 1516, explained

Shambu Nath Mehra v. State of Ajmer, 1956 SCR 199: AIR 1956 SC 404: 1956 Cri LJ 794, relied on

[8697] — Ss. 364, 324, 323, 149 and 148 — Contravention of — Effect — Investigation done by police officer not specifically authorised to do so — If illegal qua the offences not relatable to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST Act) — *Accusation under Ss. 364, 324, 323, 149 and 148 IPC and S. 3(2)(v), SC & ST Act — Held, only investigation qua offence under SC & ST Act is vulnerable and not those relatable to IPC — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(2)(v) — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, R. 7* (Para 8). *State of Punjab* v. *Hardial Singh*, (2009) 15 SCC 106.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 8-5-2009]

State of M.P. v. Chunnilal, (2009) 12 SCC 649, applied

[8698] — Ss. 364, 359 and 362 — Ingredients under S. 364 — *Held, are: (1) kidnapping by the accused must be proved; (2) it must also be proved that the person was kidnapped in order (a) that he may be murdered, or (b) that he might be disposed of as to be put in danger of being murdered* (Para 13). *Badshah* v. *State of U.P.*, (2008) 3 SCC 681: (2008) 2 SCC (Cri) 712: 2008 Cri LJ 1950: (2008) 3 All LJ 524: (2008) 65 AIC 183 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-2-2008]

[8699] — Ss. 364 and 362 — Abduction for murder — Offence if established — Abduction of a person should be shown to have been done with the objective of murdering him — FIR lodged after the incident of abduction, when fact of murder had not come to light, referring to accused as saying that he would finish off the deceased — *On facts, held, prosecution succeeded in establishing that the abduction was for committing murder*

Abduction takes place when a person is compelled by force (or such person is induced by any deceitful means) to go from any place. The important task for the prosecution to establish the offence under Section 364 IPC is to demonstrate that abduction of a person was for murdering him. Even if the murder did not take place, the offence would be complete if the abduction was completed with the said objective. Conversely, if there was no such objective when the abduction was perpetrated, but later the abductors murdered the victim, Section 364 IPC would not be attracted, though in such a case the court may have to consider whether the offence of culpable homicide (amounting to or not amounting to murder) was committed. (Para 13)

In the FIR lodged by the PW after the abduction, the PW stated that while taking away the deceased the abductors were saying that they would kill the deceased. When the FIR was given PW had no reason to believe that the deceased was not alive. All the broad features of this case eloquently support the version of the witnesses to conclude that the words attributed to the accused were really uttered by them. Thus it must be held that all the accused abducted the deceased in order to murder him. (Paras 12, 13, 15 and 16). *State of W.B.* v. *Mir Mohammad Omar*, (2000) 8 SCC 382: 2000 SCC (Cri) 1516: AIR 2000 SC 2988.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 29-8-2000]

[8700] — Ss. 364 & 365 — Several offences — Power to pass several sentences in respect of — *Appellant prosecuted for kidnapping and murdering two boys aged 10 to 12 years — Trial court finding that there was no evidence to show that victims had been killed by the appellant or that they were kidnapped for obtaining ransom or for murdering them — However, two letters demanding ransom were proved to be written by him, and hence he was convicted under Ss. 364 and 365 IPC by the trial court and sentenced as under: — "Under S. 364 IPC: RI for 10 years — Under S. 364 IPC: RI for 10 years — Under S. 365 IPC: RI for 4 years — Under S. 365 IPC: RI for 4 years — Under S. 120-B IPC: RI for 5 years — Under S. 120-B IPC: RI for 5 years — Under S. 201 IPC: RI for 2 years." — High Court in appeal maintaining the conviction and directing the sentence under S. 364 to run consecutively, while for other offences it was to be concurrent i.e. total period of 20 years' RI imposed — Appellant already in jail for more than 12 years, while the maximum sentence that could be imposed was 14 years — Held, provisos appended to S. 31 clearly mandate that the accused could not have been sentenced to imprisonment for a period longer than fourteen years — Trial court as well as the High Court committed a serious illegality in passing the impugned judgment — Appellant sentenced to the period already undergone — CrPC, 1973, S. 31 and proviso* (Paras 2, 3, 6 to 12). *Chatar Singh* v. *State of M.P.*, (2006) 12 SCC 37: (2007) 2 SCC (Cri) 370: AIR 2007 SC 319: (2007) 49 AIC 725 (SC): 2007 Cri LJ 796.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

Kamalanantha v. State of T.N., (2005) 5 SCC 194: 2005 SCC (Cri) 1121; Zulfiwar Ali v. State of U.P., 1986 All LJ 1177: (1986) 3 Crimes 199, relied on

K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754: 2005 SCC (Cri) 451, distinguished (partly)

[8701] — Ss. 364, 366-A, 368 and 120-B — Revision — Proper mode of disposal — *High Court setting aside acquittal of appellant-accused by allowing revision petition filed by Respondent 1 (informant) without indicating any reasons therefor and neither analysing the evidence recorded — Impugned order set aside and matter remitted to High Court for fresh disposal — CrPC, 1973, Ss. 401, 378 and 386* (Paras 1, 2, and 5 to 8). *Sunil* v. *Rajesh Das*, (2008) 13 SCC 246: (2008) 64 AIC 271 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 21-2-2008]

[8702] — Ss. 364, 386 & 302 — Confession — Not relied upon as basis for conviction for an offence of murder — Accused being tried in addition for offences under Ss. 364 and 386 — *Confession can nevertheless be taken into consider-*

ation as against the confessing accused to lend assurance to conclusion against them insofar as these offences are concerned based on circumstantial evidence

Though it has been considered unsafe to act upon the confession as basis for the conviction in respect of murder, there is no reason why the confession insofar as it relates to the two offences of kidnapping and extortion should not be taken into consideration as against this accused to lend assurance to the conclusion reached against him insofar as these offences are concerned based on circumstantial evidence. *Ram Chandra* v. *State of U.P.*, AIR 1957 SC 381: 1957 Cri LJ 559.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 26-11-1956]

[8703] — Ss. 364, 396 & 120-B — Accomplice — Testimony of — Need for corroboration — Rule for, restated — *LP (driver of the car in which the deceased was travelling) along with other accused alleged to have killed the deceased and snatched Rs 1,84,405 from her — Pursuant to confessional statement made by LP amount of Rs 30,695 recovered from him and he also disclosing names of other accomplices — One of the accomplice L (PW 6) turned approver and his statement recorded under S. 306 CrPC — Submission by appellant-accused that there was no eyewitness to the occurrence and simply on the basis of evidence of L they cannot be found guilty — L in his deposition stating the sequence of events leading to murder of the deceased (how the conspiracy was hatched and executed) — He also stating that mouth of the deceased was pressed by LP which prevented her from raising alarm and then he stabbed her on instigation and active participation of co-accused LR — Injury found on body of deceased and abrasions on her cheek and mouth corroborating his version — Moreover, part of looted money recovered from LP's possession — Held, in such circumstances there was complete corroboration of evidence of PW 6 and hence conviction on the basis of his testimony was justified — Evidence Act, 1872, S. 133 and S. 114 Ill. (b)* (Paras 4 and 19 to 21). *Sitaram Sao* v. *State of Jharkhand*, (2007) 12 SCC 630: (2008) 3 SCC (Cri) 319: AIR 2008 SC 391.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 12-11-2007]

K. Hashim v. State of T.N., (2005) 1 SCC 237: 2005 SCC (Cri) 292, relied on

— S. 364 r/w S. 34 *See also* Ss. 302, 364 r/w Ss. 120-B and 34

— S. 364 r/w S. 120-B *See also* Ss. 302, 364 r/w Ss. 120-B and 34

— S. 364 r/w S. 149 *See also* Ss. 302 r/w S. 149, S. 364 r/w S. 149, S. 429 r/w S. 149 and S. 436 r/w S. 149

See also Ss. 436 r/w 149, 364 r/w 149 and 302 r/w 149

— Ss. 364/34 *See also* Ss. 302/34, 364/34 and 201/34

— Ss. 364/149 *See also* Ss. 302/149 and 364/149

— S. 364-A *See also* Ss. 120-B, 364-A and 341

See also under Ss. 299 to 304

See also Ss. 302 and 364-A

See also Ss. 302, 364-A, 120-B and 201

See also Ss. 302/149, 364-A, 365 and 148

See also Ss. 365, 364-A, 343/120-B and 346/120-B

[8704] — S. 364-A — Kidnapping for ransom — Applicability of S. 364-A — Necessary proof for, stated — "Demand for ransom" — Communication of — *Held, no straitjacket formula can be laid down that the demand for payment has to be made to a person who ultimately pays — Hence, after communicating the intended demand to the kidnapped or abducted person, merely because the demand could not be conveyed to some other person, as the accused is arrested in the meantime, does not take away the offence out of the purview of S. 364-A — Object of kidnapping or abduction has to be seen in such a case*

PW 2, a college student, was abducted by the appellant and three others (who were acquitted by the trial court). They asked him his father's phone number and stated that a demand of Rs 4,00,000 would be made for his release. Somehow PW 2 managed to escape and informed the villagers who caught hold of the accused persons and, thereafter, took them to the police station. The courts below found the appellant guilty under Section 364-A IPC. Hence the present appeal.

Before the Supreme Court, it was submitted that no demand had been conveyed to any person for a ransom and, therefore, Section 364-A had no application. Strong reliance was placed on a decision of the Delhi High Court in *Netra Pal* v. *State (NCT of Delhi)*, 2001 Cri LJ 1669 (Del), to contend that since the ransom demand was not conveyed to the father of PW 2, the intention to demand was not fulfilled.

Dismissing the appeal,

Held:

To attract the provisions of Section 364-A what is required to be proved is: (*1*) that the accused kidnapped or abducted the person; (*2*) kept him under detention after such kidnapping and abduction; and (*3*) that the kidnapping or abduction was for ransom. (Para 12)

In the instant case, the object of abduction was for ransom. This was clearly conveyed to the victim PW 2. He was even conveyed the amount to be paid. It cannot be laid down as a straitjacket formula that the demand for payments has to be made to a person who ultimately pays. After making the demand to the kidnapped or abducted person merely because the demand could not be conveyed to some other person, as the accused is arrested in the meantime, does not take away the offence out of the purview of Section 364-A. It has to be seen in such a case as to what was the object of kidnapping or abduction. (Para 15). *Malleshi* v. *State of Karnataka*, (2004) 8 SCC 95: 2004 SCC (Cri) 2115.

Bench Strength 2. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 15-9-2004]

Netra Pal v. State (NCT of Delhi), 2001 Cri LJ 1669 (Del), distinguished on facts

[8705] — S. 364-A — Kidnapping for ransom — Conviction by courts below — Sustainability — *Accused persons including appellant kidnapping PW 2, a nine-year-old child — They demanding a ransom of Rs ten lakhs and threatening to kill PW 2 if said amount not paid — Father of PW 2 meeting the said demand — Accused Y collecting the ransom money and handing over the same to other accused — Thereafter, victim PW 2 was left at his residence by Y — After his release, PW 2 narrating the incident to his father naming the accused and pointing out places where he had been taken — Police conducting raid and apprehending the accused persons and making recovery of ransom money at the instance of the accused persons — Said money bearing initials of father of victim on first and last currency notes of the bundles — Placing reliance on evidence of PWs including the victim and his father, trial court convicting the accused — Analysing the evidence on record in the background of S. 364-A IPC, held, prosecution clearly established commission of the said offence — High Court's judgment affirming the conviction, not liable to be interfered with* (Paras 32, 29, 30 and 31). *Vinod* v. *State of Haryana*, (2008) 2 SCC 246: (2008) 1 SCC (Cri) 338: AIR 2008 SC 1142: (2008) 64 AIC 175 (SC): 2008 Cri LJ 1811: (2008) 105 Cut LT 559.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 24-1-2008]

[8706] — S. 364-A — Kidnapping for ransom — Demand for ransom — Proof — *Exts. P-2 & P-3, letters demanding Rs 1 crore and Rs 75 lakhs respectively which accused had got written proved and his house was at a short distance from that of the victim — Further, pursuant to disclosures made by accused the child was recovered — Accused caught picking up the bag containing money from the place which had been pre-arranged — Held, accused's demand for ransom was thus proved, and therefore, S. 364-A was clearly applicable* (Paras 5 and 10 to 13). *P. Liaquat Ali Khan* v. *State of A.P.*, (2009) 12 SCC 707: AIR 2009 SC 2597: 2009 Cri LJ 3736: (2009) 78 AIC 267 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 17-4-2009]

[8707] — S. 364-A — Kidnapping for ransom — Factors affecting fairness of trial of accused in such cases — Duty of court while appreciating evidence — *Held, kidnapping as understood under S. 364-A is a truly reprehensible crime and when a helpless child is kidnapped for ransom and that too by close relatives, the incident becomes all the more unacceptable — Very gravity of crime and abhorrence which it creates in mind of court are, however, factors which also tend to militate against fair trial of accused in such cases — Court must, therefore, guard against possibility of being influenced in its judgments by sentiment, rather than by objectivity and judicial considerations, while evaluating evidence* (Para 15). *Lohit Kaushal* v. *State of Haryana*, (2009) 17 SCC 106.

Bench Strength 2. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 4-8-2009]

[8708] — S. 364-A — Kidnapping for ransom — Ingredients — "Ransom" — Meaning — *Not only the abductor but the person who acts as go-between to collect the ransom also liable to be convicted under this section*

Before Section 364-A is attracted and a person is convicted, the prosecution must prove the following ingredients:

(*1*) The accused must have kidnapped, abducted or detained any person;

(*2*) He must have kept such person under custody or detention; and

(*3*) Kidnapping, abduction or detention must have been for ransom. (Para 57)

The term "ransom" has not been defined in the Code. Stated simply, "ransom" is a sum of money to be demanded to be paid for releasing a captive, prisoner or detenu. Kidnapping for ransom is an offence of unlawfully seizing a person and then confining the person usually in a secret place, while attempting to extort ransom. This grave crime is sometimes made a capital offence. In addition to the abductor a person who acts as a go-between to collect the ransom is generally considered guilty of the crime. (Paras 58, 62 and 60). *Suman Sood* v. *State of Rajasthan*, (2007) 5 SCC 634: (2007) 2 SCC (Cri) 637: AIR 2007 SC 2774: 2007 Cri LJ 4080.

Bench Strength 2. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 14-5-2007]

Malleshi v. State of Karnataka, (2004) 8 SCC 95: 2004 SCC (Cri) 2115, relied on

Concise Oxford English Dictionary, 2002, p. 1186; Advanced Law Lexicon (3rd Edn., p. 3932, relied on

[8709] — S. 364-A — Kidnapping for ransom — Ingredients of offence under, whether made out *— A-1, A-2 and A-3 forcibly took away AN (a 4 years old boy), causing grievous hurt to her mother and gave a written threat to the life of the boy if Rs 5 lakhs were not paid — A-5 immediately joined the car in which the boy was being kidnapped and the written threat was in the handwriting of A-4 — Ingredients of offence under S. 364-A requires kidnapping and reasonable apprehension that some person may be done to death or hurt if ransom money is not paid — On facts, held, the offence under S. 364-A was committed — Therefore, conviction of appellants for life imprisonment, held, proper*

On 24-9-1997, at about 2.30 in the afternoon, *BH* went to the police station and gave her statement. On the basis of her statement, an FIR was lodged at 2.40 p.m. that her 4 years old son, *AN* was kidnapped in front of her house, in her presence, after *AN* returned from the nursery classes in the school bus at about 1.25 p.m. She claimed that she had seen one white-coloured Maruti van bearing No. DDD 436, standing outside their house in which two other young men were sitting and they forcibly took away her son, who was still in his school uniform, and when she tried to stop them, they gave fist-blows to her and one of them also threatened her with knife and while departing they also threw a note inside the house demanding Rs 5 lakhs as ransom for the return of the child and also threatened that in case police was informed they would kill the child. She claimed that the accused persons tied her hands with cloth and bolted her inside the room. She managed to free herself and after opening the door had informed the police. She stated that occurrence had also been witnessed by her neighbour, *RS* (PW 2) and she could identify the culprits.

By the impugned order, the Division Bench of the High Court dismissed the appeal filed by the appellants (five accused A-1 to A-5 viz. *S*, *BB*, *RR*, *C* and *T* respectively) confirming their conviction by the Sessions Court, for offences under Sections 364-A, 325, 323, 384, 342 and 506 IPC read with Section 120-B IPC.

Dismissing the appeal,

Held:

All the five accused persons have, undoubtedly, committed the offence under Section 364-A IPC and the courts below were right in convicting them for the offence, as also awarding them the life imprisonment for the same. The wording itself suggests that when kidnapping is done with the threat to cause death or hurt to the kidnapped person or gives a reasonable apprehension that some person may be done to death or hurt or compels any Government, any foreign State or international intergovernmental organisation or any person to pay a ransom, the offence is complete. The original note Ext. PD clearly brings out the threat to the life of the child in case the ransom money was not paid. The ransom note was proved to be in the handwriting of *C* (A-4) and it was not an individual act of *C*, but as many as three appellants, who were together in whisking away the child from his mother. *T* (A-5) must be presumed to have the idea, because he immediately and knowingly joined the bandwagon. The accused persons in a daring daylight bid kidnapped a child, right in the presence of his mother and caused hurt to her, which was in the nature of grievous hurt and on the top of it, demanded a ransom of 5 lakhs rupees in writing for the life of the child. Therefore, there would be no other offence, but the one under Section 364-A IPC and the appeal has no merit. (Paras 20 and 19). *Shyam Babu* v. *State of Haryana*, (2008) 15 SCC 418: (2009) 3 SCC (Cri) 1023: AIR 2009 SC 577: (2009) 73 AIC 233 (SC): (2009) 1 ECrN 436 (SC).

Bench Strength 2. Coram: *D.K. Jain* and **V.S. Sirpurkar**, JJ. [Date of decision: 11-11-2008]

[8710] — S. 364-A — Offence under — Award of sentence of life imprisonment and fine of Rs 1000 with default stipulation — Non-interference with *— Need leading the legislature to provide for stringent sentence in relation to offence concerned — Consideration of*

Considering the alarming rise in kidnapping of young children for ransom, the legislature has in its wisdom provided for stringent sentence. Therefore, the High Court rightly refused to interfere in the matter. The impugned judgment of the High Court does not suffer from any infirmity to warrant interference. (Para 32). *Vinod* v. *State of Haryana*, (2008) 2 SCC 246: (2008) 1 SCC (Cri) 338: AIR 2008 SC 1142: (2008) 64 AIC 175 (SC): 2008 Cri LJ 1811: (2008) 105 Cut LT 559.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 24-1-2008]

[8711] — S. 364-A — Trial for — Territorial jurisdiction — Offence under S. 364-A IPC — Territorial jurisdiction in relation to — Determination of — Applicability of S. 181(2) CrPC — *Offence under S. 364-A IPC, held, not covered under S. 181(2) CrPC — Distinguishing the said offence from ordinary case of abduction or kidnapping, the three ingredients of offence under S. 364-A IPC stated — Held, the offence under S. 364-A IPC could be tried by the court within whose jurisdiction any of the said ingredients had taken place — Victims abducted at place* **L** *in State of U.P. — Demand for ransom made by phone call at the house of victims situated at place* **N** *in another State — Victims put to death at place* **U** *in State of U.P. — Held, the trial courts at all the three places i.e.* **L, N** *and* **U** *had jurisdiction to try the offence in question — Since the offence was registered at place* **N**, *the trial court at* **N** *could try the offence — CrPC, 1973, Ss. 181(2), 178 and 179 & 2(j)*

The present matter involved the question as to which court had jurisdiction to try the instant criminal case which was lodged under Section 364-A IPC.

One *R*, who was resident of the State of Uttaranchal, had gone to the State of U.P. along with a contractor *S*. Both *R* and *S* were abducted at place *L* in the State of U.P. The accused made phone calls to the family members of *R* at their house, which was situated at place *N* in the State of Uttaranchal, and by threatening them demanded ransom money. When the said demand was not met, *R* and *S* were murdered. The dead bodies of *R* and *S* were recovered at place *U* in the State of U.P. A first information report in relation to the said case was lodged at the police station concerned in the State of Uttaranchal. An application was filed before the Sessions Court at *N* that the said court had no jurisdiction to frame the charges as the offence had been committed in another State i.e. State of U.P. The court at *N* held that merely because the telephone calls relating to demand for ransom were received at *N*, it would not confer jurisdiction on it to try the case. The said court held that in view of the provisions of Section 181(2) CrPC, the case should be tried in the court located at place *U* or place *L* in the State of U.P. Thereafter, the matter was taken up before the High Court. The High Court set aside the above order on the basis of the order passed by the Supreme Court on 24-4-2006. Hence, the present SLP was preferred.

Dismissing the SLP,

Held :

Offence under Section 364-A IPC is not covered under Section 181(2) CrPC. It is not simply abduction or kidnapping. In the case of Section 364-A IPC something more is there. There are three stages in Section 364-A IPC, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not met, then causing death. If the three ingredients are available, that will constitute the offence under Section 364-A IPC. Any of the three ingredients can take place at one place or at different places. (Paras 17 and 9)

As per Section 178 CrPC, in case an offence has been committed in two local areas then it can be tried by any of them. Further, as per Section 179 CrPC, when an act is an offence by reason of anything which has been done and consequence which has ensued in another area, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. (Para 15)

In the present case, all the ingredients of offence under Section 364-A IPC have not taken place at one place. It is a case wherein the offence has taken place at three places i.e. at place *N* where the threat to the life of the deceased was given and demand of money was raised, at place *L* from where the deceased were abducted and at place *U* where they were ultimately put to death. (Para 17)

Therefore, all the three courts i.e. the trial court at *N* in the State of Uttaranchal and the trial courts at *L* and *U* in the State of U.P. will have territorial jurisdiction to try the matter. The trial could be conducted in any of the said courts. (Paras 10 and 17)

The present case was registered at place *N* and the investigation started in that district. The trial court at *N* erred in taking view that it had no jurisdiction to try the matter. (Para 17). *Vishwanath Gupta* v. *State of Uttaranchal*, (2007) 11 SCC 633: (2007) 55 AIC 173 (SC).

Bench Strength 2. Coram: *A.K. Mathur* and *L.S. Panta*, JJ. [Date of decision: 21-3-2007]

[8712] — S. 364-A (inserted by Amendment Act 42 of 1993) — Statement of Objects and Reasons — Need for deterrent punishment — Discussed (Paras 63 and 64). *Vikram Singh* v. *State of Punjab*, (2010) 3 SCC 56.

Bench Strength 2. Coram: **H.S. Bedi** and *J.M. Panchal*, JJ. [Date of decision: 25-1-2010]

[8713] — Ss. 364-A, 342 and 120-B — Kidnapping for ransom — Conviction reversed — *Appellant-accused allegedly kidnapped minor niece of his brother-in-law along with other co-accused — Held, but for three or four stray sentences regarding appellant's involvement, there was virtually nothing brought out regarding his role in High Court's judgment — Only two incriminating circumstances highlighted against appellant — First was disclosure statements of two co-accused, subsequent to their arrest, naming appellant as main conspirator and second was recovery of Maruti car, allegedly used in kidnapping, from appellant — Disclosure statements of two co-accused, held, cannot be read into evidence against appellant, as they have status of being statements made to police while co-accused were in custody — Maruti car recovered from appellant did not figure in kidnapping of child and there is absolutely no evidence to suggest that — Also as per prosecution story, appellant not present when child kidnapped by four co-accused and he was roped in as main conspirator with aid of S. 120-B — No evidence to indicate that such a conspiracy hatched by appellant — Appellant's conviction reversed* (Paras 13, 16 to 18, 21 to 24 and 28). *Lohit Kaushal* v. *State of Haryana*, (2009) 17 SCC 106.

Bench Strength **2**. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 4-8-2009]

[8714] — Ss. 364-A, 342 and 120-B — Kidnapping for ransom — Schools of thought re informing police or not — Conduct of accused — Inference of guilt — When not established — Conduct of appellant-accused in dissuading father of kidnap victim from informing police about kidnapping and his abscondence after arrival of police — *Held, these circumstances by themselves cannot be taken against appellant — It needs to be kept in mind that in a case of kidnapping for ransom, there are two very clear schools of thought: (i) that law-enforcement agencies should be informed as soon as possible so that victim can be recovered without loss of time; and (ii) given that police investigations are often tardy and clumsy, police should not be informed, as victim would then be gravely endangered and that best option was to pay up and recover victim — Second option is more preferred one in India — Assuming, therefore, that appellant, as a close relative, advised victim's family to adopt second course, cannot by itself be a circumstance to be taken against him — Again, in backdrop of all other circumstances, appellant's abscondence after arrival of police may raise some suspicion, but cannot by itself constitute sufficient evidence for his conviction — Evidence Act, 1872, Ss. 114 and 8* (Paras 25 to 27). *Lohit Kaushal* v. *State of Haryana*, (2009) 17 SCC 106.

Bench Strength **2**. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 4-8-2009]

[8715] — Ss. 364-A and 364 — Conviction under S. 364-A IPC though charge framed only in respect of S. 364 IPC — Sustainability of such conviction — Conviction for offence in respect of which no charge is framed (though framed for similar but higher offence) — Sustainability of — *Reiterating the principles of law laid down by Supreme Court in such matter, held, where the offence (pertaining to S. 364-A IPC) in respect of which no charge was framed was a different as well as a higher offence than the one (pertaining to S. 364 IPC) in respect of which charge was framed, the conviction for offence in respect of which no charge was framed could not be sustained as it caused prejudice to the accused — Hence, conviction altered to S. 364 IPC in respect of which charge was framed — Appellant sentenced to rigorous imprisonment for life — CrPC, 1973, Ss. 464, 216, 221 and 215*

As regards the cases where the accused is convicted for the offence in respect of which no charge is framed, the propositions of law which can be culled out from the judgments of the Supreme Court are:

(*i*) The accused should not suffer any prejudice by reason of misjoinder of charges.

(*ii*) A conviction for lesser offence is permissible.

(*iii*) It should not result in failure of justice.

(*iv*) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere misjoinder to frame charges. (Para 54)

The ingredients for commission of offence under Section 364 and 364-A IPC are different. Whereas the intention to kidnap a person in order that he may be murdered or may be so disposed of as to be put in danger of being murdered satisfies the requirements of Section 364 IPC, for obtaining a conviction for commission of an offence under Section 364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom. (Para 55)

Thus, it was obligatory on the part of the trial court to frame a charge which would answer the description of the offence envisaged under Section 364-A IPC. It may be true that the kidnapping was done with a view to get ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing any charge. Hence, the appellant could not have been convicted under Section 364-A IPC. The appellant is held to be guilty of commission of an offence under Section 364 IPC. He deserves the highest punishment prescribed therein i.e. the rigorous imprisonment for life. (Paras 58, 55 and 56). *Anil* v. *Admn. of Daman & Diu, Daman*, (2006) 13 SCC 36: (2008) 1 SCC (Cri) 72: (2007) 49 AIC 65 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271; Kammari Brahmaiah v. Public Prosecutor, High Court of A.P., (1999) 2 SCC 522: 1999 SCC (Cri) 281; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592; Kamalanantha v. State of T.N., (2005) 5 SCC 194: 2005 SCC (Cri) 1121; Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417, relied on

Kammari Brahmaiah v. Public Prosecutor, High Court of A.P., (1999) 2 SCC 522: 1999 SCC (Cri) 281, distinguished on facts

[8716] — Ss. 364-A and 364 — Distinction between the said two offences indicated

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Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271; Kammari Brahmaiah v. Public Prosecutor, High Court of A.P., (1999) 2 SCC 522: 1999 SCC (Cri) 281; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592; Kamalanantha v. State of T.N., (2005) 5 SCC 194: 2005 SCC (Cri) 1121; Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417, relied on

Kammari Brahmaiah v. Public Prosecutor, High Court of A.P., (1999) 2 SCC 522: 1999 SCC (Cri) 281, distinguished on facts

[8717] — S. 364-A r/w S. 120-B — Conviction under — Death sentence — Justification for — *Entire planning for the offence committed was masterminded and executed by Umar Sheikh who managed to go out of the net of law — In his case, death sentence might have been appropriate — Six appellants — No distinctive feature indicated to impose two different sentences i.e. death sentence for three and life sentence for three others — No appeal by prosecution for enhancing sentence of accused awarded life imprisonment — Hence, on facts, all the six appellants, held, liable to be sentenced to life imprisonment — Thus, death sentence of the three appellants altered accordingly — Offence under S. 364-A r/w S. 120-B IPC — Death sentence, held on facts, not justified* (Para 42). *Nazir Khan* v. *State of Delhi*, (2003) 8 SCC 461: 2003 SCC (Cri) 2033: AIR 2003 SC 4427.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-8-2003]

[8718] — S. 364-A r/w S. 472 CrPC, 1973 — Continuing offence of kidnapping — When occurs — Making ransom calls after death of victim — Point in time at which to be reckoned — Continuing offence — Reckoning of date of commission of offence — Making of ransom calls after death of victim of kidnapping — *Held, the same was a continuing offence under S. 472 CrPC and offence under S. 364-A IPC did not come to an end on death of victim — Further held, even after death of victim every time a ransom call was made a fresh period of limitation commenced — Accordingly, it would be date on which last ransom* *call was made and not initial date of abduction, which has to be taken as date of commission of offence — Thus, Juvenile Justice Act no longer applicable to petitioner who had attained age of 18 years by then — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 2(k)*

The main object of the kidnapping committed by the accused was to extort money from the parents of the deceased victim by way of ransom even after the death of the victim, as is evident from the subsequent phone calls asking for ransom. The offence under Section 364-A IPC did not come to an end only on account of the death of the victim since ransom calls had been made even though the victim had been killed. If Section 364-A IPC and Section 472 CrPC are to be read together, it has to be held that even after the death of the victim every time a ransom call was made a fresh period of limitation commenced. Accordingly, it would be the date on which the last ransom call was made which has to be taken to be the date of commission of the offence and, accordingly, the Juvenile Justice Act was no longer applicable to the petitioner, who had attained the age of 18 years by then. (Paras 23 and 29). *Vikas Chaudhary* v. *State (NCT of Delhi)*, (2010) 8 SCC 508: (2010) 3 SCC (Cri) 936: AIR 2010 SC 3380: (2010) 94 AIC 233 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-8-2010]

Vimal Chadha v. Vikas Choudhary, (2008) 15 SCC 216: (2009) 3 SCC (Cri) 790, relied on

[8719] — Ss. 364-A/120-B — Criminal conspiracy for kidnapping for ransom — Ingredients for attracting conviction under — *Fact that Accused 1 (A-1) kidnapped a person for getting an arrested person released, proved — Accused 2 (A-2), wife of A-1, remained at the secret place where A-1 had kept the victim, kept watch on the victim and provided him food and medicine — Held, facts not sufficient to connect A-2 with the offence under Ss. 364-A/120-B (though found to be enough to sustain conviction under Ss. 365/120-B)*

The trial court held that the prosecution failed to prove charge against A-2 for an offence punishable under Sections 364-A or 364-A read with 120-B IPC "beyond reasonable doubt" inasmuch as no reliable evidence had been placed on record from which it could be said to have been established that A-2 was also a part of "pressurise tactics" or had terrorised the victim or his family members to get the arrested person released in lieu of the victim. The trial court, therefore, held that she was entitled to benefit of doubt.

Held :

In the facts and circumstances in their totality, by recording such finding, the trial court has neither committed an error of fact nor an error of law. A-2 being the wife of A-1, it was natural that she was staying with her husband at the place where the victim was kept. But merely on that ground, it cannot be held that she was in "continued association" and involved as a co-conspirator in criminal conspiracy with A-1 in kidnapping the victim for release of the arrested person. The courts below were right in drawing an inference that she must be presumed to be aware of kidnapping of the victim and in detaining him. She was all throughout present in the said house and was very well aware that the victim had been kidnapped and was kept at a secret place. That, however, does not mean that A-2 was also a part of conspiracy in kidnapping for ransom. No witness has directly or even indirectly deposed about ransom by A-2. (Paras 65 to 67)

But even if it is assumed for the sake of argument that the other view was possible, it is settled law that in case two views are possible and the trial court has acquitted the accused, the High Court would not interfere with such order of acquittal. (Para 68)

On the facts and in the circumstances in its entirety and considering the evidence as a whole, it cannot be said that by acquitting A-2 for offences punishable under Sections 364-A read with 120-B IPC, the trial court had acted illegally or unlawfully. The High Court, therefore, ought not to have set aside the finding of acquittal of accused A-2 for an offence under Sections 364-A read with 120-B IPC. (Para 71). *Suman Sood* v. *State of Rajasthan*, (2007) 5 SCC 634: (2007) 2 SCC (Cri) 637: AIR 2007 SC 2774: 2007 Cri LJ 4080.

Bench Strength **2**. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 14-5-2007]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[8720] — S. 364-A/S. 363 r/w S. 34 — Power of appellate court — Scope — Held, appellate court must not only consider questions of law but also of fact and in doing so must subject evidence to critical scrutiny — *It must really apply its mind to facts of case particularly when offence alleged is of serious nature and may attract heavy punishment — In the instant case, High Court delivered a cryptic judgment without making any serious attempt to appreciate evidence on record — Hence, impugned order set aside and matter remitted to High Court for rehearing — CrPC, 1973, S. 386* (Paras 3 to 5). *Narendra Bhat* v. *State of Karnataka*, (2009) 17 SCC 785.

Bench Strength **2**. Coram: *B.P. Singh* and *H.S. Bedi*, JJ. [Date of decision: 14-5-2007]

— S. 365 *See* Ss. 148, 365, 342, 323, 324 and 302/149

See also under Ss. 299 to 304

See also Ss. 302/149, 364-A, 365 and 148

See also Ss. 323/343/355 and 365

See also Ss. 347, 386 and 365

See also Ss. 363, 364, 365, 386 and 387

See also Ss. 364 and 365

See also Ss. 384, 365, 342 and 120-B

[8721] — S. 365 — Abduction of a girl for immoral trafficking — Abductor showing sufficient expertise in the art of abduction, seduction and sale of girls — *Sentence of three years' RI, held, cannot be reduced and provisions of Probation of Offenders Act cannot be extended to the accused-appellant in the facts and circumstances of the case. Devki* v. *State of Haryana*, (1979) 3 SCC 760: 1979 SCC (Cri) 861: AIR 1979 SC 1948: 1979 Cri LJ 1309.

Bench Strength **3**. Coram: *V.R. Krishna Iyer, D.A. Desai* and *A.D. Koshal*, JJ. [Date of decision: 24-7-1979]

[8722] — S. 365 — Kidnapping and wrongful confinement — Extremist activity — Fact that the area being surcharged with insurgency, witnesses and corroborative evidence were rarely available, must be kept in mind — *PW 1 alleged to have been taken away blindfolded in a car driven by PW 4 to a house where he was assaulted and confined for three nights — PW 4, who was known to PW 1, stating that the car which belonged to his mother had been taken by two unknown youths from his mother by force — That car was brought by the accused-appellant to the place from where PW 1 was kidnapped — Car seized by IO during course of investigation, statement of witnesses recorded under S. 161 CrPC and appellant arrested — Held on facts, conviction of appellant under S. 365 justified*

It is quite but natural that in the prevalent situation, obtaining in an area surcharged with insurgency activities, striking terror and fear psychosis in the mind of the people, the investigating officer would definitely find difficulties to collect sufficient corroborative evidence. Witnesses will be reluctant to come to the court to depose or appear before the investigating officer to give statement for fear of reprisals. Rarely, one comes across any corroborative evidence in such type of offence. This would be no ground to throw away the otherwise trustworthy evidence of prosecution witnesses. In this case the statement-in-chief of PW 1 remained unimpeached. There is also no reason to doubt the creditworthy evidence of PW 4, apart from the other circumstances. In the facts and circumstances of the case, coupled with the credible and trustworthy statement of PW 1, the prosecution has established its case. (Para 27). *Tarun Bora* v. *State of Assam*, (2002) 7 SCC 39: 2002 SCC (Cri) 1568: AIR 2002 SC 2926.

Bench Strength **3**. Coram: *M.B. Shah, B.P. Singh* and **H.K. Sema**, JJ. [Date of decision: 12-8-2002]

[8723] — S. 365 — Sentence — Offence of kidnapping and wrongful confinement — *No leniency should be shown on human considerations — Kidnapping of a person is violative of his right under Art. 21 — It produces terror in mind of the people and deleterious effect on society — Constitution of India, Art. 21*

It is not possible to accept the appellant's plea for leniency on the ground that the appellant has his mother, wife and children to support and if the Court so decides to confirm the conviction serious prejudice would be caused to them. Human consideration is no ground for showing leniency to the perpetrator of a crime against organized civilized society, which is abhorrent to the concept of rule of law. In fact, this prayer has already been considered by the Designated Court and lenient punishment of 5 years' RI has been awarded. The offence of kidnapping in any form impinges upon human rights and right to life enshrined in Article 21 of the Constitution. Such acts not only strike terror in the mind of the people but have deleterious effect on the civilized society and have to be condemned by imposing deterrent punishment. (Para 28). *Tarun Bora* v. *State of Assam*, (2002) 7 SCC 39: 2002 SCC (Cri) 1568: AIR 2002 SC 2926.

Bench Strength **3**. Coram: *M.B. Shah, B.P. Singh* and **H.K. Sema**, JJ. [Date of decision: 12-8-2002]

[8724] — Ss. 365, 364-A, 343/120-B and 346/120-B — Kidnapping for release of an arrested person — Appreciation of evidence — *A white Maruti car was seen on previous night — Next morning, victim was pushed into the white Maruti car and taken away — Ownership and possession of the Maruti car by Accused 1 (A-1) proved — Phone call received by victim's wife informing her that her husband had been kidnapped so that an arrested person (said to be a member of Khalistan Liberation Force) could be released through the influence of victim's father who was then Chairman of Joint Parliamentary Committee — Identity of A-1 established — Even if photograph of A-1 shown on TV as also published in newspapers, held, that would not adversely affect prosecution case, if otherwise evidence of PWs is reliable and court is satisfied as to identity of the accused — On facts,* *conviction of A-1 upheld — Evidence Act, 1872, S. 9* (Paras 36 to 43). *Suman Sood* v. *State of Rajasthan*, (2007) 5 SCC 634: (2007) 2 SCC (Cri) 637: AIR 2007 SC 2774: 2007 Cri LJ 4080.

Bench Strength **2**. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 14-5-2007]

[8725] — Ss. 365, 366 and 368 — Abduction of a woman from her house — *Accused 1 and 2 taking her against her wish and under threat up to another station wherefrom accused 3 and 4 taking her similarly under threat to a village and confining her there in a house — No evidence that the woman was abducted to compel her either to marry or submit to sexual intercourse against her wish — Held, accused guilty of offences under Ss. 365 and 368 and not under S. 366 — Accordingly sentence of imprisonment reduced but fine imposed*

There was sufficient evidence on record to show that the prosecutrix was abducted from her house when accused Nos. 1 and 2 had taken her against her wish and under threat up to Patna Railway Station and accused Nos. 3 and 4 had thereafter carried her similarly under threat from Patna Railway Station to a village. She was also confined in a house at Ajaipur village till she was recovered by the police after some hours. That will squarely bring the accused within the clutches of Ss. 365 and 368 of IPC. The offences under these two sections are lesser offences compared to offence under S. 366 and, therefore, on the evidence before the court, they are liable to be convicted for the said offences. *Faiyaz Ahmed* v. *State of Bihar*, 1991 Supp (1) SCC 186: 1991 SCC (Cri) 543: AIR 1990 SC 2147.

Bench Strength **2**. Coram: *P.B. Sawant* and *K. Ramaswamy*, JJ. [Date of decision: 10-8-1990]

[8726] — Ss. 365, 384, 342 r/w S. 120-B and S. 120-B — Abduction and extortion of money — Victim released on payment of ransom of Rs 3 lakhs — Conviction of accused-appellants — Propriety — *PW 7 (partner of victim) deposing that he had withdrawn money from bank for the said ransom — PW 4 (a relative of victim) deposing that he had paid Rs 3 lakhs to one motorcyclist (who identified himself with a code which was stated to PW 4 on phone) — Confession of co-accused (which was truthful and voluntary) implicating the appellants in crime — Thus, their complicity in crime proved beyond reasonable doubt — Hence, their conviction was liable to be confirmed* (Paras 15 to 17). *Abdulvahab Abdul Majid Shaikh* v. *State of Gujarat*, (2007) 9 SCC 293: (2007) 3 SCC (Cri) 126: AIR 2007 SC 2492.

Bench Strength **2**. Coram: **K.G. Balakrishnan, C.J.** and *G.P. Mathur*, J. [Date of decision: 24-4-2007]

[8727] — Ss. 365, 384, 342 r/w S. 120-B and S. 120-B — Abduction and extortion of money — Victim released on payment of ransom of Rs 3 lakhs — Recovery of Rs 50,000 and Rs 1,75,000 from houses of A-6 and A-7 respectively — Acquittal of A-6 and A-7 — Propriety — *Held, though recovery of the said amounts stood proved, prosecution could not prove that these amounts were actually the amounts paid by the agents of victim as ransom to the said accused — The accused gave explanation as to possession of the said amounts — Moreover, the confession of co-accused did not involve the said accused in crime — Hence, acquittal of A-6 and A-7 was proper — Appeal filed thereagainst by State liable to be dismissed* (Para 18). *Abdulvahab Abdul Majid Shaikh* v. *State of Gujarat*, (2007) 9 SCC 293: (2007) 3 SCC (Cri) 126: AIR 2007 SC 2492.

Bench Strength **2**. Coram: **K.G. Balakrishnan, C.J.** and *G.P. Mathur*, J. [Date of decision: 24-4-2007]

— Ss. 365 r/w S. 147 *See also* Ss. 365 r/w S. 149 and S. 147

[8728] — S. 365 r/w Ss. 149 and 147 — *Abduction — Appellant alleged to have abducted the prosecutrix — Existence of intimate relations between them for past several years affecting seriousness of the complaint — Reduction of sentence*

Where the prosecutrix was of easy virtue and intimate relationship existed between the accused-appellant and the complainant, not much serious notice can be taken of the allegation of abduction. The complainant was being taken away in a jeep forcibly and this may have happened on more than one occasion. The ends of justice will be satisfied by reducing the sentence to the period of imprisonment already undergone by the appellant. *Laiq Singh* v. *State of U.P.*, (1970) 2 SCC 561: 1970 SCC (Cri) 502: AIR 1970 SC 658: 1970 Cri LJ 741.

Bench Strength **3**. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 2-12-1969]

[8729] — Ss. 365/120-B, 343/120-B and 346/120-B — Criminal conspiracy for kidnapping — Sustainability of conviction — *Kidnapping of a person by Accused 1 (A-1) and his "companions" proved — Accused 2 (A-2), wife of A-1, was fully aware about the kidnapping and keeping the victim at a secret place — A-2 throughout remaining at that place, keeping watch on the victim and also providing him food and medicine — Held, A-2 was rightly convicted with the aid of S. 120-B* (Paras 53 and 66). *Suman Sood* v. *State of*

Rajasthan, (2007) 5 SCC 634: (2007) 2 SCC (Cri) 637: AIR 2007 SC 2774: 2007 Cri LJ 4080.

Bench Strength 2. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 14-5-2007]

State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715, distinguished

[8730] — Ss. 365/411, 494 and 506 — *Husband putting the wife into an auto-rickshaw with force and taking her to her father's house where he left her — Held, S. 365 is not attracted — No mens rea is involved in such act of kidnapping — Charge under Ss. 365/411 quashed — Offences under Ss. 494 and 506 being compoundable, permission to compound granted. B. Laxmi* v. *B. Srinivasa Rao*, 1997 SCC (Cri) 1218.

Bench Strength 2. Coram: *M.M. Punchhi* and *K.T. Thomas*, JJ. [Date of decision: 29-11-1996]

— Ss. 365/511 r/w S. 147 *See also* Ss. 365/511 r/w S. 149 and S. 147

[8731] — Ss. 365/511 r/w S. 149 and S. 147 — Attempt to kidnap a girl — Existence of love affair between accused-appellant and the said girl — *Conviction — Propriety — Held, the fact that victim had a affair with appellant would not give any right to appellant to forcibly take her away from her lawful guardianship — Prosecution case established — Conviction upheld*

Though it is true that there was a love affair between PW 1 (victim) and the appellant, on the date of incident the appellant along with 5 other persons did come in a tempo and tried to kidnap PW 1 at about 10 p.m. and it is because of the intervention of the mother and maternal uncle of the victim along with the neighbours, the appellant and another accused *M* were apprehended and were produced before the police promptly. The fact that PW 1 had an affair with the appellant would not, in any manner, give any right to the appellant to forcibly take her away from her lawful guardianship. In this background the trial court correctly came to the conclusion that the appellant was guilty of the offences for which he is convicted. (Para 7). *Deo Narain Mandal* v. *State of U.P.*, (2004) 7 SCC 257: 2004 SCC (Cri) 1921: (2004) 3 KLT 591.

Bench Strength 3. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 25-8-2004]

[8732] — Ss. 365/511 r/w S. 149 and S. 147 — Attempt to kidnap girl with whom accused-appellant having love affair — *Reduction of sentence by High Court to period already undergone i.e. 40 days without even noticing the said period — Propriety — On facts, held, said sentence was inadequate and disproportionate — Incident in question took place nearly 20 years ago — Victim girl as well as appellant now married and settled in life — After the said incident, no allegation against appellant of any criminal conduct — Considering the said facts including the factum of love affair, Supreme Court directing appellant to undergo six months' RI for offence under Ss. 365/511 r/w S. 149 — That apart, restoring sentence of three months under S. 147 IPC as awarded by trial court and maintaining fine of Rs 4000 and Rs 1000 for offences under Ss. 365/511 r/w S. 149 and S. 147 IPC respectively as awarded by High Court — Further directing that on recovery of fine amount, a sum of Rs 3000 out of the same be paid to victim — Directions also about further rigorous imprisonment on default in payment of fine — Constitution of India — Art. 136* (Paras 10 to 13). *Deo Narain Mandal* v. *State of U.P.*, (2004) 7 SCC 257: 2004 SCC (Cri) 1921: (2004) 3 KLT 591.

Bench Strength 3. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 25-8-2004]

— S. 366 *See also* Ss. 302, 323 and 324 r/w 148, 149, 363, 366 and 376

See also Ss. 302, 376, 366 and 201

See also Ss. 342, 343 and 366

See also Ss. 361 and 366

See also Ss. 365, 366 and 368

See also Ss. 366-A and 366

See also Ss. 375 and 376

See also Ss. 375, 376 and 366

See also Ss. 376, 302, 363 and 366

See also Ss. 376, 366 and 363/109

See also Ss. 376 and 366

See also Ss. 376, 375, 148, 452, 149, 342, 323, 366 and 506

See also Ss. 376 & 375 and 366

See also S. 376 and proviso thereto and Ss. 342, 363 and 366

See also Ss. 376/149, 375, 148, 452, 342, 323, 366 and 506

[8733] — S. 366 — Proof that girl is about 18 years' old — So consent is immaterial for the offence to be made out — But the girl was clearly indulging in sexual acts — Case made out for treating it as a technical offence — Sentence reduced from 6 months to the period already undergone

The main issue is one of reduction of sentence as the girl kidnapped was below 18 years but greatly prone to sexual connections. So her consent was not lacking in the real sense though that will not be a defence when the girl is below 18 years.

That there was justification for reducing sentence to the period already undergone. *Brij Lal Sud* v. *State of Punjab*, (1970) 3 SCC 808: 72 Punj LR 999.

Bench Strength **3**. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 18-3-1970]

[8734] — S. 366 — Abduction — *Prosecutrix allegedly kidnapped by the appellants by making her to sit on the carrier of a bicycle — Prosecutrix, a fully grown-up woman, not jumping down from the bicycle or putting up a struggle or raising an alarm to protect herself — Held, in the circumstances of the case, prosecutrix was a willing party and there was no taking out of the guardianship of her mother — Conviction set aside. Shyam* v. *State of Maharashtra*, 1995 SCC (Cri) 851.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1995]

[8735] — S. 366 — Abduction — *Prosecutrix lured by two ladies and brought to accused — Accused threatening her with pistol and after taking her to another place committing rape — Held, it cannot be said that the offence of abduction was complete when the prosecutrix was induced by the two ladies to accompany them — Accused did commit offence under S. 366. Gurcharan Singh* v. *State of Haryana*, (1972) 2 SCC 749: 1972 SCC (Cri) 793: AIR 1972 SC 2661: (1973) 2 SCR 197: 1973 Cri LJ 179.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 13-9-1972]

AIR 1961 Bom 282: 1961 (2) Cri LJ 578 (Bom), distinguished

[8736] — S. 366 — Abduction and rape of a helpless widow — Circumstantial evidence conclusively proving the guilt of the accused — *Defence plea unbelievable — Held on facts, High Court justified in convicting the accused under S. 366 reversing trial court's order of acquittal — Sentence of 10 years' RI also justified considering the heinous crime committed by accused. Arun Kumar* v. *State of U.P.*, 1989 Supp (2) SCC 322: 1990 SCC (Cri) 173: AIR 1989 SC 1445: 1989 Cri LJ 1460.

Bench Strength **2**. Coram: **S. Natarajan** and *Kuldip Singh*, JJ. [Date of decision: 13-4-1989]

[8737] — S. 366 — Accused charged for kidnapping a girl for the purposes of illicit intercourse — *Kidnapping not proved — Accused not examined under S. 342, CrPC about the evidence relating to abduction — Conviction under S. 366 on the ground of the proof of abduction for the purposes of illicit intercourse not possible*

The accused cannot be convicted under S. 366, IPC by reason of his having abducted the girl for the purposes of illicit intercourse, because apart from the fact that, that was not the charge sought to be proved against the appellant, the evidence on the record did not warrant a conclusion that the girl was either compelled by force or induced by any deceitful means to go from her father's place by the appellant nor was any question put to the appellant in the examination under S. 342, CrPC in regard to her compelling or inducing the girl to leave her father's place. *Ram Devi* v. *State of U.P.*, AIR 1955 SC 574: 1955 Cri LJ 1296, 1297.

Bench Strength **3**. Coram: *S.R. Das*, **N.H. Bhagwati** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 22-2-1955]

[8738] — S. 366 — Age of victim and taking out — *By various tests and evidences age of victim not clearly established and estimated or indicated variously to be under 18 years, below 20 years, about 16 years and about 18 years — Held, in such situation when age in doubt the question of taking her away from lawful guardianship not made out — Also where such victim willingly went with the accused to see places and moved together for 10-11 days in different towns, the accused could not be held to have taken her out of the keeping of her lawful guardian — Something more like inducement should have been shown. State of Karnataka* v. *Sureshbabu Puk Raj Porral*, (1994) 1 SCC 468: 1994 SCC (Cri) 435: AIR 1994 SC 966: 1994 Cri LJ 1216.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 8-10-1993]

[8739] — S. 366 — Applicability — Case of alleged kidnapping of/elopement with a girl *T*, less than 16 years of age, and her subsequent rape — Defence of appellant-accused *P* that he got married to *T* — Photographs relating to so-called marriage produced — *However, both appellant-accused convicted under S. 366 IPC by trial court and High Court — Before Supreme Court, three affidavits favouring appellants, filed — One by* **T**, *who swore that she had an affair with appellant* **P** *and wanted to marry him, but her parents got her married to another person, that she had no grudge or ill will against* **P**, *that she did not want any kind of action against appellants and that matter had been patched up — Other two affidavits sworn by different persons, giving a certificate of good character to* **P**, *certifying that he was a law-abiding citizen and had committed no offence — Only on basis of these affidavits, appellants praying for acquittal or alternatively some reduction in sentence (of 1 years imposed by High Court) — Tenability — Held, S. 366 IPC is a non-compoundable offence —*

Therefore, argument of appellants about acquittal on basis of affidavits, unsustainable — Also, there is genuine doubt about affidavits — Again, under the circumstances, sentence is already on lenient side — Moreover, no contrition on part of accused for their crime — Hence, plea regarding sentence, also rejected — CrPC, 1973, S. 320 (Paras 13 and 14). *Parshotam Lal* v. *State of Punjab*, (2010) 1 SCC 65.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 6-10-2009]

[8740] — **S. 366 — Besides proving the fact of abduction, held, it was also necessary to prove that it was for one of the purposes mentioned in the section.** *Chote Lal* v. *State of Haryana*, (1979) 4 SCC 336: 1979 SCC (Cri) 972: AIR 1979 SC 1494: 1979 Cri LJ 1126.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 11-1-1979]

[8741] — **S. 366 — Kidnapping a woman (girl aged about 12 years in this case) to compel her to illicit intercourse — Conviction for** — *Intention/knowledge required on the part of accused at the relevant time — Appellant forcibly taking prosecutrix/victim to his gumti — But, before he could ravish her, hearing alarm raised by prosecutrix, the father of prosecutrix and other villagers assembling there and rescuing the prosecutrix — Held, during kidnapping or forcibly taking prosecutrix to his gumti, appellant had intention to commit illicit intercourse or knowledge that it was likely that prosecutrix would be forced to have illicit intercourse — Hence, offence committed squarely covered under S. 366 — Appellant convicted thereunder — Sentenced to imprisonment for 5 years*

The essential ingredient of the offence punishable under Section 366 IPC is that when a person has forcibly taken a minor girl with the intention as specified in that section, then the offence is clearly made out. In the instant case, the act of the accused proves that during the kidnapping of the prosecutrix or forcibly taking her to his gumti, the accused had intention or knew it likely that the prosecutrix would be forced to have illicit intercourse. Hence, it is not a mere case of kidnapping for indecent assault but the purpose for which kidnapping was done by the accused has been proved. It is a different matter that the accused failed at the stage of preparation of committing the offence itself. (Paras 30 and 35). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[8742] — **S. 366 — Kidnapping, abducting or inducing a girl to compel her to marry** — *To establish charge under S. 366 there should be acceptable evidence to show that the girl was compelled to marry the accused-appellant against her will and/or was forced to or induced to intercourse against her will — Prosecution, therefore, required to prove that there was some such undue force on the girl either to marry the accused or to have intercourse with him — On facts, held, prosecution failed to prove the same as there was consent on the part of the girl — She had planned her departure from the house in advance and had willingly gone away with the appellant which also indicates that there was no threat or inducement either in regard to her leaving the house or in regard to accompanying the appellant — Hence charge under S. 366 not made out* (Paras 5 and 6). *Jinish Lal Sah* v. *State of Bihar*, (2003) 1 SCC 605: 2003 SCC (Cri) 395: AIR 2003 SC 2081.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 20-12-2002]

2002 Cri LJ 274 (Pat), reversed

[8743] — **S. 366 — Kidnapping, abducting or inducing a woman — Conditions for applicability of S. 366** — *Mere abduction is not enough to attract the provision — Prosecution must further prove that the abduction was for the purposes mentioned in S. 366 — After abduction of the woman accused-appellant departed and the other accused committed the offence as alleged by the prosecution but that would not make the appellant liable to conviction under S. 366 — On facts held, prosecution failed to prove charge under S. 366 against appellant*

According to the prosecution case, the prosecutrix and her husband, the complainant, were labourers. On the night of the occurrence, when the prosecutrix went out of the house to attend call of nature the appellant along with *S* at point of a knife gave her threats and abducted her against her wishes. The complainant lodged a report next morning at the police station but the same was not registered properly. However, the prosecutrix in her evidence before court deposed that on the day of the incident in the evening the appellant came with *S* and they told that she had no child and then asked her to show her hand. On her refusal the appellant forcibly caught her hand and *S* applied some medicine. Thereafter, they again came at 10-11 p.m. and forcibly made her to get up. *S* forcibly caught her mouth and the appellant pointed a knife towards her and threatened not to raise alarm. *S* and the appellant then took her on foot upto village *G*. Thereafter, she accompanied *S* as the appellant left them there.

S then took the prosecutrix to another place where she was sexually exploited and raped by *S*. The prosecutrix escaped therefrom and after reaching her maternal uncle's place she narrated the incident on the basis of which a report was lodged to the SP and a case was registered against the accused persons. The trial court convicted the appellant under Sections 366 and 506-B IPC and sentenced him to 2 years' RI with fine of Rs 500 and one years' RI with fine of Rs 500 respectively thereunder. Accused *S* was convicted under Sections 366 and 376 IPC. The High Court in appeals preferred by the appellant and *S*, confirmed the order of the trial court. As *S* did not file any further appeal, the order of conviction and sentence against him attained finality. The appellant preferred the present appeal before the Supreme Court by special leave.

Allowing the appeal and setting aside the order of conviction and sentence against him

Held :

To constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. So far as a charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough; it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC. In this case, the prosecutrix nowhere alleged that she was abducted with the intention to commit an offence, that she was compelled to marry the accused or any other person or that the accused knew that she would be forced or seduced to illicit intercourse or that it was likely that she would be forced or seduced to illicit intercourse. (Paras 11 and 12)

The story unfolded from the evidence led by the prosecution appears to be that the accused-appellant along with the other accused in the evening went to the house of the prosecutrix and the other accused applied some medicine on her hand so that she might get pregnant after 10 years of marriage. The accused might have persuaded her to accompany them so that they could administer the medicine to her and she being an illiterate lady believing in the superstitions agreed to accompany them. After the accused-appellant left both of them at village *G* the other accused had other intentions and committed the offence as alleged by the prosecution. That does not *ipso facto* prove the fact that from the very beginning the accused-appellant had any intention of inducing the prosecutrix to forcibly marry him or the other accused or she was induced or seduced to illicit intercourse with the accused-appellant or with the other person in whose company he left her at village *G* the accused-appellant made any advances against the prosecutrix so as to show his intention of committing forcible intercourse with her. (Para 13)

It appears from the evidence of the prosecutrix that the story of the prosecution as alleged in the FIR that the prosecutrix was abducted when she had gone to attend the call of nature has been given a complete go-by by the prosecutrix. Further, it is difficult to believe that the prosecutrix who is a mature lady married for 10 years would be made to walk from her place of residence to the other village and she would not raise any hue and cry apart from the fact that her husband who was sleeping with her had woken up and yet the accused had forcibly taken the prosecutrix away from her house. The husband in the natural course of conduct would have resisted his wife being taken away forcibly. If he had some handicap because of being single, he would have certainly raised alarm and called the other persons. The place from where the prosecutrix was taken away, as referred in the FIR on the one hand and stated in the evidence of the prosecutrix on the other, raises a grave doubt about the happening of the incident as alleged by the prosecution. Delay in lodging the FIR is another factor which creates doubt in the prosecution version. (Paras 8 and 10)

In an overall consideration of the material placed on record by the prosecution, it is not possible to find that the prosecution has proved that the accused-appellant has committed an offence under Section 366 IPC. There is a doubt as to the place of incident and the motive of the accused in taking away the prosecutrix. It is difficult to believe in the story put up by the prosecutrix that she was forced to leave her place of residence under a threat by showing a knife to her. (Para 14). *Gabbu* v. *State of M.P.*, (2006) 5 SCC 740: (2006) 3 SCC (Cri) 71: AIR 2006 SC 2461: 2006 Cri LJ 3276.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 12-5-2006]

[8744] — S. 366 — Kidnapping and sexual exploitation of a girl of 16 years by promising to marry her — Sentence of four years' RI awarded by trial court — Reduction of — Propriety — *Under the Act, said offence punishable up to 10 years' RI — High Court holding that accused had already suffered the sentence of imprisonment for a period of 1 month and 3 days, and that he at the time of commission of offence was an uneducated labourer from rural area and was aged 21 years — Thus, it without considering the gravamen of the offence and the ignominy to which the victim had been put to, with misplaced generosity/sympathy unreasonably reducing the sentence to period already undergone — Held, it was a ridiculously low sentence, totally disproportionate to the crime committed — High Court's order set aside — Sentence by trial court, though inadequate, restored* (Paras 5, 6 and 8). *State of M.P.* v. *Rameshwar*, (2005) 2 SCC 373: 2005 SCC (Cri) 505: AIR 2005 SC 687: 2005 Cri LJ 912.

Bench Strength 2. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 25-1-2005]

[8745] — S. 366 — Kidnapping of a minor girl aged 15 years — *Evidence on record conclusively establishing guilt of the accused — Plea that accused being aged 55 years would not have developed fancy for a minor girl rightly rejected by courts below as a fanciful defence set up by the accused — Conviction and sentence of 7 years' R.I. and a fine of Rs 1000 upheld. Ganga Dayal Singh* v. *State of Bihar*, 1995 SCC (Cri) 154: AIR 1994 SC 859: 1994 Cri LJ 951.

Bench Strength 2. Coram: *K. Ramaswamy* and *S. Mohan*, JJ. [Date of decision: 31-1-1992]

[8746] — S. 366 — Kidnapping of a minor girl (PW 2) to compel her to marry — *Accused, a regular visitor to the house of brother of PW 2 — Developing intimacy with PW 2 — He taking undue advantage of his friendship and persuading PW 2 to abandon the lawful guardianship with a promise of marriage — Held, accused rightly convicted under S. 366*

The appellant was known to the family of PW 2 and was on visiting terms. During such visits he developed intimacy with PW 2. Material on record shows that the appellant promised to marry PW 2 and based on such promise she went away with the appellant. Evidence also, shows that on that day preparation for marriage was already made in the house of the appellant. Thus, on facts it is established that the appellant had taken the minor by enticing her and hence had committed the offence of kidnapping which kidnapping was for the purpose of marrying the said minor. Hence, the courts below were justified in convicting the appellant for an offence punishable under Section 366 IPC. (Paras 5, 9 and 10). *Moniram Hazarika* v. *State of Assam*, (2004) 5 SCC 120: 2004 SCC (Cri) 1545: 2004 Cri LJ 2553.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 13-4-2004]

S. Varadarajan v. State of Madras, AIR 1965 SC 942: (1965) 2 Cri LJ 33, explained and distinguished

Paramjit Singh v. State of H.P., 1987 Cri LJ 1266 (HP); Sachindra Nath Mazumder v. Bistupada Das, 1978 Cri LJ 1494 (Cal), considered

[8747] — S. 366 — Offence under, not made out — No evidence to show that the woman was abducted to compel her either to marry against her wish or to submit to sexual intercourse against her wish — *Hence conviction under S. 366 not warranted. Faiyaz Ahmed* v. *State of Bihar*, 1991 Supp (1) SCC 186: 1991 SCC (Cri) 543: AIR 1990 SC 2147.

Bench Strength 2. Coram: *P.B. Sawant* and *K. Ramaswamy*, JJ. [Date of decision: 10-8-1990]

[8748] — S. 366 — On facts, conviction of the appellant found improper — *Misdirection to the jury — Otherwise evidence not convincing. Mushtak Hussein* v. *State of Bombay*, AIR 1953 SC 282: 1953 SCR 809: 1953 Cri LJ 1127.

Bench Strength 3. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 30-3-1953]

[8749] — S. 366 — Person inducing a minor to leave the guardianship is as guilty as a person who forcibly takes a minor. *Bihari* v. *State of M.P.*, 1968 SCD 435.

Bench Strength 2. Coram: **M. Hidayatullah** and *K.S. Hegde*, JJ. [Date of decision: 15-11-1967]

[8750] — S. 366 — Prosecution for kidnapping of girl — *Circumstances warranting quashment of — The girl in her affidavit admitting her marriage with appellant-accused — Despite notice from Supreme Court the complainant failing to make appearance — Moreover, the counsel for the appellant stating before Supreme Court that a child was born of that marriage — In such circumstances, in the interest of justice, Supreme Court quashing the prosecution — Constitution of India, Art. 136* (Para 3). *Fazle Gaffar Khan* v. *State of W.B.*, (2000) 10 SCC 10.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 20-9-1999]

[8751] — S. 366 — Prosecutrix aged below 17 years secretly taken by appellant from lawful guardianship of her parents at night, confined in a room in the neighbourhood and subjected to forcible sexual intercourse — *Held, ingredients of*

S. 366 made out — Sentence of 9 months' RI imposed by High Court being unduly lenient, no further reduction in the sentence called for. Bhushan Lal v. *State of M.P.*, 1987 Supp SCC 243: 1988 SCC (Cri) 50.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 20-2-1987]

[8752] — S. 366 — Sentence — Enhancement of — Interference by appellate court — *When justified*

A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment. *Shiv Govind* v. *State of M.P.*, (1972) 3 SCC 399: 1972 SCC (Cri) 549: AIR 1972 SC 1823: 1972 Cri LJ 1181: (1972) 3 SCR 835.

Bench Strength **2**. Coram: *A.N. Grover* and **M.H. Beg**, JJ. [Date of decision: 14-3-1972]

[8753] — Ss. 366 and 361 — On facts held, that the prosecutrix left with the accused of her free will and with the consent of her mother — *She was betrothed to the accused at the material time and was not taken by the accused to seduce her to illicit intercourse. Lalta Prasad* v. *State of M.P.*, (1979) 4 SCC 193: 1979 SCC (Cri) 954: AIR 1979 SC 1276: 1979 Cri LJ 867.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 11-1-1979]

[8754] — Ss. 366 and 363 — *High Court reduced the conviction to one under S. 363 — Supreme Court's finding no offence under S. 363 made out — Taking away and enticing not proved — Appeal allowed. Ram Das* v. *State of M.P.*, (1970) 3 SCC 211: 1971 SCC (Cri) 29.

Bench Strength **2**. Coram: **S.M. Sikri** and *K.S. Hegde*, JJ. [Date of decision: 17-9-1970]

[8755] — Ss. 366, 366-A and 376 — *Importance of question of age in cases under — Divergent statements of the prosecutrix as to her age — Medical evidence showing that prosecutrix was used to sexual intercourse and the rupture of the hymen was old — No independent corroborative evidence as to the fact of abduction — Whether conviction sustainable*

The question of age of the prosecutrix in case under Ss. 366, 376, IPC is always of importance. It was particularly so in this case because according to the medical evidence the prosecutrix was found to have been used to sexual intercourse and the rupture of the hymen was old. The High Court having acquitted the appellant for an offence under S. 376, IPC, because the prosecutrix appeared to be a consenting party. It was a fit case in which the trial Court should have examined the question of her age more closely.

On the evidence on record, we are far from satisfied that there is any trustworthy evidence on the record on which the conclusion that the prosecutrix was under 18 years of age in March 1965 can safely be founded.

There should be corroboration of some material particular from some independent source and her bare statement cannot be considered sufficient to sustain the appellant's conviction.

There is no evidence on the record on which the offence under S. 366, IPC, can be sustained against the appellant. *Ram Murti* v. *State of Haryana*, (1970) 3 SCC 21: 1970 SCC (Cri) 371: AIR 1970 SC 1029: 1970 Cri LJ 991: 72 Punj LR 1000.

Bench Strength **2**. Coram: *J.M. Shelat* and **I.D. Dua**, JJ. [Date of decision: 14-4-1970]

[8756] — Ss. 366 and 368 — Sentence — *Enhancement of sentence by High Court from 2 years' RI to 5 years' RI on ground the crime was result of a widespread criminal activity of kidnapping and abduction and inter-state commerce of unfortunate girls — No interference by Supreme Court. Bishambar Dayal* v. *State of Punjab*, Criminal Appeal No. 14 of 1957.

[Date of decision: 8-5-1958]

[8757] — Ss. 366, 368 and 376 — Sentence — Reduction of, by High Court — Propriety — *Sentence of seven years' RI and fine with default stipulation imposed by the Sessions Court, reduced by the High Court to the period already undergone, the fine having been already paid, on only ground that the accused were illiterate labourers from rural area and were registering their attendance in the Registry of the High Court till 11-7-2003 — Held, it has been repeatedly held, while dealing with similar orders, that grounds of this nature are wholly irrelevant for reducing the sentence for the heinous crime for which the respondents had been convicted — Further held, though the order of conviction passed by the Sessions Court had been confirmed by the High Court but it does not appear that there was any consideration on merits by the High Court — Hence, impugned judgment of the High Court set aside and matter remitted to it for decision afresh* (Paras 2, 3 and 4). *State of M.P.* v. *Pooran*, (2006) 10 SCC 300: (2006) 3 SCC (Cri) 543.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *G.P. Mathur*, JJ. [Date of decision: 18-7-2005]

[8758] — Ss. 366, 375 & 376 — Age — Determination of — Determination of — Common law principle — *Held, a person attains a specified age on the day next before the anniversary of his birthday i.e. on the day preceding that anniversary — Family Law Reform Act, 1969 (English) — General Clauses Act, 1897, Ss. 9 and 10*

A person attains a specified age on the day next before the anniversary of his birthday or in other words, on the day preceding that anniversary. However, the common law rule in this regard has been abrogated by the (UK) Family Law Reform Act, 1969. The effect of the change is that, in respect of anniversaries falling after 1-1-1970, the time at which a person attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth. However India does not have such statute. The age in India therefore has to be determined either according to relevant provision and in its absence, by common law principle. (Paras 13 and 14). *Achhaibar Maurya* v. *State of U.P.*, (2008) 2 SCC 639: (2008) 1 SCC (L&S) 519: (2008) 1 KLT 213: (2008) 62 AIC 81 (SC): (2008) 3 SLR 86: (2008) 116 FLR 377.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 13-12-2007]

Shurey, Re, Savory v. Shurey, LR (1918) 1 Ch 263; R. v. Scoffin, LR (1930) 1 KB 741; Prabhu Dayal Sesma v. State of Rajasthan, (1986) 4 SCC 59: 1986 SCC (L&S) 731: 1986 SCC (Cri) 411: (1986) 1 ATC 341, relied on

Halsbury's Laws of England, 4th Edn., Reissue, p. 209, relied on

[8759] — Ss. 366 and 376 — Identity of accused — *Evidence of prosecutrix aged 13 years — Prosecutrix could not have forgotten the face of the accused who had raped her — In absence of defence case of insufficiency of light, her evidence regarding identity of the accused, as corroborated by house servant, even in absence of any T.I. parade, acceptable — Conviction under Ss. 366 and 376 and sentence of 3 years' and 5 years' RI respectively recorded by trial court upheld — But in the circumstances, sentence under both the counts reduced to the period already undergone. State of M.P.* v. *Sunder Lal*, (1992) 2 SCC 578: 1992 SCC (Cri) 393: AIR 1992 SC 1413: 1992 Cri LJ 2519.

Bench Strength **2**. Coram: *Kuldip Singh* and **B.P. Jeevan Reddy**, JJ. [Date of decision: 13-3-1992]

[8760] — Ss. 366 & 376 — Sole testimony of prosecutrix — Basis for conviction — If corroboration required

The prosecutrix cannot be considered to be an accomplice. As a rule of prudence courts should normally look for some corroboration of her testimony in order to satisfy itself that the prosecutrix is telling the truth, but the view that, as a matter of law, no conviction without corroboration was possible is erroneous. The only rule of law is the rule of prudence, namely, the advisability of corroboration should be present in the mind of the Judge or the Jury, as the case may be. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand. As to what type of corroboration may be required when the court is of opinion that it is not safe to dispense with that requirement, it has also been laid down that the type of corroboration required must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence with which a person is charged. *Madho Ram* v. *State of U.P.*, (1973) 1 SCC 533: 1973 SCC (Cri) 417: AIR 1973 SC 469: 1973 Cri LJ 673.

Bench Strength **3**. Coram: *A. Alagiriswami, I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 19-12-1972]

[8761] — Ss. 366 and 376 & Ss. 407(1)(c) & (4), 406 and 408 — Transfer of case — Words "will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice" in S. 407(1)(c) — Scope — *Embarrassment likely to be caused to judge(s), counsel, witnesses or parties due to subject-matter of proceedings — If a ground on which case may be transferred — Proceedings concerning commission of offences relating to pornographic material/acts — Trial being assigned to Fast Track Court presided over by a lady Judge, and also being a designated "Mahila Court" — High Court presuming that the Judge, being a woman, and for that reason alone, would be caused embarrassment and transferring case to Court presided over by a male Judge — Appellant being one of the female witnesses/accused, applying for case to be retransferred to original court, claiming that avoidance of embarrassment to her should have been given primacy — Held, embarrassment is a state of mind which is more individual-related than related to the sex of a person — High Court was not justified in presuming embarrassment to the lady judicial officer solely on the ground that she was a woman even when the officer concerned had not expressed any reservation, nor sought for or directed transfer of the case — Moreover, even when given such a choice at an earlier stage by the High Court, the said lady officer had not sought or directed transfer of the case — In any case, counsel for either party cannot claim embarrassment as a ground for transfer of a case — Lawyers accept briefs knowing very well the facts of the case and it is up to them to continue in a case or not — However, following* Gurmit Singh case, *(1996) 2 SCC 384, if at all there was a question of* *avoiding embarrassment caused to any of the people concerned, held, the Court ought to have considered the embarrassment that would be caused to witnesses — High Court had erred in not considering the embarrassment that might be caused to female witnesses, like the appellant, more so when their own acts were part of the prosecution evidence — Moreover, the fact that the appellant herself was in the position of an accused in the trial was of no relevance — Hence matter retransferred to original court presided over by lady officer with liberty to make arrangements for viewing of evidence likely to cause the least embarrassment to herself — Evidence Act, 1872, S. 114 — Constitution of India, Art. 136 — Information Technology Act, 2000, S. 67 — Indecent Representation of Women (Prohibition) Act, 1986, S. 6 — Immoral Traffic (Prevention) Act, 1956, Ss. 5 and 6 — CrPC, 1973, Ss. 407(1)(c) & (4), 406 and 408* (Paras 11 to 15). *Fatima Riswana* v. *State*, (2005) 1 SCC 582: 2005 SCC (Cri) 427: AIR 2005 SC 712: 2005 Cri LJ 900: (2005) 116 DLT 382: (2005) 26 AIC 73 (SC): (2005) 1 KLT 502.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 11-1-2005]

[8762] — Ss. 366 and 376/34 and 302/34 — Rape and murder — Testimony of teen aged eye witnesses (12 and 15 years), even after taking necessary precautions and gruelling cross-examination, found to be truthful — *Accused-appellant having human nail scratches on his face furnishing circumstantial support against him — Even assuming that the actual acts of rape and murder were performed by his accomplices, held on facts, he cannot escape the criminal liability — Hence his conviction and sentence of RI for 7 years, 10 years and life imprisonment confirmed — But his co-accused entitled to benefit of doubt as evidence against them though created serious suspicion but fell short of establishing the guilt beyond reasonable doubt. Ravikant Bhagoji Dhumal* v. *State of Maharashtra*, 1991 Supp (1) SCC 385: 1991 SCC (Cri) 683.

Bench Strength **2**. Coram: **L.M. Sharma** and *K. Ramaswamy*, JJ. [Date of decision: 15-11-1990]

[8763] — S. 366 r/w S. 354 — Offence of abduction — Essential ingredients — *Held, in order to constitute an offence of abduction, a person must be carried off illegally by force or deception — Neither of these two ingredients established in the instant case — Hence, finding that the accused-appellant adopted deceitful means to abduct PW 1 or PW 22, held, could not be sustained — The story of being forcibly taken on a scooter through busy roads with traffic police on duty, unbelievable — Further held, it was doubtful that the appellant asked PW 1 to have sexual intercourse with her in the presence of her eleven-year-old child, and that he allowed her to easily slip out of his hands from the lodge, if that was his intention — Thus, appellant's conviction under S. 366 r/w S. 354 IPC set aside*

The prosecution case was that on 5-6-1997 PW 1 and her daughter PW 22 were coming out of a theatre after watching a matinee show. The appellant, who was going on the road on a scooter, having seen them, stopped the scooter and offered to give them a lift on his scooter up to their house. When PW 1 declined to accept his offer, the appellant threatened PW 1 that he would kill her by pointing out a knife at her. It was stated that on account of the fright created by the appellant, PW 1 had to go with him on his scooter along with her daughter PW 22. PW 1 and PW 22 were thereafter taken to a lodge owned by PW 3 located in Buldi area. It was further alleged that on reaching that place the appellant held the hand of PW 1 and started taking her towards a room inside the lodge. The son of PW 3 started closing the door of the room from outside allegedly on the direction of the appellant and on seeing this PW 1 asked the boy not to close the door and at that time her daughter PW 22 was also inside the room. Thereafter, PW 1 forcibly pulled her hand out of the appellant's hold and managed to become free from the clutches of the appellant and went out of the room along with her daughter. PW 1 and her husband went to the police station and lodged a complaint against the appellant. The appellant was tried for offences under Sections 341, 354, 366 and 506 Part II IPC. The trial court held the appellant guilty of the charges levelled against him. In appeal, after analysing the evidence the High Court came to the conclusion that PW 1 came to Buldi area along with the accused on his scooter willingly. But, the High Court held that there was no reason to distrust the further story that the accused took the prosecutrix inside the room of the lodge and made an attempt to close the door. In this regard, the High Court drew an inference that the accused must have brought PW 1 and PW 22 to Buldi area by making some misrepresentation or under some pretext and as PW 1 was knowing the accused, since he was visiting the area of the hutment of PW 1, she must have accompanied the accused on his scooter along with her daughter believing in his representation. Thus, the High Court set aside the conviction and sentence imposed on the appellant under Sections 341 and 506 Part II IPC, but maintained his conviction under Sections 354 and 366 IPC by modifying the sentence to six months for the offence under Section 354 and six years for the offence under Section 366 with a fine of Rs 500.

Setting aside the order passed by the High Court,

Held :

It is not that PW 1 was not knowing that the appellant was not taking them to their house but somewhere else. If PW 1 did not want to go with the appellant, there was hardly any difficulty for her to have declined. If really the appellant intended to have sexual intercourse with her there would have been no chance either for her or her daughter to rescue themselves from the clutches of the appellant while they were being confined in a room of the lodge. Even if PW 1 came to Buldi area along with the appellant on his scooter to go to her home, on noticing that she was being taken elsewhere to a place other than her home, she would have immediately suspected foul play and would have raised an alarm. It cannot be taken that PW 1 is so innocent as to be carried away by the antics of the appellant to simply go with him when she did not intend to go with him. (Para 6)

In order to constitute offence of "*abduction*" a person must be carried off illegally by force or deception, that is, "*to compel a person by force or deceitful means to induce to go from one place to another*". In the instant case, neither of these two ingredients are established. (Para 6)

The High Court held that it was by adopting deceitful means that PW 1 was abducted by the appellant. This conclusion of the High Court rests on a pure figment of imagination inasmuch as what misrepresentation or pretext was held out to PW 1 is not spelt out and not established as a fact. The High Court could not have speculated on how PW 1 could have accompanied willingly right up to the lodge and then inferred that she did so only yielding to a pretext or misrepresentation held out to her when in fact no evidence was adduced on this aspect at all. Therefore, the finding that the appellant adopted deceitful means to abduct PW 1 or PW 22 cannot be sustained. (Para 6)

Further, on reaching the lodge, it is difficult to visualise that the appellant had asked PW 1 to have sexual intercourse with her in the presence of her eleven-year-old child, and that he allowed her to easily slip out of his hands from the lodge, if that was his intention. Hence that part of the case also is doubtful. (Para 7). *Rajendra* v. *State of Maharashtra*, (2002) 7 SCC 721: AIR 2002 SC 3390.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 1-10-2002]

— Ss. 366/34 *See also* Ss. 376(2)(g)/34 and 366/34

[8764] — Ss. 366/34 and 376(2)(g) — Kidnapping — Modification of sentence — Considerations — *Conviction confirmed under Ss. 366/34 but acquitted under S. 376(2)(g) — Sentenced to imprisonment for four years — Incident of 1983 — Appellant was 17 years of age — Now he is married and having children — Sentence reduced to 2½ years' imprisonment. Vinod Kumar* v. *State of Delhi*, (2010) 13 SCC 774.

Bench Strength **2**. Coram: *Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 16-7-2010]

[8765] — Ss. 366/109 — Abduction of a young girl to compel her marriage — *Evidence of eyewitnesses establishing that the prosecutrix was made to sit in the car by the accused persons but they were prevented from taking her away by the eyewitnesses — Non-mention of names of some of the accused, who were her collegemates, in FIR not creating any doubt about their presence at the time of commission of the offence — Courts below erred in throwing burden upon the accused to prove that it was a case of elopement — But, in view of clear and credible evidence on record, it cannot affect conviction of the appellants — However, in view of the fact that A-1 and the prosecutrix were close to each other and A-1 wanted to marry her and she having completed 18 years A-1 probably believed that she would go with him and also considering the fact that incident took place in 1991 and that all the accused were college-going boys sentence of two years' RI reduced to one year's RI. Rajesh* v. *State of Maharashtra*, (1998) 7 SCC 324: 1998 SCC (Cri) 1623: AIR 1998 SC 2724.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 13-8-1998]

— S. 366-A *See also* Ss. 323, 504, 506, 117, 366-A and 373

See also Ss. 361, 363, 363-A, 366-A and 375

See also Ss. 363, 366-A and 372 r/w S. 511

See also Ss. 364, 366-A, 368 and 120-B

See also Ss. 366, 366-A and 376

See also Ss. 376, 363 and 366-A

See also Ss. 376 Sixthly and 366-A

[8766] — S. 366-A — Ingredients of — Person merely accompanying a woman below 18 years going out to ply her profession of prostitute — *Does not commit an offence under*

There are three principal ingredients of the offence:

(*a*) that a minor girl below the age of 18 years is induced by the accused,

(*b*) that she is induced to go from any place or to do any act, and

(*c*) that she is so induced with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person.

A person who merely accompanies a woman going out to ply her profession of a prostitute, even if she has not attained the age of eighteen years does not thereby commit an offence under S. 366-A of the Indian Penal Code. It cannot be said that thereby he induces her to go from any place or to do any act with the intent or knowledge contemplated by the section. *Ramesh* v. *State of Maharashtra*, AIR 1962 SC 1908: (1963) 3 SCR 396: (1963) 1 Cri LJ 16, 19.

Bench Strength **3**. Coram: *B.P. Sinha, C.J.* and *K.N. Wanchoo* and **J.C. Shah**, JJ. [Date of decision: 24-7-1962]

[8767] — S. 366-A — Ingredients of offence of — Procuration of minor girl to induce or seduce her to illicit intercourse with another person — Absence of proof of — *PW 6, a minor girl, taken from her school to the house of the accused's brother — No evidence at all to establish that she was induced to go to any place with the intent or knowledge that she may be or likely to be forced or seduced to illicit intercourse with another person — On the contrary, evidence showed that PW 6 was well treated at the said house — Medical evidence also not indicating any kind of sexual harassment or any attempt or likelihood in that direction — Thus, ingredients of S. 366-A, held, not proved against the accused — Hence, his conviction thereunder was not sustainable* (Para 3). *Sajjan Kapar* v. *State of Bihar*, (2005) 9 SCC 426.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *Brijesh Kumar*, JJ. [Date of decision: 7-8-2003]

[8768] — S. 366-A — Procuration of minor girl — Age of the girl — *Evidence of the girl's father showing that likely age of the girl at the time of the incident was around 19 years — Doctor, finding that her x-ray photograph showed partial epiphyseal fusion of iliac crest opining that she appeared to be 17 years old — Girl stating that she was only about 14 years old — Held, evidence of the girl, when examined in the light of that of her father and of the doctor, was wholly unreliable — Evidence of the doctor was approximate and not conclusive — Prosecution thus failed to establish that the girl was less than 18 years of age on the date of the incident — Hence charge under S. 366-A against the accused-appellant must fail* (Para 5). *Jinish Lal Sah* v. *State of Bihar*, (2003) 1 SCC 605: 2003 SCC (Cri) 395: AIR 2003 SC 2081.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 20-12-2002]

2002 Cri LJ 274 (Pat), reversed

[8769] — S. 366-A — Procuration of minor girl — Ingredients of offence of — *Held, it needs to be established that a minor girl under the age of 18 years was induced to come from one place to the other with the intention that such girl may be, forced to have illicit intercourse with another person — In the instant case, evidence on record did not reveal any such intention — That the prosecutrix was subjected and forced to have illicit intercourse came to be stated for the first time only during the trial, which is nothing but embellishment in order to see that the accused persons were subjected to major punishments* (Para 39). *Sannaia Subba Rao* v. *State of A.P.*, (2008) 17 SCC 225.

Bench Strength **2**. Coram: *R.V. Raveendran* and **Dr. M.K. Sharma**, JJ. [Date of decision: 24-7-2008]

State, Chhattisgarh v. Lekhram, (2006) 5 SCC 736: (2006) 3 SCC (Cri) 66, considered and relied on

[8770] — S. 366-A or S. 363 — Kidnapping — Conviction under — *Need of proper evidence regarding involvement of accused, stressed — Applicability — Prosecutrix giving statement only under S. 164 — Prosecutrix not giving any evidence in court — During alleged crime other accused bringing prosecutrix to appellant's house but nothing on record to show appellant's involvement — Effect — Mere S. 164 CrPC statement of prosecutrix, held, is not enough to convict appellant — S. 164 CrPC statement is not substantive evidence and can be utilised only to corroborate or contradict the witness vis-à-vis statement made in court — CrPC, 1973, S. 164* (Paras 6 to 8)

In appeal, the High Court altered the conviction from one under Section 366-A to Section 363 IPC. One out of the four accused died, one was released on the basis of reduction of sentence to imprisonment already undergone and the appellant and his brother were sentenced to one year's RI. The SLP of appellant's brother was dismissed because he did not surrender to custody.

Allowing the appeal,

Held :

Statement under Section 164 CrPC is not substantive evidence and can be utilised only to corroborate or contradict the witness vis-à-vis statement made in court. (Para 6)

The conviction of the appellant under Section 363 IPC is set aside because the only material that has been used against the appellant is the statement under Section 164 CrPC. The prosecutrix was not produced as a witness as she had since been married in Nepal and her husband had refused to let her return to India for the evidence. In this light her statement under Section 164 cannot be used against the appellant. (Paras 7 and 6)

Even otherwise the appellant could not be implicated in the offence under Section 363 or 366-A IPC dehors other evidence to show his involvement in the events preceding the kidnapping when as per the Section 164 CrPC statement of the prosecutrix she was brought to appellant's house by other kidnappers. (Para 7). *Baij Nath Sah* v. *State of Bihar*, (2010) 6 SCC 736.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 29-4-2010]

Ram Kishan Singh v. Harmit Kaur, (1972) 3 SCC 280: 1972 SCC (Cri) 493, relied on

[8771] — Ss. 366-A and 366 — Seduction to illicit intercourse — Surrender of body by a prostitute is not 'seduction' — *Expression 'seduce' — Meaning of*

Seduction to illicit intercourse contemplated by the section does not mean merely straying from the path of virtue by a female for the first time. The verb 'seduce' is used in two senses. It is used in its ordinary and narrow sense as inducing a woman to stray from the path of virtue for the first time; it is also used in the wider sense of inducing a woman to submit to illicit intercourse at any time or on any occasion. It is in the latter sense that the expression has been used in Ss. 366 and 366-A of the Penal Code which sections partially overlap.

A case in which a girl who had strayed from the path of virtue when she was in the custody of her guardian and had with a view to carry on her affair accompanied her seducer or another person may certainly fall within the terms of S. 366 or S. 366-A whichever applies. But where a woman follows the profession of a prostitute, that is, she is accustomed to offer herself promiscuously for money to 'customers', and in following that profession she is encouraged or assisted by someone, no offence under S. 366-A is committed by such person for it cannot be said that the person who assists a girl accustomed to indulge in promiscuous intercourse for money in carrying on her profession acts with intent or knowledge that she will be forced or seduced to illicit intercourse.

Seduction implies surrender of her body by a woman who is otherwise reluctant or unwilling to submit herself to illicit intercourse in consequence of persuasion, flattery, blandishment or importunity, whether such surrender is for the first time or is preceded by similar surrender on earlier occasions. But where a woman offers herself for intercourse for money — not casually but in the course of her profession as a prostitute — there are no scruples nor reluctance to be overcome, and surrender by her is not seduction within the Code. It would then be impossible to hold that a person who instigates another to assist a woman following the profession of a prostitute abets him to do an act with intent that she may or with knowledge that she will be seduced to illicit intercourse. *Ramesh* v. *State of Maharashtra*, AIR 1962 SC 1908: (1963) 3 SCR 396: (1963) 1 Cri LJ 16, 19.

Bench Strength **3**. Coram: *B.P. Sinha, C.J.* and *K.N. Wanchoo* and **J.C. Shah**, JJ. [Date of decision: 24-7-1962]

Prafullakumar Basu v. Emperor, ILR 57 Cal 1074: 31 Cri LJ 903: AIR 1930 Cal 209; Emperor v. Laxman Bala, ILR 59 Bom 652: 36 Cri LJ 1509: AIR 1935 Bom 189; Krishna Maharana v. Emperor, ILR 9 Pat 647: 31 Cri LJ 306: AIR 1929 Pat 651; In re Khalandar Saheb, AIR 1955 Andh 59: 1955 Cri LJ 581; Suppiah v. Emperor, AIR 1930 Mad 980: 32 Cri LJ 357; Pessumal v. Emperor, 27 Cri LJ 1292: AIR 1927 Sind 97; Emperor v. Nga Ni Ta, 10 Bur LR 199 and Kartara v. State, ILR 1957 Punj 2003: AIR 1958 Punj 323, approved

Emperor v. Baijnath, ILR 54 756: 33 Cri LJ 669: AIR 1932 All 409; Shaeb Ali v. Emperor, ILR 60 Cal 1457: 35 Cri LJ 307: AIR 1933 Cal 718; Aswini Kumar Roy v. State, AIR 1955 Cal 100: 1955 Cri LJ 347 and Nura v. Emperor, AIR 1934 Lah 227: 35 Cri LJ 1386, ***overruled***

[8772] — Ss. 366-A, 366-B, 372 and 373 — Public interest litigation against forced prostitution of girls, Devdasis and Jogins and for their rehabilitation — *In spite of stringent and rehabilitative provisions under various Acts, desired result yet to be achieved — Both Central and State Governments having obligation to safeguard interest and welfare of children and girls, must evaluate various measures and implement them in the right direction — Severe and speedy legal action against erring persons such as pimps, brokers and brothel keepers suggested — Direction for conducting CBI inquiry throughout the country not practicable — However certain directions issued inter alia for setting up a separate Zonal Advisory Committee, for taking steps for providing rehabilitative homes, for delving into Devdasi system and Jogin tradition etc. — Immoral Traffic (Prevention) Act, 1956 — Juvenile Justice Act, 1986, Ss. 13 and 15 — Constitution of India, Arts. 23(1), 35(a)(ii), 39(e) & (f) and 32.* *Vishal Jeet* v. *Union of India*, (1990) 3 SCC 318: 1990 SCC (Cri) 482: AIR 1990 SC 1412: 1990 Cri LJ 1469.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 5-2-1990]

[8773] — Ss. 366-A, 372, 373 r/w S. 34 — Procurement and selling of a minor for illegal and immoral purposes — Sentence — Proportionality — *Sentence of 7 years' imprisonment and fine of Rs 50,000 with default stipulation — Sustainability — Held, no interference with quantum of sentence called for — Such cases call for a deterrent sentence to be imposed on accused — Immoral Traffic (Prevention) Act, 1956, S. 5* (Paras 8 to 15). *Manjappa* v. *State of Karnataka*, (2010) 9 SCC 334.

Bench Strength **2**. Coram: **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision: 8-9-2010]

[8774] — Ss. 366-A, 372, 376, 344 — Quashing of FIR — *Allegation against a large number of accused persons of sexual exploitation under threat, coercion, force and allurement — Case registered under Ss. 366-A, 372, 376, 344 IPC and Immoral Traffic Act — High Court not justified in embarking upon an enquiry by sifting evidence and coming to conclusion with regard to the age of the prosecutrix and also recording a finding that no offence of rape had been committed — Uncharitable comments made by the High Court against the prosecutrix deprecated — High Court exceeded its jurisdiction to record a finding that the prosecutrix was a consenting party — Order of the High Court set aside and the investigating agency directed to proceed with the investigation and conclude the same in accordance with law — CrPC, 1973, S. 482 — Constitution of India, Arts. 226, 227 and 136. State of Kerala* v. *O.C. Kuttan*, (1999) 2 SCC 651: 1999 SCC (Cri) 304: AIR 1999 SC 1044: 1999 Cri LJ 1623.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 17-2-1999]

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415, relied on

[8775] — Ss. 366-A and 372 r/w S. 511 — Applicability — Matters to be established for conviction under — Acquittal justified — *No reliable or cogent evidence led by prosecution to prove that prosecutrix was kidnapped by the accused persons with the intention of making her have sexual intercourse with them or with any other person, or with the intention of selling her for prostitution — Hence, conviction under Ss. 366-A and 372 r/w S. 511, held, unsustainable* (Para 44). *Sannaia Subba Rao* v. *State of A.P.*, (2008) 17 SCC 225.

Bench Strength **2**. Coram: *R.V. Raveendran* and **Dr. M.K. Sharma**, JJ. [Date of decision: 24-7-2008]

State of Chhattisgarh v. Lekhram, (2006) 5 SCC 736: (2006) 3 SCC (Cri) 66, considered and relied on

[8776] — Ss. 366-A and 376(2) — Abduction and rape of minor — Appreciation of evidence — Failure to appreciate evidence properly — Effect of, on trial and conviction — *In the present case, prosecutrix in her examination-in-chief not recognising the appellant as she had never seen him — Held, trial court and High Court ignored the statement of the victim — Hence, conviction of appellant set aside*

Out of the five accused persons tried for alleged commission of rape and abduction in terms of Sections 366-A and 376(2) IPC two absconded and the rest three including the appellant were convicted by the trial court. The trial court imposed a sentence of 10 years for each of the aforesaid offences. The High Court had dismissed the appeal filed by the appellant.

Allowing the appeal,

Held :

Both the trial court and the High Court ignored the statement of the victim who in court categorically stated that she did not recognise him as she had never seen him. That being so, the conviction so far as the present appellant is concerned cannot be maintained. (Para 6). *Jakir* v. *State of M.P.*, (2009) 6 SCC 646: (2009) 3 SCC (Cri) 290: AIR 2009 SC 2437.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-5-2009]

— S. 366-B *See also* Ss. 366-A, 366-B, 372 and 373

[8777] — S. 367 — Only picking up of the victim by accused proved — *But accused's connection with the subsequent assault on the victim not established — Held, conviction under S. 367 not proper. Vinod Chaturvedi* v. *State of M.P.*, (1984) 2 SCC 350: 1984 SCC (Cri) 250: AIR 1984 SC 911: 1984 Cri LJ 814.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **Ranganath Misra**, JJ. [Date of decision: 5-3-1984]

[8778] — Ss. 367, 147 and 325 r/w S. 149 — Abduction and causing grievous hurt — *Victim forcibly abducted in a car and taken out of his village by some unidentified persons — Later the victim found lying on the road completely immobilised by the grievous injuries sustained by him — On facts, abduction and place of occurrence established — None except victim identifying the assailants — Victim giving name and description of assailants on the basis of conversation heard by him while being abducted in car — No motive of enmity against the assailants alleged — Held, in circumstances of the case, false implication of appellants ruled out — Wrong assessment of the age of one of the assailants does not falsify the statement of the injured — Whether statement made* *by the injured to police in hospital should be accepted as FIR or statement under S. 162 CrPC, on facts, not material. Darshan Singh* v. *State of Punjab*, 1994 SCC (Cri) 281: 1994 Cri LJ 226.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 9-9-1993]

— **S. 367 r/w S. 34** *See also* Ss. 302 and S. 367 r/w S. 34

— **S. 368** *See also* Ss. 302, 364, 365, 368, 193, 197, 201, 120-B, 420 and 342

See also Ss. 363 to 366

See also Ss. 376, 363, 366 and 368

[8779] — S. 368 — Ingredients of the offence

To constitute an offence under S. 368, it is necessary that the prosecution must establish the following ingredients:

(1) The person in question has been kidnapped.

(2) The accused knew that the said person had been kidnapped.

(3) The accused having such knowledge, wrongfully conceals or confines the person concerned.

So far as the second ingredient is concerned, it is an inference to be drawn by the courts from the various circumstances, e.g. age of the child. Similarly, whether there has been wrongful concealment or confinement under S. 368, is a matter to be considered from the facts and circumstances of a particular case. *Saroj Kumari* v. *State of U.P.*, (1973) 3 SCC 669: 1973 SCC (Cri) 475: AIR 1973 SC 201: 1973 MLJ (Cri) 272: 1973 Cri LJ 267.

Bench Strength **3**. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 24-11-1972]

[8780] — S. 368 — Kidnapping of new-born child — *Appellant found in possession of newly born child — No explanation given regarding his presence — Pretence to conceal and claim the child to be hers when she had not delivered in the recent past — Offence established. Saroj Kumari* v. *State of U.P.*, (1973) 3 SCC 669: 1973 SCC (Cri) 475: AIR 1973 SC 201: 1973 MLJ (Cri) 272: 1973 Cri LJ 267.

Bench Strength **3**. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 24-11-1972]

[8781] — S. 368 r/w S. 109 — Accused-appellant's complicity in selling co-accused's wife to a stranger who committing rape on her and murdering her — *Prosecution discharging its burden of proof of the offence on the basis of evidence including dying declarations recorded by police officers and Tehsildar Magistrate — Conviction and sentence upheld. Pyare Lal* v. *State of U.P.*, (1987) 1 SCC 525: 1987 SCC (Cri) 209: AIR 1987 SC 852: 1987 Cri LJ 769.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 23-1-1987]

— **S. 369** *See also* Ss. 302, 364, 369, 376(2)(f), 392 and 449

— **S. 370** *See also* Ss. 88, 92, 370 and 304-A

— **S. 372** *See also* Ss. 366-A, 366-B, 372 and 373

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See also Ss. 377, 373, 372, 323 r/w Ss. 109 and 120-B

— **S. 372 r/w S. 511** *See also* Ss. 363, 366-A and 372 r/w S. 511

See also Ss. 366-A and 372 r/w S. 511

— **S. 373** *See also* Ss. 323, 504, 506, 117, 366-A and 373

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See also Ss. 366-A, 372, 373 r/w S. 34

See also Ss. 377, 373, 372, 323 r/w Ss. 109 and 120-B

[8782] — Ss. 374 and 53 — Applicability — "Unlawfully compels any person to labour against the will" — *Exaction of hard work by jail authorities from convicted persons pursuant to punishment of RI imposed by court of competent jurisdiction in accordance with law — Held, S. 374 not attracted*

Per Thomas, J.

Section 374 IPC makes imposition of work on an unwilling person an offence. But the jail officer who requires a prisoner sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the court and the jail authorities cannot disobey the directions of the court which passed the sentence. No prisoner sentenced to rigorous imprisonment can conceivably complain that the jail authorities committed the offence under Section 374 IPC by compelling him to do work during the term of his imprisonment.

Per Wadhwa, J.

Section 374 IPC prescribes that whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both. It cannot be said that prison authorities are unlawfully "compelling the prisoners to do the work". (Para 89). *State of Gujarat* v. *Hon'ble High Court of Gujarat*, (1998) 7 SCC 392: 1998 SCC (Cri) 1640: AIR 1998 SC 3164.

Bench Strength **3**. Coram: **M.M. Punchhi, C.J.**[1] and **K.T. Thomas**[2] and **D.P. Wadhwa**[3], JJ. [Date of decision: 24-9-1998]

People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235: 1982 SCC (L&S) 275, followed

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A. RAPE — BASIC PRINCIPLES

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1. Generally — Meaning and Scope

See also 'A.3.(a) Ingredients of rape — Broadly', below

[8783] — S. 375 — Rape — Meaning and definition of — Petitioner, a social organisation, filing PIL expressing deep concern against non-traditional modes of sexual abuse and violations against children and women which though equally traumatic are treated as lesser offences under Ss. 354 and 377 IPC — *Hence the plea for enlarging the scope and meaning of "sexual intercourse" to cover such non-traditional sexual offences — Held, meaning is to be confined in narrow terms to include penile/vaginal penetration only and cannot be enlarged to include penile/anal, penile/oral, finger/vaginal, finger/anal or object/vaginal penetration — Intention of the legislature to be gathered from the language used — Attention to be paid to what is being said and what is not being said — Giving a wider meaning to Section 375 IPC will lead to serious confusion in the minds of prosecuting agencies and courts, which instead of achieving the object of expeditiously bringing a criminal to book may unnecessarily prolong the legal proceedings and would have an adverse impact on society as a whole, and therefore, held, it will not be in the larger interest of the State or the people to alter the definition of "rape" by a process of judicial interpretation — Parliament requested to address the issue*

The petitioner under Article 32, sought *inter alia*, in view of increase of sexual violence against women and especially children, an enlarged definition of rape under Section 375 IPC to include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vaginal and finger/anal penetration and object/vaginal penetration.

Dismissing the petition on this ground,

Held :

The dictionary meaning of the words "sexual intercourse" is heterosexual intercourse involving penetration of the vagina by the penis. If the hymen is ruptured by inserting a finger, it would not amount to rape. (Paras 16 and 18)

It is well-settled principle that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute. It is equally well settled that a statute enacting an offence or imposing a penalty is to be strictly construed. The fact that an enactment is a penal provision is in itself a reason for hesitating before ascribing to phrases used in it a meaning broader than that they would ordinarily bear. (Para 19)

Moreover, the entire legal fraternity of India, lawyers or judges, have the definition as contained in Section 375 IPC ingrained in their mind and the cases are decided on the said basis. The first and foremost requirement in criminal law is that it should be absolutely certain and clear. An exercise to alter the definition of rape, as contained in Section 375 IPC, by a process of judicial interpretation, and that too when there is no ambiguity in the provisions of the enactment, is bound to result in a good deal of chaos and confusion, cause delays and will not be in the interest of the society at large. (Paras 22 and 26)

Nevertheless, the suggestions made by the petitioners will advance the cause of justice and are in the larger interest of society. The cases of child abuse and rape are increasing at an alarming speed and appropriate legislation in this regard is, therefore, urgently required. It is hoped that Parliament will give serious attention to the points highlighted by the petitioner and make appropriate legislation with all the promptness which it deserves. (Para 35). *Sakshi* v. *Union of India*, (2004) 5 SCC 518: 2004 SCC (Cri) 1645: AIR 2004 SC 3566: (2004) 98 Cut LT 491: (2004) 112 DLT 457.

Bench Strength **2**. Coram: *S. Rajendra Babu, C.J.* and **G.P. Mathur**, J. [Date of decision: 26-5-2004]

[8784] — S. 375 — "Rape" — Meaning of, explained — Legislative intent to curb the offence of rape with an iron hand, taken note of

The offence of rape in its simplest term is "the ravishment of a woman, without her consent, by force, fear or fraud", or as "the carnal knowledge of a woman by force against her will". "Rape" or "raptus" is when a man hath carnal knowledge of a woman by force and against her will; or as expressed more fully, "rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will". The essential words in an indictment for rape are *rapuit* and *carnaliter cognovit*; but *carnaliter cognovit*, nor any other circumlocution without the word *rapuit*, are not sufficient in a legal sense to express rape. In the crime of rape, "carnal knowledge" means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation. It is violation with violence of the private person of a woman — an outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order. (Para 10)

"Rape" is defined in Section 375. Sections 375 and 376 have been substantially changed by the Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act i.e. Sections 376-A, 376-B, 376-C and 376-D. The fact that sweeping changes were introduced reflects the legislative intent to curb with an iron hand, the offence of rape which affects the dignity of a woman. When a woman is ravished, what is inflicted is not merely physical injury but a deep sense of some deathless shame. (Paras 10 and 11). *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551: AIR 2003 SC 4684.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

Co. Litt. 123-B; 1 Hon. 6, 1a, 9 Edw. 4, 26 a (Hale PC 628), relied on

Stephen's Criminal Law, 9th Edn., p. 262; Encyclopaedia of Crime and Justice, Vol. 4, p. 1356; Halsbury's Statutes of England and Wales, 4th Edn., Vol. 12, referred to

[8785] — Ss. 375 and 376 — In appeal against conviction, High Court directing acquittal of respondent-accused observing that "law is well settled that it is not possible for a single man to commit sexual intercourse with a healthy adult female in full possession of her senses against her will" — Unsustainability — *Held, there is not even a single decision which says so — Further, basis of presumptuous conclusion that PW 1 (victim) was an able-bodied tribal lady capable of taking care of herself not fathomable — Moreover, two contradictory irreconcilable stands of defence that no such incident had taken place and the other that the act was consensual should not have found favour with the High Court — Besides, observation of High Court that except PWs 1 and 2, there were no other eyewitnesses, and therefore, the prosecution version was not acceptable was not only contrary to law laid down by Supreme Court but also showed scant regard to law declared by Supreme Court — Held, in such circumstances ordinarily order of trial court would be restored but in the instant case matter remitted to High Court to hear the appeal afresh as the respondent-accused had not appeared before the Court in spite of notice — High Court while disposing of the matter to keep correct legal principles in view — Grave concern expressed and practice of naming rape victim in judgment strongly* *deprecated, which indicated judicial indiscipline* (Paras 3, 8 and 10). *State of Orissa* v. *Sukru Gouda*, (2009) 2 SCC 118: (2009) 1 SCC (Cri) 676: AIR 2009 SC 1019: (2009) 107 Cut LT 1: 2009 Cri LJ 831: (2009) 75 AIC 262 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 16-12-2008]

[8786] — Ss. 375 and 376 — Rape — Effect of on psyche, privacy and personality of victim, discussed — *Effect of on victim, in context of Indian culture, considered — Duty of court while appreciating evidence of victim, outlined*

Rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely assault-it is often destructive of the whole personality of the victim. The murderer destroys the physical body of his victim. Rapist degrades the very soul of the helpless female. (Para 1)

In the context of Indian culture, a woman-victim of sexual aggression-would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent. (Para 19). *Rajinder* v. *State of H.P.*, (2009) 16 SCC 69: (2010) 2 SCC (Cri) 156: AIR 2009 SC 3022: 2009 Cri LJ 4133: (2009) 80 AIC 165 (SC).

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **R.M. Lodha**, JJ. [Date of decision: 7-7-2009]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Radhu v. State of M.P., (2007) 12 SCC 57: (2008) 2 SCC (Cri) 207; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, followed

[8787] — Ss. 375 and 376 — Right to privacy — Basis, scope and extent — Privacy as an aspect of personal liberty — Mental privacy and physical privacy — *Held, while physical privacy may be curtailed to some extent in reasonable exercise of police powers under CrPC, there is no corresponding provision for intruding upon a person's mental privacy — A female who alleges to be victim of sexual offence cannot be subjected to polygraph test to ascertain whether she is making truthful allegation — Extracting testimonial responses by means of narcoanalysis, polygraph and BEAP tests, held, intrude upon a person's mental privacy and are therefore impermissible in law — Protection of mental privacy is available to accused as well as to victim of an offence — Evidence Act, 1872, Ss. 24 to 27 and 114-A — CrPC, 1973, S. 164-A — Laboratory Procedure Manual for Polygraph Examination, Para 3.4(v) — European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Art. 8 — Police and Criminal Evidence Act, 1984 (UK), S. 64(1-A)*

Medical test for ascertaining mental condition of a person is most likely to be in the nature of a psychiatric evaluation which usually includes testimonial responses. Subjecting a person to the impugned techniques (narco-analysis, lie-detector and BEAP tests) in an involuntary manner violates prescribed boundaries of privacy. Forcible interference with a person's mental processes is not provided for under any statute and it most certainly comes into conflict with right against self-incrimination. However, this determination does not account for circumstances where a person could be subjected to any of the impugned tests but not exposed to criminal charges and the possibility of conviction. In such cases, he/she could still face adverse consequences such as custodial abuse, surveillance, undue harassment and social stigma among others. In order to address such circumstances, it is important to examine some other dimensions of Article 21. (Paras 204 and 226)

There is possibility that victims of offences could be forcibly subjected to any of these techniques during the course of investigation. There is provision in *Laboratory Procedure Manual* for polygraph tests which contemplates the same for ascertaining the testimony of victims of sexual offences. Irrespective of the need to expedite investigations in such cases, no person who is a victim of an offence can be compelled to undergo any of the tests in question. Such a forcible administration would be an unjustified intrusion into mental privacy and could lead to further stigma for the victim. (Para 254). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength **3**. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision: 5-5-2010]

M.P. Sharma v. Satish Chandra, AIR 1954 SC 300: 1954 Cri LJ 865: 1954 SCR 1077; Kharak Singh v. State of U.P., AIR 1963 SC 1295: (1963) 2 Cri LJ 329; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Gobind v. State of M.P., (1975) 2 SCC 148: 1975 SCC (Cri) 468; R. Rajagopal v. State of T.N., (1994) 6 SCC 632; People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301; 'X' v. Hospital 'Z', (2003) 1 SCC 500; Attorney General's Reference (No. 3 of 1999), (2001) 2 AC 91: (2001) 2 WLR 56: (2001) 1 All ER 577 (HL), relied on

M. Vijaya v. Singareni Collieries Co. Ltd., AIR 2001 AP 502; R.(S) v. Chief Constable of the South Yorkshire Police, (2002) 1 WLR 3223: (2003) 1 All ER 148 (CA), approved

'X' v. Hospital 'Z', (1998) 8 SCC 296, held, partly overruled

94 Journal of Criminal Law and Criminology 243-293 (2004), relied on

[8788] — Ss. 375 and 376 — Sexual abuse of children — PIL filed contending that interpretation of these and other sections by the courts not in tune with current state of affairs in society — At Supreme Court's suggestion a note about the precise issues involved submitted for consideration by Law Commission of India — *Held, issues are important and in view of growing menace of sexual abuse of children Law Commission requested to examine within 3 months: (a) issues submitted by petitioners, and (b) the feasibility of making recommendations for amendment of Penal Code or of dealing with the problem in any other manner — Constitution of India, Art. 32* (Para 6). *Sakshi* v. *Union of India*, (1999) 6 SCC 591: 1999 SCC (Cri) 1159.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *Sujata V. Manohar* and *B.N. Kirpal*, JJ. [Date of decision: 9-8-1999]

[8789] — Ss. 375 and 376 — Sexual abuse of children — PIL regarding interpretation of these and other provisions by courts — *Issues requiring consideration, formulation of — Observing that issues involved were important, Supreme Court issuing directions to counsel representing parties to formulate issues which may require consideration and determination by Supreme Court* (Para 3). *Sakshi* v. *Union of India*, (2001) 10 SCC 732.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *B.N. Kirpal* and *K.T. Thomas*, JJ. [Date of decision: 3-11-2000]

[**Ed.**: *See also* (1999) 6 SCC 591]

[8790] — Ss. 375, 376 and 376-A to 376-D — Legislative intent in changes introduced in Ss. 375 and 376 and introduction of Ss. 376-A to 376-D by Criminal Law (Amendment) Act, 1983, restated (Para 21). *Mohan Anna Chavan* v. *State of Maharashtra*, (2008) 7 SCC 561: (2008) 3 SCC (Cri) 193.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Dr. M.K. Sharma*, JJ. [Date of decision: 16-5-2008]

State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559, relied on

[8791] — Ss. 375, 376, 376-A, 376-B, 376-C and 376-D — "Rape" — Consequences and egregiousness of — *Held, by the very nature of the offence it is an obnoxious act of the highest order — The physical scar may heal up, but the mental scar will always remain — When a woman is ravished, what is inflicted is not merely physical injury but a deep sense of deathless shame — Constitution of India, Art. 21* (Paras 7 and 8). *State of M.P.* v. *Munna Choubey*, (2005) 2 SCC 710: 2005 SCC (Cri) 559: AIR 2005 SC 682: 2005 Cri LJ 913.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 24-1-2005]

[8792] — Ss. 375, 376 and 376-A to 376-D — Rape — Meaning, consequences and egregiousness of, restated (Para 21). *Mohan Anna Chavan* v. *State of Maharashtra*, (2008) 7 SCC 561: (2008) 3 SCC (Cri) 193.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Dr. M.K. Sharma*, JJ. [Date of decision: 16-5-2008]

State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559, relied on

Stephen's Criminal Law, 9th Edn., p. 262; Encyclop'dia of Crime and Justice, Vol. 4, p. 1356; Halsbury's Statutes of England and Wales, 4th Edn., Vol. 12, cited

[8793] — Ss. 375, 376, 376-A, 376-B, 376-C and 376-D — "Rape" — Meaning of — *Held, rape is the carnal knowledge of any woman, above the age of particular year, against her will; or of a woman child, under that age, with or against her will — In the crime of rape "carnal knowledge" means the penetration to any the slightest degree — Emission is unnecessary* (Para 7). *State of M.P.* v. *Munna Choubey*, (2005) 2 SCC 710: 2005 SCC (Cri) 559: AIR 2005 SC 682: 2005 Cri LJ 913.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 24-1-2005]

[8794] — Ss. 375 to 376-D — "Rape" — Meaning of, explained — *Legislative intent to curb the said offence with an iron hand, taken note of*

"Rape" is defined in Section 375 IPC. The offence of rape in its simplest term is "the ravishment of a woman, without her consent, by force, fear or fraud", or as "the carnal knowledge of a woman by force against her will". "Rape or raptus" is when a man hath carnal knowledge of a woman by force and against her will; or, as expressed more fully, "rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will". The essential words in an indictment for rape are *rapuit* and *carnaliter cognovit*; but *carnaliter cognovit*, nor any other circumlocution without the word *rapuit*, are not sufficient in a legal sense to express rape. In the crime of rape, "carnal knowledge" means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation. It is violation, with violence, of the private person of a woman — an outrage by all means. By the very nature of the offence it is an obnoxious act of a high order. (Para 6)

Sections 375 and 376 IPC have been substantially changed by the Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the Amending Act i.e. 376-A, 376-B, 376-C and 376-D. The fast sweeping changes introduced reflect the legislative intent to curb with an iron hand, the offence of rape which affects the dignity of a woman. (Para 6). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

[**Ed.**: See also *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551, in this regard.]

[8795] — Ss. 375 to 376-D — Rape — Meaning of, explained — Legislative intent to curb the said offence with an iron hand, taken note of (Para 7). *State of M.P.* v. *Babbu Barkare*, (2005) 5 SCC 413: 2005 SCC (Cri) 1335: AIR 2005 SC 2846: 2005 Cri LJ 3117.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-5-2005]

Co. Litt. 123-b; 1 Hon. 6, 1a, 9 Edw. 4, 26 a (Hale PC 628), relied on

[8796] — Ss. 375 and 377 — Grounds of dissolution under S. 10, Divorce Act, 1869 — Held, not discriminatory against husband — *As regards the ground of adultery and exchange of profession of Christianity, available to wife, she is in a more disadvantageous position — Ground of rape rightly made available to wife alone since the word 'rape' used in S. 10 has to be assigned the same meaning as defined in S. 375 of Penal Code i.e. forcible sexual intercourse by man with a woman and not vice versa — Though sodomy and bestiality can be committed by wife also, conferring those grounds to wife alone cannot be said to be discriminatory having regard to the weaker position of Indian women — Besides it is also open to the parties to marry under Special Marriage Act, but once having married under Divorce Act one cannot allege its disadvantages — Hence S. 10 not violative of Art. 14 — Divorce Act, 1869, S. 10*

There is no substance in the challenge by the petitioner-husband to the vires of the provisions of S. 10 as being discriminatory against the husband and, therefore, violative of Art. 14 of the Constitution.

As far as the ground of adultery is concerned, it is the husband who is in a favourable position as against the wife, since it is not enough for the wife to prove adultery simpliciter on the part of her husband. To that extent, undoubtedly, it is the wife who is discriminated against.

For the ground of exchange of profession of Christianity by husband, the wife has also to prove that the husband has married another woman. Since, however, the husband can seek dissolution of the marriage only on the ground of adultery, the husband is not at a disadvantage as against his wife because a mere marriage with another man whether after exchanging the profession of religion or not, would give a ground to the husband to seek dissolution of marriage. Thus even as far as this ground is concerned, it is the wife who is at a disadvantage.

The only other grounds unavailable to the husband are of rape, sodomy or bestiality. Although the modern usage of the word 'rape' extends also to the forcible sexual intercourse by a woman with a man, the dictionary meaning of the said word as well as the offence of rape as defined in the Indian Penal Code speak only of forcible sexual intercourse by a man with a woman. Therefore, the latter meaning of the said word has to be accepted while construing the provisions of the Act which is one of the vintage enactments on our statute book. Hence, it cannot be said that there is any discrimination between husband and wife because the ground of rape is not available to the husband for dissolving the marriage.

However, a woman can also be guilty of sodomy. So will be the position in the case of the offence of bestiality. The discrimination, therefore, can be alleged by the husband only on the basis that these two grounds, viz., sodomy and bestiality, are not available to him for claiming dissolution of his marriage whereas the same are available to the wife for the purpose. But taking into consideration the muscularly weaker physique of the woman, her general vulnerable physical and social condition and her defensive and non-aggressive nature and role particularly in this country, the legislature can hardly be faulted if the said two grounds are made available to the wife and not to the husband for seeking dissolution of the marriage. For the same reasons, it can hardly be said that on that account the provisions of S. 10 of the Act are discriminatory as against the husband.

Moreover, the individuals not willing to submit to the Indian Divorce Act or any other personal law are not obliged to marry exclusively under that law. They have the freedom to marry under the Special Marriage Act, 1954. Having, however, married under the Divorce Act and accepted its discipline, they cannot be heard to complain of its rigours, if any. *Anil Kumar Mahsi* v. *Union of India*, (1994) 5 SCC 704: (1994) 2 KLT 399.

Bench Strength **2**. Coram: **P.B. Sawant** and *Yogeshwar Dayal*, JJ. [Date of decision: 20-7-1994]

[8797] — S. 376 — Rape — Considering serious effects of, held, is a crime against basic human rights — *Is violative of victim's fundamental right under Art. 21 — So courts should deal with cases of sexual crime against women sternly and severely — Constitution of India — Art. 21*

Sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity — it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised Judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. In the present case, the accused who was a teacher gratified his animated passions and sexual pleasures by having carnal knowledge of his student, a girl of tender age. Such offenders are a menace to civilised society. (Paras 3 and 1). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[8798] — S. 376 — Rape — Considering serious effects of, held, is a crime against basic human rights — Is violative of victim's fundamental right under Art. 21 — So courts should deal with cases of sexual offence sternly and severely — *Constitution of India, Art. 21*

Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity — it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of fundamental rights, namely, the right to life contained in Article 21. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. (Para 1). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490: 1996 SCC (Cri) 133, relied on

[8799] — S. 376 — Rape — It is a crime against the entire society — *Plight of the rape victims in the present legal system despite making the rule of corroboration of prosecutrix not always necessary and introduction of S. 114-A in Evidence Act highlighted and reform suggested*

Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, namely, the Right to Life contained in Article 21. "Right to Life" does not merely mean animal existence but means something more, namely, the right to live with human dignity. Right to Life would, therefore, include all those aspects of life which go to make a life meaningful, complete and worth living. *Bodhisattwa Gautam* v. *Subhra Chakraborty*, (1996) 1 SCC 490: 1996 SCC (Cri) 133: AIR 1996 SC 922: (1996) 1 AndhLT (Cri) 252.

Bench Strength **2**. Coram: *Kuldip Singh* and **S. Saghir Ahmad**, JJ. [Date of decision: 15-12-1995]

Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608: 1981 SCC (Cri) 212; State of Maharashtra v. Chandrabhan Tale, (1983) 3 SCC 387: 1983 SCC (Cri) 667: 1983 SCC (L&S) 391; Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545; Delhi Transport Corpn. v. DTC Mazdoor Congress, 1991 Supp (1) SCC 600: 1991 SCC (L&S) 1213, relied on

[8800] — S. 376 — Rape — Meaning of, explained — *Legislative intent to curb the offence of rape with an iron hand, taken note of*

The offence of rape in its simplest term is "the ravishment of a woman, without her consent, by force, fear or fraud", or as "the carnal knowledge of a woman by force against her will". "Rape or raptus" is when a man hath carnal knowledge of a woman by force and against her will; or, as expressed more fully, "rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will". The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape. In the crime of rape, "carnal knowledge" means the penetration to any the slightest degree of the male organ of generation. It is violation, with violence, of the private person of a woman, an outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order. (Para 8)

"Rape" is defined in Section 375 IPC. Sections 375 and 376 IPC have been substantially changed by the Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act i.e. Sections 376-A, 376-B, 376-C and 376-D. The fast sweeping changes introduced reflect the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. (Para 9). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

Co. Litt. 123 b; 1 Hen. 6, 1a, 9 Edw. 4, 26 a (Hale P.C. 628), relied on

[8801] — S. 376 — Rape — Nature of crime — Considering serious effects and consequences of, held, is a crime against basic human rights — *Is violative of victim's fundamental right under Art. 21 — So court should deal with cases of sexual crime against women sternly and severely — Constitution of India, Art. 21*

Sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity-it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished fundamental right, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. (Para 6). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[8802] — S. 376 — Right to "life" under Art. 21 — Includes right to live with human dignity — Rape violates this right of women — *Right to life is recognised as a basic human right — It has to be read in consonance with Universal Declaration of Human Rights, 1948, Preamble and Arts. 1, 2, 3, 5, 7, 9, Declaration on the Elimination of Violence Against Women, Arts. 1, 2, 3 as also Declaration and Covenants of Civil and Political Rights and Covenants of Economic, Social and Cultural Rights to which India is a party having ratified them — However, this right has to be subject to such restrictions as may be imposed in the interest of the nation and security of the State — Primacy of interest of the nation and security of the State will have to be read into the Universal Declaration as also Art. 21 — Constitution of India, Arts. 21 and 51*

Our Constitution guarantees all the basic and fundamental human rights set out in the Universal Declaration of Human Rights, 1948, to its citizens and other persons. The chapter dealing with the fundamental rights is contained in Part III of the Constitution. The purpose of Part III is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties who, by virtue of their majority, may come to form the Government at the Centre or in the State. (Para 27)

The fundamental rights are available to all the "citizens" of the country but a few of them are also available to "persons". The word "LIFE" has also been used prominently in the Universal Declaration of Human Rights, 1948. The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the Declaration and the Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them. That being so, since "LIFE" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by the Supreme Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country. On this principle, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to "life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens. (Paras 28, 32 and 34)

However, the rights guaranteed under Part III of the Constitution are not absolute in terms. They are subject to reasonable restrictions and, therefore, in case of a non-citizen also, those rights will be available subject to such restrictions as may be imposed in the interest of the security of the State or other important considerations. Interest of the nation and security of the State is supreme. Since 1948 when the Universal Declaration was adopted till this day, there have been many changes — political, social and economic while terrorism has disturbed the global scenario. Primacy of the interest of the nation and the security of the State will have to be read into the Universal Declaration as also in every article dealing with fundamental rights, including Article 21. (Para 35). *Rly. Board* v. *Chandrima Das*, (2000) 2 SCC 465: AIR 2000 SC 988: 2000 Cri LJ 1473.

Bench Strength **2**. Coram: **S. Saghir Ahmad** and *R.P. Sethi*, JJ. [Date of decision: 28-1-2000]

Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490: 1996 SCC (Cri) 133, relied on

[8803] — Ss. 376, 375, 376-A, 376-B, 376-C and 376-D — Changes introduced in Ss. 375 and 376 and introduction of Ss. 376-A to 376-D by Criminal Law (Amendment) Act, 1983 — *Legislative intention evinced thereby — Held, said amendment which introduced sweeping changes reflects legislative intent to curb with an iron hand, the offence of rape which affects the dignity of woman — Constitution of India, Art. 21*

The offence of rape occurs in Chapter 16 IPC. It is an offence affecting the human body. In that chapter, there is a separate heading for "Sexual offences", which encompasses Sections 375, 376, 376-A, 376-B, 376-C and 376-D. "Rape" is defined in Section 375. Sections 375 and 376 have been substantially changed by the Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act i.e. Sections 376-A, 376-B, 376-C and 376-D. The fact that sweeping changes were introduced reflects the legislative intent to curb with an iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is "the ravishment of a woman, without her consent, by force, fear or fraud", or as "the carnal knowledge of a woman by force against her will". "Rape" or "raptus" is when a man hath carnal knowledge of a woman by force and against her will; or as expressed more fully, "rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will". The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape. In the crime of rape, "carnal knowledge" means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation — even slight penetration is sufficient and emission is unnecessary. It is violation with violence of the private person of a woman — an outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order. The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but a deep sense of some deathless shame. (Paras 7 and 8). *State of M.P.* v. *Munna Choubey*, (2005) 2 SCC 710: 2005 SCC (Cri) 559: AIR 2005 SC 682: 2005 Cri LJ 913.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 24-1-2005]

Followed in Mohan Anna Chavan v. State of Maharashtra, (2008) 7 SCC 561

[8804] — Ss. 376 to 376-D — Sexual offences — Name of the victim — *Held, should not be indicated in the judgments of the courts* (Para 4). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

State of Karnataka v. Puttaraja, (2004) 1 SCC 475: 2004 SCC (Cri) 300: (2003) 8 Supreme 364, relied on

[8805] — Ss. 376 to 376-D — Sexual offences — Name of the victim — Held, should not be indicated in the judgments of the courts (Para 3). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

State of Karnataka v. Puttaraja, (2004) 1 SCC 475, relied on

[8806] — Ss. 376 to 376-D — Sexual offences — Name of the victim — Indication of — *Held, should not be indicated in the judgments of the courts*

Section 228-A IPC makes disclosure of the identity of the victim of certain offences punishable. Printing or publishing the name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by the High Court or the Supreme Court. But keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of the Supreme Court, the High Court or lower court, the name of the victim should not be indicated. (Para 7). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

State of Karnataka v. Puttaraja, (2004) 1 SCC 475: 2004 SCC (Cri) 300, relied on

[8807] — Ss. 376 to 376-D — Sexual offences — Name of the victim, held, should not be indicated in the judgments (Para 2). *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551: AIR 2003 SC 4684.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

2. Abuse or misuse of rape laws

[8808] — Ss. 376 and 375 — Caution against false cases — Law summarised — *Held, a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix and her testimony should not be rejected on the basis of minor discrepancies and contradictions — Further held, absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor can be construed as evidence of consent, nor the opinion of a doctor that there was no evidence of any sexual intercourse or rape sufficient to disbelieve the victim — However, courts should, at the same time, bear in mind that false charges of rape are not uncommon, and there are some rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability — Whether there was rape or not would depend ultimately on the facts and circumstances of each case. Radhu* v. *State of M.P.*, (2007) 12 SCC 57: (2008) 2 SCC (Cri) 207: 2007 Cri LJ 4704.

Bench Strength **2**. Coram: **R.V. Raveendran** and *B. Sudershan Reddy*, JJ. [Date of decision: 14-9-2007]

3. Ingredients of rape

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(a) Broadly

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'A.4. Prior sexual history/conduct — Relevance, if any', below

[8809] — S. 376 — Casting stigma on the character of a victim of rape deprecated — Trial judge not justified in characterising a rape victim as a girl of loose character — *Court must use self-restraint while recording such finding even if the girl is found to be habituated to sexual intercourse — Evidence Act, 1872, S. 155(4). State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

[8810] — S. 376 — Character of reputation of the victim of rape — Not relevant for conviction and sentence under S. 376 — *Hence cannot serve as mitigating or extenuating circumstances for imposing sub-minimum sentence under proviso to S. 376(2) — Word 'conduct' of the prosecutrix used in the judgment under review was in lexicographical sense and not in the context of her character — No error apparent on the face of the record of the earlier judgment. State of Haryana* v. *Prem Chand*, (1990) 1 SCC 249: 1990 SCC (Cri) 93: AIR 1990 SC 538: 1990 Cri LJ 454.

Bench Strength **2**. Coram: *B.C. Ray* and *S. Ratnavel Pandian*, JJ. [Date of decision: 14-12-1989]

Prem Chand v. State of Haryana, 1989 Supp (1) SCC 286: 1989 SCC (Cri) 418, affirmed

(b) "Against her will" and "without her consent"

See also 'C.20.(c) Injuries on prosecutrix or absence thereof', below

[8811] — Ss. 375 and 90 — Rape — "Consent" — What is — *Consent implies exercise of a free and untrammelled right to forbid or withhold — It is always a voluntary and conscious acceptance of what is proposed to be done — An act of helplessness in the face of inevitable compulsions is not consent in law — Actual use of force not always necessary — A threat of use of force is sufficient — Prosecutrix has deposed that sickle in her hand had fallen down out of fear — She had given teeth bites and broken buttons of shirt of appellant in order to rescue herself from his clutches — She raised a hue and cry — Her brother who was at some distance, came to the spot — She stood test of cross-examination with reasonable certainty — Held, there was no consent on her part — Appellant's plea of consent was rightly rejected* (Paras 30 to 36)

It can be held that a woman has given consent only if she has freely agreed to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to, it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former. An act of helplessness in the face of inevitable compulsions is not consent in law. More so, it is not necessary that there should be actual use of force. A threat of use of force is sufficient. (Para 30)

The concept of "consent" in the context of Section 375 IPC has to be understood differently, keeping in mind the provision of Section 90 IPC, according to which a consent given under fear/coercion or misconception/mistake of fact is not a consent at all. Scheme of Section 90 IPC is couched in negative terminology. Consent is different from submission. (Para 31). *Satpal Singh* v. *State of Haryana*, (2010) 8 SCC 714: (2010) 3 SCC (Cri) 1081: (2010) 93 AIC 50 (SC): 2010 Cri LJ 4283.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-7-2010]

Uday v. State of Karnataka, (2003) 4 SCC 46: 2003 SCC (Cri) 775; Deelip Singh v. State of Bihar, (2005) 1 SCC 88: 2005 SCC (Cri) 253; Yedla Srinivasa Rao v. State of A.P., (2006) 11 SCC 615: (2007) 1 SCC (Cri) 557; State of H.P. v. Mange Ram, (2000) 7 SCC 224: 2000 SCC (Cri) 1331, relied on

[8812] — Ss. 375 and 90 — Word "consent" in context of S. 375 — Concept of, discussed (Paras 16 to 21). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

Holman v. R., 1970 WAR 2; State of H.P. v. Mango Ram, (2000) 7 SCC 224: 2000 SCC (Cri) 1331; Uday v. State of Karnataka, (2003) 4 SCC 46: 2003 SCC (Cri) 775, relied on

Jowitt's Dictionary of English Law (2nd Edn.), Vol. 1 (1977), p. 422; Stroud's Judicial Dictionary (4th Edn.), Vol. 1 (1971), p. 555; Words and Phrases, Permanent Edition (Vol. 8A), pp. 205-06, relied on

[8813] — Ss. 375 & 90 and 376 — Rape — "Consent" — Voluntary consent or consent under misconception of fact — Determination of — *Consent given by the prosecutrix to sexual intercourse with accused-appellant, with whom she was deeply in love, on a promise that he would marry her on a later date — Prosecutrix continuing to meet accused and often having sexual intercourse and becoming pregnant — Complaint lodged on failure of appellant to marry her — In such case, held, the consent cannot be said to be given under a misconception of fact — A false promise is not a fact within the meaning of the Penal Code — For deter-*

mining whether consent given by the prosecutrix was voluntary or under a misconception of fact, held, there is no straitjacket formula and each case has to be decided considering the evidence and surrounding circumstances of that case — Where (i) the prosecutrix (aged 19 years on the date of occurrence) had sufficient intelligence to understand the significance and moral quality of the act she was consenting to, (ii) she was conscious of the fact that her marriage with the appellant was difficult on account of caste considerations, (iii) it was difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise, and (iv) there was no evidence to prove conclusively that the appellant never intended to marry the prosecutrix, held, appellant's conviction and sentence under S. 376 IPC was liable to be set aside — Question as to whether in a case of rape the misconception of fact must be confined to the circumstances falling under S. 375 fourthly and fifthly, or whether consent given under misconception of fact contemplated by S. 90 has a wider application so as to include circumstances not enumerated in S. 375, held, not necessary to be considered herein

There is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. The tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. The court must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them. (Para 21)

The consensus of judicial opinion is in favour of the view that consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. The circumstances show that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact. (Paras 21 and 23)

Further, there is no evidence to prove conclusively that the appellant never intended to marry her. Perhaps he wanted to, but was not able to gather enough courage to disclose his intention to his family members for fear of strong opposition from them. Even the prosecutrix stated that she had full faith in him. It appears that the matter got complicated on account of the prosecutrix becoming pregnant. Therefore, on account of the resultant pressure of the prosecutrix and her brother the appellant distanced himself from her. (Para 24)

That apart, in a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. But in the instant case, there is doubt that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant because the prosecutrix knew that her marriage with the appellant was difficult on account of caste considerations. Further, there is no evidence to prove that the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. (Para 25)

The prosecutrix and the appellant were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant

3.(b) "Against her will" and "without her consent" *(contd.)*

also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. (Para 25)

In view of the above findings, it is not necessary to consider the question as to whether in a case of rape the misconception of fact must be confined to the circumstances falling under Section 375 fourthly and fifthly, or whether consent given under a misconception of fact contemplated by Section 90 has a wider application so as to include circumstances not enumerated in Section 375 IPC. (Para 26). *Uday* v. *State of Karnataka*, (2003) 4 SCC 46: 2003 SCC (Cri) 775: AIR 2003 SC 1639: 2003 Cri LJ 1539.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 19-2-2003]

Words and Phrases, Permanent Edition, Vol. 8A, at p. 205; Stroud's Judicial Dictionary (5th Edn.), p. 510, referred to

Holman v. R., 1970 WAR 2; R. v. Olugboja, (1981) 3 WLR 585: (1981) 3 All ER 443: 1982 QB 320 (CA); R. v. Clarence, (1888) 22 QBD 23: (1886-90) All ER Rep 133: 58 LJMC 10; People v. Perry, 26 Cal App 143; State of H.P. v. Mango Ram, (2000) 7 SCC 224: 2000 SCC (Cri) 1331, relied on

Rao Harnarain Singh Sheoji Singh v. State, AIR 1958 Punj 123: 1958 Cri LJ 563: 59 Punj LR 519; Vijayan Pillai v. State of Kerala, (1989) 2 Ker LJ 234; Anthony, In re, AIR 1960 Mad 308: 1960 Cri LJ 927; Arjan Ram Naurata Ram v. State, AIR 1960 Punj 303: 1960 Cri LJ 849; Gopi Shanker v. State of Rajasthan, AIR 1967 Raj 159: 1967 Cri LJ 922; Bhimrao Harnooji Wanjari v. State of Maharashtra, 1975 Mah LJ 660; Jayanti Rani Panda v. State of W.B., 1984 Cri LJ 1535: (1983) 2 CHN 290 (Cal); Hari Majhi v. State, 1990 Cri LJ 650 (Cal); Abhoy Pradhan v. State of W.B., 1999 Cri LJ 3534: (1999) 3 Crimes 359 (Cal); State of Karnataka v. Anthonidas, ILR 2000 Kar 266; Nilambar Goudo v. State, 1982 Cri LJ NOC 172 (Ori); Mir Wali Mohd. v. State of Bihar, 1990 BBCJ 530, approved

Saleha Khatoon v. State of Bihar, 1989 Cri LJ 202: 1988 BLJR 678 (Pat), explained and distinguished

Jowitt's Dictionary of English Law, IInd Edn., Vol. 1, cited

[8814] — Ss. 375 & 376 — Rape — Consent of prosecutrix — What amounts to — Submission of body under fear of terror does not amount to consent — *Whether there was resistance by the prosecutrix, held, depends upon relevant circumstances — Absence of marks of violence on the body of prosecutrix as well as accused not of much significance when accused was examined three days after the incident — On facts and in the circumstances, held, prosecutrix had resisted the onslaught of the accused and there was no consent on her part*

The verdict of not guilty had been entered by the Sessions Judge mainly based on two grounds that the prosecutrix was aged above sixteen years and if at all there was any sexual act, it must have been with her consent. Both these findings are erroneous and incorrect. (Para 11)

Even if it is assumed that the prosecutrix was above 16 years, the reasons attributed by the Sessions Judge to prove that she had given consent to the sexual act are not true. The accused was examined on 20-4-1993. As the incident occurred on 17-4-1993, even if there were any marks of violence on the body of the accused, the same would have been obliterated and were not so prominent so as to be noticed by the Medical Officer who examined him. Therefore, the absence of nail marks or minor injuries on the body of the accused is of not much significance. From the oral evidence of the prosecutrix it is proved that the accused caught her from behind and he lifted her and pushed her down and despite her attempt to cover herself with the salwar, the accused pulled it down. She also stated that the accused gagged her mouth when she attempted to cry aloud. The subsequent conduct of the prosecutrix also shows that she was very much resistant to the sexual onslaught on her. She came to her father immediately and told the entire incident as to how she was ravished by the accused. The evidence as a whole indicates that there was resistance by the prosecutrix and there was no voluntary participation by her in the sexual act. Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances. From the evidence on record, it cannot be said that the prosecutrix had given consent and thereafter she turned round and acted against the interest of the accused. There is clear credible evidence that she resisted the onslaught and made all possible efforts to prevent the accused from committing rape on her. (Para 13). *State of H.P.* v. *Mango Ram*, (2000) 7 SCC 224: 2000 SCC (Cri) 1331: AIR 2000 SC 2798.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, *C.J.* and *R.C. Lahoti* and **K.G. Balakrishnan**, JJ. [Date of decision: 24-8-2000]

[8815] — Ss. 375 and 376 — Rape — Conviction under — Sustainability — *On facts, there was absolutely no evidence to suggest that sexual intercourse was committed by the appellant-accused without consent of victim or against her will — Injuries present on person of victim did not indicate any attempt to rape or the commission of rape — Also, no attempt was made to have the appellant medically examined to ascertain his capacity to perform sexual intercourse — Therefore, held, appellant's conviction under S. 376 cannot be sustained*

Considering the question of conviction under Section 376 IPC, it is found from the medical evidence and from the chemical examiner's reports that the vaginal swab and clothes taken from the dead body did indicate the presence of semen. There is however absolutely no evidence to suggest (even assuming that the intercourse had been committed by the appellant) that he had done so without consent of *M* or against her will. Some suspicions of rape could perhaps have been raised had some tell-tale injuries been detected on person of *M* but it is found that the two injuries other than the gunshot wounds i.e. Injury 3 being on the left pinna and Injury 4 an abrasion near the right eye do not indicate any attempt to rape or the commission of rape. It is also significant that the investigators had made no attempt whatsoever to have the appellant medically examined to ascertain his capacity to perform sexual intercourse. The State counsel relying on the statement of PW 14, the inspector, has however submitted that the examination had not been possible as the appellant had received a very serious gunshot injury and was hanging between life and death. The submission of the counsel that an examination could not have been carried out immediately is agreed to, but there is no justification in the omission of the prosecution to have him examined after he had recovered his health and been discharged from hospital. Even assuming for a moment that sexual intercourse between the two had indeed taken place it cannot be said from the evidence that it was without the consent or against the wishes of *M*. Therefore, appellant's conviction under Section 376 IPC cannot be sustained. (Para 9). *Ujjagar Singh* v. *State of Punjab*, (2007) 13 SCC 90: 2008 Cri LJ 808.

Bench Strength **2**. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 13-12-2007]

[8816] — Ss. 375 and 376 — Rape — Testimony of prosecutrix — Alleged relationship between prosecutrix and accused — Reliability of testimony of prosecutrix in case of — *High Court holding that on evidence showing that there were relations between accused and prosecutrix, it was very difficult to rely upon testimony of prosecutrix and therefor acquitting accused — Unsustainability — Held, the High Court's approach is improper — Trial court has held that alleged relationship between prosecutrix and accused was of no consequence, particularly having regard to manner in which entire incident took place — Matter remanded for fresh consideration to High Court* (Paras 3 and 4). *State of Rajasthan* v. *Bhanwar Singh*, (2006) 6 SCC 9: (2006) 3 SCC (Cri) 9.

Bench Strength **2**. Coram: *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision: 2-5-2006]

[8817] — Ss. 375 and 376 — Rape of a minor — Appreciation of medical evidence — *No semen detected on person or clothes of prosecutrix, but hymen found absent — Injuries detected on her private parts despite passage of a long time — Inference of partial/incomplete penetration — Offence of rape if made out — Effect of discrepancies in evidence of prosecutrix — Appellant alleged to have gagged mouth of prosecutrix aged about 11 years, and sexually assaulted her — On hearing her aunt's (PW 5) voice, accused fleeing away — No semen detected on any of the exhibits sent to chemical examiner — However, hymen found absent — Prosecutrix medically examined after a long time — Despite long passage of time (about 80 hours) injuries found on her private parts — Though the doctor failing to state specifically anything as regards actual intercourse, she testifying that there had been attempt to commit rape — PW 5 had detected the accused committing the offence, and he had fled away on hearing her voice — Thus, the act was incomplete — Evidence of PW 5 was found reliable by courts below — Hence, held, conclusion of High Court that absence of hymen clearly indicated that there was penetration, or that penetration may have been partial with no emission of semen, calls for no interference — Medical evidence in such cases needs to be appreciated in context of ocular evidence and other circumstances surrounding thereto — Discrepancies in evidence of prosecutrix also inconsequential, because she was a minor — Besides, there was time gap between occurrence and examination of witnesses — Hence, lapse of some memory on part of child witness possible — Delay in lodging FIR was also a natural phenomenon in rape cases — Conviction of appellant under S. 376, sustainable — CrPC, 1973, S. 154* (Paras 10, 14, 17 to 21). *Satyapal* v. *State of Haryana*, (2009) 6 SCC 635: (2009) 3 SCC (Cri) 108: AIR 2009 SC 2190: (2009) 77 AIC 66 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-4-2009]

3.(b) "Against her will" and "without her consent" *(contd.)*

Satyapal v. State of Haryana, 2007 Cri LJ 2095 (P&H), affirmed

Modi's Medical Jurisprudence, 23rd Edn., at pp. 897 and 928, relied on

[8818] — Ss. 375, 376 and 366 — Rape — Consent — Absence of injuries — Inference — Appreciation of evidence — *Victim suffering from throat pain — Appellant-accused, by misrepresenting victim to take her to doctor, instead took her to different places — After it grew dark, appellant took her to a lonely place and committed forcible sexual intercourse with her — Appellant contending that act committed with consent of victim — Tenability — Held, categorical, clear and unequivocal deposition of victim that appellant-accused committed forcible sexual intercourse with her — Circumstances pointed out by accused neither individually nor collectively leading to any plausible inference that sexual intercourse by him was done with victim's tacit consent — Circumstances pointed out by accused neither sufficient nor justify discarding of evidence of victim — Nothing on record creating any doubt/disbelief or suspicion about evidence of victim — Her allegation in cross-examination that accused had threatened her with a dagger not mentioned in FIR or in S. 161 CrPC statement does not render her evidence unreliable — Moreover, in such circumstances, victim not expected to put any resistance lest to endanger her life — Therefore, absence of injuries on person of victim does not lead to an inference that she consented for sexual intercourse with accused — Hence, no interference with the conviction called for*

It admits of no doubt that the accused had sexual intercourse with the prosecutrix on the date and place of occurrence. The core area of debate is whether such act was committed with the consent of the prosecutrix or not. (Para 9)

The prosecutrix in her deposition has been categorical, clear and unequivocal that the accused committed forcible sexual intercourse with her. It is true that in her cross-examination she stated that the accused had threatened her with a dagger before Jablu when she refused to go with him and this aspect was neither stated in her statement under Section 161 CrPC nor in the FIR but does this contradiction make her evidence unreliable. (Para 10)

The circumstances which have been pointed out by the accused neither individually nor collectively lead to any plausible inference that the sexual intercourse with the prosecutrix by the accused was done with her tacit consent and the circumstances pointed out are neither sufficient nor do they justify discarding the evidence of the prosecutrix. There is nothing on record that creates any doubt/disbelief or a suspicion about the evidence of the prosecutrix. In a case, such as this, where the prosecutrix was misrepresented by the accused that he would show her to his cousin (a doctor) as she was suffering from some throat pain and she accompanied him but the accused took her to other places and when it became dark, took her to a lonely place and committed sexual intercourse, the prosecutrix was not expected to put any resistance lest her life would have been in danger. In the facts and circumstances, the absence of injuries on the person of the prosecutrix does not lead to an inference that she consented for sexual intercourse with the accused. The young girl became victim of lust of the accused who was more than double her age and yielded to sexual intercourse against her will. (Paras 11 and 20)

The judgment of the High Court affirming the judgment of the trial court convicting the accused under Sections 366 and 376 IPC does not suffer from any legal flaw. The sentence awarded to the appellant does not call for any interference. The appeal having no merit must fail. (Para 21). *Rajinder* v. *State of H.P.*, (2009) 16 SCC 69: (2010) 2 SCC (Cri) 156: AIR 2009 SC 3022: 2009 Cri LJ 4133: (2009) 80 AIC 165 (SC).

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **R.M. Lodha, JJ.** [Date of decision: 7-7-2009]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, followed

Pratap Misra v. State of Orissa, (1977) 3 SCC 41: 1977 SCC (Cri) 447; Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92: (2007) 1 SCC (Cri) 161; Narayan v. State of Rajasthan, (2007) 6 SCC 465: (2007) 3 SCC (Cri) 198; Radhu v. State of M.P., (2007) 12 SCC 57: (2008) 2 SCC (Cri) 207, distinguished

[8819] — Ss. 375 & 376 and 417 — Rape — Consent — Inference regarding — Prosecutrix admitting absence of a major injury — Effect — Promise of marriage to secure consent before rape — Offence of cheating if made out — Corroboration of testimony of prosecutrix — *Offence committed on three/four different occasions — First forcibly, when prosecutrix declined to marry appellant-accused — Later, on appellant promising to marry prosecutrix — Report by prosecutrix to family members and police only after appellant refused to marry her — On refusal by police to lodge FIR, prosecutrix filing petition under S. 154(3) CrPC — Appellant convicted by trial court under Ss. 376 and 417 IPC — Held, no inference of consent of prosecutrix can be drawn —*

Consistent version of prosecutrix against accused was acceptable — Evidence of prosecution witnesses had also remained unchallenged — There was no suggestion as to any love affair between the two — Also no reason to falsely implicate appellant — Considering that medical examination of prosecutrix was held six months after the incident and medical officer had confirmed the sexual intercourse, absence of a major injury, held, lost its significance — Appellant's conviction upheld under S. 376 — However, further held, promise of marriage on which prosecutrix had succumbed, did not amount to cheating by itself — Conviction under S. 417, quashed (Paras 12 to 14, 22, 23 and 26)

The evidence about the cheating is of slipshod nature and not believable. It is also self-effacing. After all, the first act of the sexual intercourse was without the consent and the accused had thereby committed rape. However, the version that he gave a marriage promise would really go against the prosecution whereby it would mean that the subsequent acts were done with the consent of the girl on account of the promise of marriage. But this can not be the approach. If the promise of marriage was given and the girl had succumbed on that account, this by itself may not amount to cheating. Besides this, the girl has very specifically stated that even subsequently she was ravished against her wishes. Therefore, the theory of promise of marriage and the consent for sexual intercourse will wither away. The accused is therefore acquitted of the offence under Section 417 IPC. (Para 26). *Zindar Ali Sheikh* v. *State of W.B.*, (2009) 3 SCC 761: (2009) 2 SCC (Cri) 737: AIR 2009 SC 1467: 2009 Cri LJ 1324: (2009) 2 CHN 19 (SC): (2009) 1 ECrN 941 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 6-2-2009]

[8820] — S. 375 Firstly — Rape — "Against her will" — Meaning — Evidence of prosecutrix not reliable — *Held on facts, sexual intercourse against her will not made out*

The expression "against the will" seems to connote that the offending act was done despite resistance and opposition of the woman. In this case the prosecutrix deposed that the first sexual intercourse took place against her will, though she became a consenting party later on in view of the accused's promise to marry her. But if the rape was committed by the accused much against her will, she would not have volunteered to submit to his wish subsequent to the alleged first incident of rape. She admitted that the accused used to talk to her for hours together and that was within the knowledge of her parents and brother. This statement also casts an element of doubt on her version that she was subjected to sexual intercourse in spite of her resistance. Above all, the version given by her in the court is at variance with the version set out in the FIR. She categorically stated in the first information report that she "surrendered before him" in view of his repeated promises to marry. In short, her version about the first incident of rape bristles with improbabilities, improvements and exaggerations. It is a different matter that she became a consenting party under the impact of his promise to marry her. But so far as the first clause of Section 375 is concerned, it is not safe to lend credence to the version of the prosecutrix that she was subjected to rape against her will in the first instance even before the appellant held out the promise to marry. (Paras 12 and 13). *Deelip Singh* v. *State of Bihar*, (2005) 1 SCC 88: 2005 SCC (Cri) 253: AIR 2005 SC 203: (2005) 2 Mah LJ 147.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 3-11-2004]

[8821] — S. 375 Firstly & Secondly — Rape — Expressions "against her will" and "without her consent" in S. 375 Firstly and Secondly, respectively — Meaning of — *Held, expressions "against her will" and "without her consent" may overlap sometimes, but said two expressions have different connotation and dimension — Expression "against her will" would ordinarily mean that intercourse was done by a man with a woman despite her resistance and opposition — Whereas, expression "without her consent" would comprehend an act of reason accompanied by deliberation* (Para 15). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

Holman v. R., 1970 WAR 2; State of H.P. v. Mango Ram, (2000) 7 SCC 224: 2000 SCC (Cri) 1331; Uday v. State of Karnataka, (2003) 4 SCC 46: 2003 SCC (Cri) 775, relied on

Jowitt's Dictionary of English Law (2nd Edn.), Vol. 1 (1977), p. 422; Stroud's Judicial Dictionary (4th Edn.), Vol. 1 (1971), p. 555; Words and Phrases, Permanent Edition (Vol. 8A), pp. 205-06, relied on

[8822] — Ss. 375 Secondly and 90 — Rape — "Without her consent" — Meaning — Consent as explained under S. 90 relevant — *"Consent" compared with "will" and "submission" — Consent given by a woman believing the man's promise to marry her would fall within the expression "without her consent" only if it is established that from the very inception the man never really intended to marry her and the promise was a mere hoax —*

3.(b) "Against her will" and "without her consent" *(contd.)*

Nature of consent — Questions relevant for determining — Burden on prosecution to prove absence of consent from attendant circumstances — Evidence should be scanned carefully — Past, contemporaneous and subsequent conduct are relevant — On facts, held, prosecutrix had taken a conscious decision to participate in the sexual act only on being impressed by the accused's promise to marry her — But accused's promise was not false from its inception with the intention to seduce her to sexual act — Hence cl. secondly of S. 375 not established — Instead, accused committed breach of promise for which he would be liable for damages under civil law

A girl lodged a complaint on 29-11-1988 to the police stating that she and the accused-appellant were neighbours. They fell in love with each other and one day in February 1988, the accused forcibly raped her and later consoled her saying that he would marry her, that she succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter the intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl but the accused avoided marrying her and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed and therefore she was constrained to file the complaint after waiting for some time. The victim girl was sent for medical examination. The medical officer of the hospital gave the opinion, on the basis of his own examination and the examination of the dental surgeon and the x-rays taken by the radiologist that her age was between 16 and 17 years. The trial court accepted the prosecution case in this regard and found that the girl was aged less than 16 years at the relevant point of time. The High Court affirmed this finding. The trial court also recorded an alternative finding that she was forcibly raped on the first occasion and after that incident the accused went on making false promises to marry her. It was therefore held that either there was no consent or the consent was involuntary. Thus, according to the trial court, it was a case of having sexual intercourse against the will of the victim girl or without her consent. If so, irrespective of the age of the girl, the offence is deemed to be committed. As regards this latter aspect the High Court did not enter into any discussion. Accordingly, the appellant was convicted under Section 376 IPC. The trial court sentenced him to 10 years' RI but the High Court modified the sentence to 7 years' RI.

Allowing the accused's appeal,

Held :

The question is: What is the meaning and content of the expression "without her consent" in Section 375 secondly IPC? Whether the consent given by a woman believing the man's promise to marry her is a consent which excludes the offence of rape? (Para 15)

Though will and consent often interlace and an act done against the will of a person can be said to be an act done without consent, the Indian Penal Code categorises these two expressions under separate heads in order to be as comprehensive as possible. Further, it is not easy to find a dividing line between submission and consent except in the situation contemplated by clause fifthly of Section 375 IPC. Yet, the evidence has to be carefully scanned. The ultimate conclusion depends on the facts of each case. (Paras 15, 14, 33 and 16)

Section 90 cannot, however, be construed as an exhaustive definition of consent for the purposes of the Indian Penal Code. The normal connotation and concept of "consent" is not intended to be excluded. Various decisions of the High Court and of the Supreme Court have not merely gone by the language of Section 90, but travelled a wider field, guided by the etymology of the word "consent". (Para 20)

The decision of the Madras High Court in *N. Jaladu case*, ILR (1913) 36 Mad 453 is an authority for the proposition that a misrepresentation as regards the intention of the person seeking consent i.e. the accused, could give rise to the misconception of fact. Applying that principle to a case arising under Section 375 IPC, consent given pursuant to a false representation that the accused intends to marry, could be regarded as consent given under misconception of fact. But a promise to marry without anything more will not give rise to "misconception of fact" within the meaning of Section 90 IPC. A representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause secondly IPC. (Paras 26 and 28)

As regards the factual aspect of the present case related to consent questions pertinent are: Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in? Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her? These are the questions which have to be answered on an analysis of the evidence. The last question raises the allied question, whether the promise to marry, if made by the accused, was false to his knowledge and belief from the very inception and it was never intended to be acted upon by him. The burden is on the prosecution to prove that there was absence of consent. Of course, the position is different if the case is covered by Section 114-A of the Evidence Act. Consent or absence of it could be gathered from the attendant circumstances. The previous or contemporaneous acts or the subsequent conduct can be legitimate guides. Whether on the basis of the evidence adduced by the prosecution, it is reasonably possible to infer the lack of consent on the part of the prosecutrix is the ultimate point to be decided. (Paras 30 and 31)

In the present case, apart from the evidence of the prosecutrix, there is no other evidence which could throw light on the point in issue. First of all, there was no forcible sexual indulgence in this case. It is clear from the evidence of the prosecutrix that the predominant reason which weighed with her in agreeing for sexual intimacy with the accused was the hope generated in her of the prospect of marriage with the accused. That she came to the decision to have a sexual affair only after being convinced that the accused would marry her, is quite clear from her evidence which is in tune with her earliest version in the first information report. There is nothing in her evidence to demonstrate that without any scope for deliberation, she succumbed to the psychological pressure exerted or allurements made by the accused in a weak moment. Nor does her evidence indicate that she was incapable of understanding the nature and implications of the act which she consented to. On the other hand, the scrutiny of evidence of the prosecutrix gives a contra-indication. She was fully aware of the moral quality of the act and the inherent risk involved and that she considered the pros and cons of the act. The prospect of the marriage proposal not materialising had also entered her mind. Thus, her own evidence reveals that she took a conscious decision after active application of mind to the things that were happening. (Paras 33 and 34)

The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. The accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. The prosecutrix was also too keen to marry him as she said so specifically. But there is no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of the prosecutrix that "later on" the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry for which the accused is prima facie accountable for damages under civil law. Therefore, conviction and sentence under Section 376 IPC against the accused-appellant is liable to be set aside. (Paras 35 to 38). *Deelip Singh* v. *State of Bihar,* (2005) 1 SCC 88: 2005 SCC (Cri) 253: AIR 2005 SC 203: (2005) 2 Mah LJ 147.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 3-11-2004]

N. Jaladu, Re, ILR (1913) 36 Mad 453: 15 Cri LJ 24; Parshottam Mahadev v. State, AIR 1963 Bom 74: (1963) 1 Cri LJ 573; Jayanti Rani Panda v. State of W.B., 1984 Cri LJ 1535: (1983) 2 CHN 290 (Cal); approved

Uday v. State of Karnataka, (2003) 4 SCC 46: 2003 SCC (Cri) 775, relied on

[8823] — Ss. 375 Secondly & 90 and 376 — Rape — "Consent" — Value of, when obtained under misconception playing a fraud — *Consent of a girl of tender age (about 16 years) obtained by accused by making a false promise to marry her which he never intended to fulfil — Invoking S. 90 IPC, held, such fraudulent consent cannot be said to be a consent so as to condone the offence of accused — Said consent was of no consequence — Act in question fell in second category as enumerated in S. 375 (sexual intercourse without consent of victim) — Hence, conviction and sentence of accused under S. 376, held, was justified — Evidence Act, 1872, S. 114-A*

3.(b) "Against her will" and "without her consent" *(contd.)*

The prosecutrix after the death of her father was living with her elder sister. During the daytime the prosecutrix used to remain alone. The accused used to come to her sister's house in between 11 a.m. and 12 noon daily. He had been asking the prosecutrix for sexual intercourse with him. The prosecutrix refused to participate in the said act but the accused kept on persisting and persuading her. The prosecutrix resisted for about three months. But one day the accused came to her sister's house at about 12 noon and closed the doors and committed sexual intercourse with her forcibly, without her consent and against her will. When the prosecutrix asked the accused as to why he spoiled her life he gave assurance that he would marry her and asked her not to cry. On the basis of the assurance given by the accused this process of sexual intercourse continued. This state of affairs was not disclosed by the prosecutrix to her sister. When she became pregnant she informed about the pregnancy to the accused. The accused got certain tablets for abortion but they did not work. When the prosecutrix was in the third month of pregnancy, she again insisted for the marriage but the accused answered that his parents were not agreeing. Thereafter, the prosecutrix informed about the said situation to her sister and brother-in-law who asked the accused to marry her. The accused informed that he would not marry the prosecutrix. The said issue was raised before the Panchayat of elders. The accused and his father both attended the Panchayat and the accused admitted his guilt. He asked for two days' time for marrying the prosecutrix and the Panchayat accordingly granted time. But after the Panchayat meeting the accused absconded from the village and when he did not fulfil his promise which was made before the Panchayat, an FIR was lodged against him.

The trial court acquitted the accused, but the High Court convicted him under Sections 376 and 417 IPC. Hence, the present appeals.

Dismissing the appeals,

Held :

A consent obtained by misconception while playing a fraud is not a consent. (Para 10)

In the instant case, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuading the girl to believe that he is going to marry her and obtaining her consent for the sexual intercourse under total misconception, cannot be treated to be a consent. Such fraudulent consent cannot be said to be a consent so as to condone the offence of the accused. (Paras 10 and 17)

If it is a fully grown-up girl who gave the consent then it would have been a different case but a girl whose age is very tender was giving a consent after persuasion of three months on the promise that the accused will marry her which he never intended to fulfil right from the beginning which is apparent from the conduct of the accused, Section 90 can be invoked. The consent of the victim in this case is of no consequence and falls in the second category as enumerated in Section 375 — "without her consent". (Para 10)

Therefore, the conviction and sentence awarded to the appellant is correct and no case is made out for interference. (Para 17). *Yedla Srinivasa Rao* v. *State of A.P.*, (2006) 11 SCC 615.

Bench Strength **2**. Coram: **A.K. Mathur** and *Altamas Kabir*, JJ. [Date of decision: 29-9-2006]

Jayanti Rani Panda v. State of W.B., 1984 Cri LJ 1535 (Cal); Deelip Singh v. State of Bihar, (2005) 1 SCC 88: 2005 SCC (Cri) 253; Uday v. State of Karnataka, (2003) 4 SCC 46: 2003 SCC (Cri) 775, distinguished on facts

Emperor v. Soma, (1917) 18 Cri LJ 18: 36 IC 850; R. v. Williams, (1850) 4 Cox CC 220 (CCR); R. v. Flattery, (1877) 2 QBD 410: 46 LJMC 130: 36 LT 32 (CCR); R. v. Williams, (1923) 1 KB 340: 1922 All ER Rep 433 (CCA), relied on

[8824] — Ss. 375 Secondly and 376 — Consent — *Held, prosecutrix having married the accused, her consent can well be presumed even for sexual acts prior to the marriage. State of A.P.* v. *P. Narasimha*, (1994) 4 SCC 453: 1994 SCC (Cri) 1180.

Bench Strength **2**. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 29-4-1994]

[8825] — Ss. 375 Secondly and 376 — Rape — Consent of prosecutrix — Inference from her conduct — *Prosecutrix keeping quiet for six days and telling about the incident to her mother when she allegedly got pain in her private parts — Story of her getting pain in her private parts found to be unreliable in view of medical evidence — Accused a bachelor and an attractive catch for girls to be bonded in matrimony — Circumstances showing that meeting between the prosecutrix and the accused was arranged with their consent — After the sexual act the prosecutrix going to the dance performance rather than go to her parents and inform them of the crime — Held, in the circumstances of the case, testimony of the prosecutrix not reliable — Accused entitled to the benefit of doubt*

— However, fine of Rs 4000 imposed by the High Court if not paid need not be paid — But if fine paid and is lying in the court it be directed to be paid to the prosecutrix as a presumptive gift of the appellant to her — In case it stands paid, the prosecutrix is allowed to retain it and the State can appropriate Rs 1000 as costs of the prosecution (Paras 5 to 7). *Jagannivasan* v. *State of Kerala*, 1995 Supp (3) SCC 204: 1995 SCC (Cri) 826: 1995 Cri LJ 3229.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 9-3-1995]

[8826] — S. 375 Thirdly — Rape by a policeman in police station — *Onus on the prosecution to establish ingredients of the offence — Passive consent or submission out of fear by the prosecutrix — Circumstantial evidence regarding — Held, offence not established — Charge against companion policeman under S. 354 for fondling the private parts of the prosecutrix also fails*

The onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It was, therefore, incumbent on it to make out that all the ingredients of S. 375 were present in the case. For the proposition that the requisite consent was lacking in the present case reliance on behalf of the State can be placed only on clause Thirdly so that it would have to be shown that the girl had been put in fear of death or hurt and that that was the reason for her consent. In the absence of such a finding, the alleged fear would not vitiate the consent. Further, for circumstantial evidence to be used in order to prove an ingredient of an offence, it has to be such that it leads to no reasonable inference other than that of guilt. The fear which clause Thirdly of S. 375 speaks of is negatived by the circumstance that the girl is said to have been taken away by the accused policeman right from amongst her near and dear ones at a point of time when they were all leaving the police station together and were crossing the entrance gate. The circumstantial evidence available, therefore, is not only capable of being construed in a way different from that adopted by the High Court but actually derogates in no uncertain measure from the inference drawn by it.

Moreover, no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false. It is further clear that the averments on the part of the girl that she had been shouting loudly for help are untrue.

Thus the sexual intercourse in question is not proved to amount to rape and no offence is brought home to the appellant.

As regards another policeman who was alleged to have fondled the private parts of the girl, the girl's version could not be believed in view of the shifting positions taken by her in this regard. Further the circumstance that this policeman was present at the time of occurrence is not inculpatory and is capable of more explanations than one. *Tukaram* v. *State of Maharashtra*, (1979) 2 SCC 143: 1979 SCC (Cri) 381: AIR 1979 SC 185: 1978 Cri LJ 1864: (1979) 16 ACC 7.

Bench Strength **3**. Coram: *Jaswant Singh, P.S. Kailasam* and **A.D. Koshal**, JJ. [Date of decision: 15-9-1978]

See comments at (1974) 4 SCC (Jour) 17

[8827] — Ss. 375 Thirdly, 376/34 & 342/34 — Rape — Consent — Duress — Rape of rustic woman by police constable and his accomplice — Involuntary surrender of victim obtained by threat to use force, instead of actual use of force, given by police constable in uniform to the effect that she and her husband would be put in police remand and subjected to third degree treatment *— Victim not shown to be a prostitute — In the circumstances non-resistance of victim to the rape would not show her consent to the act — Accuseds' total denial of the charge without indicating any animus or motive of the PWs to falsely implicate them also corroborating the prosecution case — In the circumstances held, offence of rape established on the basis of evidence of the victim, her husband and another police constable on whose suggestion FIR had been lodged*

In connection with the Ganapati festival in the village concerned, an idol of Ganapati was installed in the courtyard of respondent 2, a businessman. Respondent 1, a police constable was deputed to the village for bandobast duty at the time of Ganapati festival. PW 1, the victim and PW 2 her husband, were poor rustic village labourers. In the middle of night of the occurrence, PW 2 was called by respondent 1 through respondent 2 and he was beaten by respondent 1 on the allegation that he wanted to desecrate and destroy the idol of Ganapati. The respondents asked the PWs to accompany them to the house of respondent 2 where PW 1 was asked to sign on certain papers under a threat that her husband would be placed in police custody in case of her denial to sign the papers. The two respondents then committed rape on her one by one. The respondents thereafter threatened the PWs not to report the matter to police. Being afraid the PWs went back and spent the rest of the night. Next morning PW 2

3.(b) "Against her will" and "without her consent" *(contd.)*

met another police constable and on his suggestion PW 2 lodged an FIR at the police station. The respondents denied the offence altogether claiming that they had been falsely implicated. The trial court convicted the respondents under S. 376 r/w S. 34 as well as under S. 342 r/w S. 34 IPC and sentenced them to 3 years' RI on the first count and two months' RI on the second count. A Single Judge of High Court, while agreeing with the trial court that the PWs had been taken to the house of respondent 2 where both the respondents had sexual intercourse with PW 1, however, concluded that in view of absence of marks of violence on the body of PW1, no force was used on her and thus she had voluntarily gone to the house of respondent 2 and was a willing partner to the act of sexual intercourse. The only question is whether the said intercourse had taken place with the consent of PW 1. Allowing the appeal,

Held :

The Single Judge of the High Court has thoroughly erred in appreciation of the evidence of PWs 1 and 2. For the offence of rape, it is not necessary that there should be actual use of force. A threat of use of force is sufficient in view of clause thirdly of S. 375.

The police constable was in uniform and on bandobast duty. By show of his authority, he coerced PWs 1 and 2 into total abject surrender. To these poor rustic helpless villagers, the police constable represents absolute authority. They had no option but to submit to his will. It is, therefore, not a case of PW 1 being a willing party to sexual intercourse. It is a case where she had surrendered herself involuntarily, under duress and threat held out by the first accused. She was deprived of her will by show of authority and by the beating administered to her husband accompanied by threat of putting him in police remand, where, as the common belief of rustic villagers goes, they would be subjected to 'third degree methods'. Not only that, after the act they were threatened not to report to the police. This explains their silence for a few hours. It is not suggested that PW 1 agreed to the said intercourse either out of love or for money. It is also not suggested that PW 1 was a prostitute. Both the accused had entered into an unholy plan and adopted a stratagem to fulfil their illegal desires. In all the circumstances of this case, the minor contradictions between her oral testimony and the report are of little consequence.

The respondents-accused denied the charge totally. Their only plea was that they have been falsely implicated. It is not even stated as to who implicated them and why. It is also not suggested that PWs 1 and 2 had any animus or motive against the accused or that they were being used by someone else to implicate the respondents falsely. In the circumstances, the mere allegation of false implication has no significance. This also is a minor corroborating aspect.

Though the offence had taken place in the year 1978 and the accused were acquitted by the High Court as far back as August 1981 and the reversal of the acquittal at this stage would be after a lapse of 10 years, but having regard to the nature of the offence and the circumstances in which it was perpetrated, the respondents deserve no mercy. They should suffer for their deed.

The appeal is, accordingly, allowed. The High Court judgment is set aside and that of trial court restored. The respondents shall undergo the sentence awarded by the trial court. *State of Maharashtra* v. *Prakash*, 1993 Supp (1) SCC 653: 1993 SCC (Cri) 411: AIR 1992 SC 1275.

Bench Strength **2**. Coram: *Kuldip Singh* and **B.P. Jeevan Reddy**, JJ. [Date of decision: 24-3-1992]

[8828] — S. 375 Thirdly & Sixthly — Rape — Consent — Consent for having sexual intercourse obtained by accused from the victim girls by deceitful means in some cases and under threat of dire consequences in some other cases and therefore, held, their acts fell under cl. thirdly, while some of the victims being aged below 16 years, their consent was immaterial in view of cl. sixthly — *Moreover, accused had dominion or control over the victims — Held, charge of rape against the accused made out*

It is in the evidence of the prosecutrix that consent of many of the prosecutrix had been obtained by deceitful means that if they had sex with A-1 they would be cured of asthma or that if they had sex with A-1 it is service to God or some of the girls have been raped under threat of dire consequences. A-1 had dominion/control over the Ashram girls and most of them are orphans and no alternative place to go. Therefore the case clearly falls within the thirdly clause of Section 375 IPC. Furthermore, if the consent is obtained by deceitful means or under threat of death or hurt, it is no consent at all and it is without her consent. Therefore, the charge of rape levelled against A-1 falls within the definition of Section 375 IPC. This apart, under the sixthly clause the consent is immaterial when the prosecutrix is under 16 years of age. Some of the prosecutrix were below 16 years of age when they were raped by A-1. In view of the facts and circumstances of the case, A-1 was rightly charged and convicted under Section 376(2)(*c*) IPC. (Para 40). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

[8829] — S. 375 Fourthly & S. 376 — Applicability — Appellant-accused marrying complainant during subsistence of his first marriage and cohabiting with her for about four years — Submission that complainant knew about his marital status and hence clause "Fourthly" to S. 375 would have no application — Tenability — *Held, even though the complainant claimed to have married the accused, which fact is established from several documents, that does not improve the situation so far as the appellant-accused is concerned — His subsequent marriage had no sanctity in law and was void ab initio — Hence, conviction of appellant under clause "Fourthly" of S. 375 sustainable — Delay in lodging complaint was inconsequential — However, taking into consideration peculiar facts of the case that the complainant had knowledge about his previous marriage, and had yet surrendered to him for sexual intercourse, held, reduction of custodial sentence from 7 years as imposed by trial court to 3 years by High Court and enhancement of compensation to Rs 1,00,000 from Rs 10,000 with a direction that in case the compensation amount was not paid, the reduction in sentence would not be given effect to, calls for no interference* (Paras 4 and 11 to 17). *Bhupinder Singh* v. *UT, Chandigarh*, (2008) 8 SCC 531: (2008) 3 SCC (Cri) 553: 2008 Cri LJ 3546.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 10-7-2008]

[**Ed.**: An interesting question arises whether on these facts the appellant could have been charged under Sections 493 and 494 IPC, and if so why not.]

[8830] — S. 375 Fifthly — Conviction under, upheld in view of testimony of prosecutrix which stood corroborated by that of her father as well as of the doctor who had examined her — *That after the occurrence the prosecutrix had been living in the house of the accused and had given birth to a child, if established, could be taken into account in fixing quantum of punishment — But in the absence of any evidence in that regard, sentence of five years' RI upheld. Bishnudayal* v. *State of Bihar*, 1980 Supp SCC 358: 1981 SCC (Cri) 283: AIR 1981 SC 39: 1980 Cri LJ 1297.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 1-8-1980]

[8831] — S. 376 — Conduct of prosecutrix — Relevance — Resistance — Absence of — Inference — *Held, would merely suggest want of violent resistance on part of prosecutrix and not consensus — Prosecutrix was forcibly caught, threatened at knife-point and thereafter gang raped — Non-resistance because of fear in such circumstances not unnatural* (Paras 25, 26 and 46). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

Gurcharan Singh v. State of Haryana, (1972) 2 SCC 749: 1972 SCC (Cri) 793; Devinder Singh v. State of H.P., (2003) 11 SCC 488: 2004 SCC (Cri) 185, followed

[8832] — S. 376 — Consent — Inference of — *Absence of any marks of violence on the body of accused on examination after three days of the incident, held, not conclusive — The same, if any, would have been obliterated and not noticeable to the Medical Officer who examined him* (Para 13). *State of H.P.* v. *Mango Ram*, (2000) 7 SCC 224: 2000 SCC (Cri) 1331: AIR 2000 SC 2798.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **K.G. Balakrishnan**, JJ. [Date of decision: 24-8-2000]

[8833] — S. 376 — Conviction and sentence — On facts held, prosecutrix being not a girl of easy virtue could not have voluntarily allowed the accused to sexually assault her when she ultimately married the other accused within 10-15 days of her elopement — *Her silence about non-reporting to the witnesses must be taken to be either because of fear of reprisal or to protect her image — Conviction upheld — Offence being of 1982, prior to prescription of minimum sentence, the sentence reduced to that already undergone. State of A.P.* v. *P. Narasimha*, (1994) 4 SCC 453: 1994 SCC (Cri) 1180.

Bench Strength **2**. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 29-4-1994]

[8834] — S. 376 — Evidence of rape victim — If a person in authority such as a police officer is accused of rape, evidence of the prosecutrix should be judged in the backdrop of the particular fact situation in which she was placed — *Absence of resistance by prosecutrix to be viewed in the context of the sense of awe attached to the authority and her helplessness — Evidence Act, 1872, S. 114-A*

The infrastructure of our criminal investigation system recognises and protects the right of a woman to decent and dignified treatment at the hands of the investigating agency. This is evident from the proviso to sub-section (2) of S. 47,

3.(b) "Against her will" and "without her consent" *(contd.)*

sub-section (2) of S. 53 and proviso to S. 160 of the Code. If a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behaviour must be judged in the backdrop of the situation in which she was placed. The purpose and setting, the person and his position, the misuse or abuse of office and the despair of the victim which led to her surrender are all relevant factors which must be present in the mind of the court while evaluating the conduct evidence of the prosecutrix. A person in authority, such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his victim. The court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped. A woman who is subjected to sex violence would always be slow and hesitant about disclosing her plight. The court must, therefore, evaluate her evidence in the above background.

In this case though the version of the prosecutrix is that she had tried to resist the accused respondent that the respondent being a strong man was able to overpower her and take her by force. Besides, he was a man in authority in police uniform. The prosecutrix was alone and helpless. In the circumstances the resistance would be considerably dampened. *State of Maharashtra* v. *Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550: 1990 SCC (Cri) 210: AIR 1990 SC 658: 1990 Cri LJ 889.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1990]

[8835] — S. 376 — Rape — Absence of consent — Inference of — *Injury on right side of the posterior labia minora indicating forcible sexual intercourse — Letter written by the deceased to the accused cautioning him not to have a leering attitude towards her — Extra-judicial confession of the accused that he took the girl by force and kept her on the cot — Sexual intercourse followed by the act of throttling is strongly suggestive of a vehement resistance offered by the victim — Held, the circumstances are sufficient to reach the irresistible inference that the deceased was ravished by the accused despite her resistance. State of A.P.* v. *Gangula Satya Murthy,* (1997) 1 SCC 272: 1997 SCC (Cri) 325: AIR 1997 SC 1588: 1997 Cri LJ 774.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 19-11-1996]

[8836] — S. 376 — Rape — Consent — *Despite sufficient opportunity the prosecutrix neither running away nor taking the help of the neighbours — Absence of injuries on the person of the prosecutrix including her private parts — Her entire conduct showing that she was a consenting party — Absence of allegation that she was put in physical restraint in the house — Held, in the circumstances, conviction of the appellant for rape cannot be sustained. Kuldeep K. Mahato* v. *State of Bihar,* (1998) 6 SCC 420: 1998 SCC (Cri) 1460: AIR 1998 SC 2694.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 6-8-1998]

[8837] — S. 376 — Rape — Consent — Presumption of — *Merely because prosecutrix was aged above 16 years, held, she cannot be held to be a consenting party — No evidence to show consent was produced — Acquittal not sustainable — Matter remitted* (Para 3). *State of U.P.* v. *Manoj Kumar Pandey,* (2009) 1 SCC 72: (2009) 1 SCC (Cri) 244: AIR 2009 SC 711: (2009) 1 ECrN 862 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *D.K. Jain*, JJ. [Date of decision: 7-11-2008]

[8838] — S. 376 — Rape — Medical evidence — Absence of spermatozoa on vaginal smear — Does not falsify the version of the prosecutrix — *Penetration does not necessarily lead to the discovery of spermatozoa — Its absence may be due to various other factors such as faulty taking of smear, its preservation, quality of semen, etc. — On facts, it was not elicited from the prosecutrix of any if the two persons had reached orgasm emitting semen in her private parts*

With regard to the vaginal smear examination the doctor stated that no spermatozoa was seen on it, and the absence of sperms has been viewed against the version of the prosecutrix. It was never elicited from the prosecutrix as to whether the two persons who committed rape on her had reached orgasm emitting semen in her private parts. No presumption can be made that penetration of penis in the private parts of a rape victim must necessarily lead to the discovery of spermatozoa. It is a question of detail and has to be put to test by cross-examination. Otherwise also there may be various other factors which may negative the presence of spermatozoa such as faulty taking of the smear, its preservation, quality of semen etc. The absence of spermatozoa prima facie could not be allowed to tell against the version of the prosecutrix. *Narayanamma* v. *State of Karnataka*, (1994) 5 SCC 728: 1994 SCC (Cri) 1573.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-8-1994]

[8839] — S. 376 — Rape — Medical evidence — Proof — Absence of dead or mobile spermatozoa in the vagina or in the cervix of the prosecutrix, held, not a conclusive proof of her not being subjected to forcible sexual intercourse

The High Court erred in holding that the prosecutrix had not been subjected to forcible sexual intercourse or the prosecution had failed to prove the case against Respondent 1 also. The High Court's conclusion that absence of dead or mobile spermatozoa either in the vagina or in the cervix of the prosecutrix rules out the possibility of the prosecutrix having been subjected to sexual intercourse, is not referable to any evidence on record. The presence of spermatozoa, dead or alive, would differ from person to person and its positive presence depends upon various circumstances. Otherwise also the presence or absence of spermatozoa is ascertained for the purposes of corroboration of the statement of the prosecutrix. If the prosecutrix is believed to be a truthful witness in her deposition, no further corroboration may be insisted upon. Corroboration is admittedly only a rule of prudence. (Paras 5 and 6). *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, followed

[8840] — S. 376 — Rape — Non-rupture of hymen or absence of injury on victim's private parts — *Held, does not belie her testimony as she nowhere stated that she bled per vagina and her statement remained virtually unchallenged in cross-examination — To constitute rape penetration, however slight, is sufficient — Prosecutrix subjected to sexual intercourse in a standing posture indicating absence of any injury on her private parts — Opinion of doctor that no rape was committed cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix — Besides such opinion was based on "no reasons" — On facts, corroboration of testimony of prosecutrix by medical evidence was not essential — In any case, her evidence was amply corroborated by her mother and father whom she immediately informed about the occurrence — Evidence Act, 1872, Ss. 45 and 8 Ill. (j). Ranjit Hazarika* v. *State of Assam*, (1998) 8 SCC 635: 1998 SCC (Cri) 1725.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *S.B. Majmudar*, JJ. [Date of decision: 28-2-1996]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, followed

[8841] — S. 376 — Rape — Plea of consensual sex raised for the first time under Art. 136, held, not maintainable (Para 23). *Utpal Das* v. *State of W.B.*, (2010) 6 SCC 493.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *Aftab Alam*, JJ. [Date of decision: 7-5-2010]

[8842] — S. 376 — Rape — Prosecutrix going with accused voluntarily to several places and staying with him in lodges — *Evidence regarding her age doubtful and not convincing — Medical evidence showing that she was used to sexual intercourse — Prosecutrix not clearly stating that accused had sexual intercourse with her except stating that he did something which he ought not to have done — Held, in absence of some other evidence to support prosecution case that the accused had sexual intercourse with her offence under S. 376 not made out. State of Karnataka* v. *Sureshbabu Puk Raj Porral*, (1994) 1 SCC 468: 1994 SCC (Cri) 435: AIR 1994 SC 966: 1994 Cri LJ 1216.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 8-10-1993]

[8843] — S. 376 — Rape — Whether there was consent — *Evidence showing that prosecutrix had planned her departure from her house in advance and had willingly gone away with the accused-appellant — Held, this indicates that there was no threat or inducement either in regard to her leaving the house or in regard to accompanying the appellant — In such a situation, in absence of any other material to show to the contrary, accused- appellant cannot be held to have raped the prosecutrix* (Para 6). *Jinish Lal Sah* v. *State of Bihar*, (2003) 1 SCC 605: 2003 SCC (Cri) 395: AIR 2003 SC 2081.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 20-12-2002]

2002 Cri LJ 274 (Pat), reversed

[8844] — Ss. 376 and 342 — Consent — Whether prosecutrix was a consenting party to the rape — *Both prosecutrix and accused found completely naked and having sexual intercourse on a bed — Prosecutrix was not raising any cries — Prosecutrix then aged 20 years — According to medical evidence she was habitual to sexual intercourse, her hymen admitted two fingers easily and there were no injuries on her person, contrary to her statement that she had received injuries on her hand and hip — Held, prosecutrix was a consenting party and accused-respondent had not committed forcible intercourse with her* (Para 2). *State of Rajasthan* v. *Shanker*, (2000) 9 SCC 161: 2000 SCC (Cri) 1193.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and *S.N. Variava*, JJ. [Date of decision: 15-3-2000]

3.(b) "Against her will" and "without her consent" *(contd.)*

[8845] — Ss. 376, 363, 366 and 368 — "Against her will" and "without her consent" — Case of kidnapping and rape — Absence of any alarm being raised by prosecutrix at public places, while being taken to other places — *She being under constant threat — Inference of willingness to accompany accused — Not made out — Doubt about truthfulness of her evidence — Not created — Held, submission of respondent-accused (A-1), that no alarm was raised by prosecutrix at bus-stand or other places, where she was taken, created serious doubt about truthfulness of her evidence, rejected, as it overlooks situation in which prosecutrix was placed in — She had been kidnapped by two adult males, one of them (A-1) wielded a firearm and threatened her and she was taken away from her village — In such circumstances, she made sensible decision not to raise an alarm — Any alarm at unknown place might have endangered her life — Absence of alarm by her at public place, cannot lead to an inference that she had willingly accompanied A-1 and A-2 (another accused) — Circumstances made her a submissive victim and that does not mean that she was inclined and willing to have intercourse with A-1 — She had no free act of mind during her stay with A-1, as she was under constant fear* (Para 30). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Prakash Singh v. Union of India, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417, relied on.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

[8846] — Ss. 376 and 366 — Abduction and rape — Defence of consent — But prosecutrix not raising alarm out of fear — *Prosecutrix abducted by the appellants at the point of knife — When she tried to resist or shout she was given a thrashing and threatened to be killed — She categorically stating that she was given a slap on the mouth when she tried to resist — Her statement supported by medical evidence — Prosecutrix made to sit on the bar of the cycle while one of the appellants was driving the cycle and the other was sitting on the back of the cycle — Therefore, it was difficult for the prosecutrix to raise any alarm — Other circumstances mentioned in the judgment of the trial court also consistent with the guilt of the appellants — Held, in the circumstances of the case, the prosecutrix was not a consenting party — Conviction upheld. Harishankar* v. *State of Maharashtra*, (1997) 11 SCC 191: 1997 SCC (Cri) 1065.

Bench Strength **2**. Coram: *Faizan Uddin* and *G.T. Nanavati*, JJ. [Date of decision: 9-1-1997]

[8847] — Ss. 376 and 366 — Rape — Conviction reversed — *Appellant-accused alleged to have abducted PW 4 allegedly a minor girl, maidservant of PW 2 & PW 3, and took her to a hotel and raped her — Prosecutrix roaming in the city by rickshaws/buses along with appellant for a long time, going to the hotel without any protest, accompanying the appellant to the room, spending the whole night with him, coming out of the hotel after checking out from the hotel, without raising any hue or cry or informing anybody that appellant had misbehaved with her in any manner — Held, such conduct of prosecutrix makes prosecution case unbelievable — No reason indicated as to why in absence of any allegation of threat or coercion, prosecutrix had not raised any alarm or informed any person on the road — Doctor who examined her, found no injury of any kind on her body or private parts, and opined that she was used to sexual intercourse — Further, there were serious contradictions in her deposition in court and her statement recorded under S. 164 CrPC — Material contradictions were also discernible regarding factual aspect of the incident — No material objects like clothes, blood samples, semen samples seized/taken by the IO — Prosecutrix had alleged that appellant had forcibly torn open her clothes, but no torn clothes recovered by IO — No person examined from the hotel to identify appellant or the prosecutrix — She was registered as wife of the appellant under a fictitious name, and hence her identification by some person from the hotel was necessary — Further, the doctor who examined her had opined that she was aged about 18 years, while the prosecutrix stated that she was only 13 years at the time of alleged incident — Her employer PW 2 stating that she was 13/14 years without indicating any basis therefor — However, her parents or any other family member who could be most reliable and natural witness on point of age not examined — Held, prosecutrix appears used to sexual intercourse and a dissolute woman — She had no objection in mixing up and having free movement with any of her known person, for enjoyment — Thus, she appeared to be a woman of easy virtues — Prosecution failed to prove its case against the appellant beyond reasonable doubt — Hence, impugned judgment of High Court convicting appellant under S. 376 set aside — CrPC, 1973, S. 164*

Allowing the appeal,

Held :

The trial court and the High Court proceeded with altogether different set of facts. Before the trial court the prosecution case had been that the prosecutrix went to the zoo along with *S* and on her return from the zoo the appellant had seen both of them together and slapped *S* who ran away and thereafter the appellant took the prosecutrix on the pretext of taking her to movie and roamed; took her on a rickshaw to the hotel where she was kept and raped. (Para 12)

However, before the High Court the case was been entirely different. It was stated that when the prosecutrix came out from the house of the informant PW 2 *A* the appellant met her and proposed to take her to a movie and she went along with him. FIR lodged by PW 2 was to the effect that appellant-accused had entered his house and forcibly abducted his maidservant (prosecutrix). Thus, there were material contradictions regarding the factual aspects of the incident itself. (Para 13)

Further no explanation was given as to why the investigating officer did not seize any material objects like clothes, blood samples, etc. from the prosecutrix and the place of occurrence. Prosecutrix had stated that accused had torn open her clothes but no torn clothes were recovered by the IO. (Para 14)

Also no effort was made by IO to take the semen, blood samples, etc. from the appellant which could have given the prosecution an opportunity to obtain medical reports of the appellant as it was necessary to establish the guilt of the appellant. No person was examined from the hotel to identify the appellant or the prosecutrix as the IO has only seized the register of the hotel to establish that Room No. 102 was booked in the name of appellant *MA* and *MB* as husband and wife. Admittedly, the name of the prosecutrix was not *MB*. Therefore, some person from the hotel should have been examined to identify her as well as the appellant. (Para 15)

Furtheremore, discrepancies were discernible in her examination under S. 164 CrPC and deposition in court. No explanation was offered as to why in the absence of any allegation of threat or coercion, the prosecutrix could not have raised the alarm or informed any person on the road, nor as to why an independent witness or an employee of the hotel was not examined and why the parents of the prosecutrix were not examined to find out her age. (Para 16)

The prosecutrix appears to be a lady used to sexual intercourse and a dissolute lady. She had no objection in mixing up and having free movement with any of her known person, for enjoyment. Thus, she appeared to be a woman of easy virtues. The prosecution failed to prove its case against the appellant beyond reasonable doubt. Hence, impugned judgment of the High Court convicting accused under S. 376 set aside. (Paras 17 and 18). *Mussauddin Ahmed* v. *State of Assam*, (2009) 14 SCC 541: (2009) 80 AIC 1 (SC).

Bench Strength **2.** Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 6-7-2009]

Gopal Krishnaji Ketkar v. Mohd. Haji Latif, AIR 1968 SC 1413, relied on

[8848] — Ss. 376 and 375 — Rape — Consent — Inference as to — *Absence of marks of injuries either on the person of the accused or the person of the prosecutrix, held, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. B.C. Deva* v. *State of Karnataka*, (2007) 12 SCC 122: (2008) 2 SCC (Cri) 253.

Bench Strength **2**. Coram: *R.V. Raveendran* and **L.S. Panta**, JJ. [Date of decision: 25-7-2007]

[8849] — Ss. 376 and 375 — Rape of girl of above 16 years age — Whether she was a consenting party — Evidence of the prosecutrix that she was forcibly subjected to sexual intercourse should normally be believed unless there is material leading to an inference of her consent — *Absence of marks of external injuries on the person of the prosecutrix by itself not sufficient to draw an inference of consent of the prosecutrix — Having regard to the fact that the prosecutrix was a teenaged girl while accused was an able-bodied youth along with other facts, held, testimony of the prosecutrix that she was subjected to rape was credible*

The prosecutrix, a teenaged girl was living in a village with her father, mother and a younger sister. The family resided in a lonely hutment situated in a field. On 1-10-1993 at about 12 noon, the prosecutrix was alone in her hut busy washing clothes at a water pump. *NK*, the accused-respondent was known to the prosecutrix since before. He came to her and initially asked for water which she provided in a lota. Then the accused asked for a knife on the pretext that it was needed for peeling cucumber. The accused was gaining time to ascertain if the prosecutrix was alone. No sooner the prosecutrix turned her back unmindful of what lay ahead, her hand was caught hold of by the accused and twisted behind her back. The accused pushed her to a *bhitian*, a secluded place. She was thrown on the ground. The accused put his knee on her chest so as to overpower her. Her shouting was throttled by the accused who placed his palm on her mouth and later covered her mouth by a towel pressed against her lips. She was then raped. Blood

3.(b) "Against her will" and "without her consent" *(contd.)*

oozed out from her private parts. Having finished his act the accused left her alone and took to his heels. The prosecutrix was weeping. She narrated the incident to a woman and to her father in quick succession. The statement of the father of the prosecutrix corroborates her in all material particulars. The victim accompanied by her father wanted to go to the police station and lodge the first information report of the incident but they were prevented from doing so by several village people belonging to the community of the accused who also proposed that the matter be settled within the village by convening a panchayat. However, the report of the incident was lodged on 5-10-1993 at 11.20 a.m. The offence was registered and investigation commenced. According to the doctor, he had found the hymen ruptured in multiple radial tears, the edges of which showed healing at most of the places and mild tenderness. The prosecutrix was not used to sexual intercourse. Pieces of broken bangles were found at the place of the incident and seized. The Forensic Science Laboratory has found (vide report Ex. P-9) presence of human semen on the lehenga seized from the prosecutrix. The trial court found the incident, as alleged, proved. In the opinion of the learned trial Judge the testimony of the prosecutrix inspired confidence. It was corroborated by the medical evidence as also by the testimony of her father. The prosecutrix was held to be 15 years of age on the date of the incident. Though there was delay in lodging the FIR but it was satisfactorily explained. Accordingly, the accused-respondent was found guilty of the offence punishable under Section 376 IPC and sentenced to undergo seven years' rigorous imprisonment with a fine of Rs 2000 and to a further simple imprisonment of one year and nine months in default of payment of fine. The High Court in an appeal preferred by the accused-respondent, held that the prosecutrix was not proved beyond reasonable doubt to be below 16 years of age. In the opinion of the High Court though the factum of the accused-respondent having committed sexual intercourse with the prosecutrix was proved but the absence of injuries on the person of the prosecutrix was a material fact not excluding the possibility of the prosecutrix having been a consenting party. The delay in lodging the FIR was not satisfactorily explained. The delay coupled with the non-examination of the woman to whom the incident was first narrated by the prosecutrix immediately after the occurrence rendered the prosecution case doubtful. Mainly on this reasoning the High Court allowed the appeal and acquitted the accused respondent. The questions arising for consideration before the Supreme Court were: whether the prosecution story, as alleged, inspires confidence of the court on the evidence adduced? Whether the prosecutrix, is a witness worthy of reliance? Whether the testimony of a prosecutrix who has been a victim of rape stands in need of corroboration and, if so, whether such corroboration is available in the facts of the present case? What was the age of the prosecutrix? Whether she was a consenting party to the crime? Whether there was unexplained delay in lodging the FIR? Allowing the appeal,

Held :

For the offence of rape as defined in Section 375 of the Indian Penal Code, the sexual intercourse should have been against the will of the woman or without her consent. Consent is immaterial in certain circumstances covered by clauses thirdly to sixthly, the last one being when the woman is under 16 years of age. If she be of 16 years of age or above, her consent cannot be presumed; an inference as to consent can be drawn if only based on evidence or probabilities of the case. The victim of rape stating on oath that she was forcibly subjected to sexual intercourse or that the act was done without her consent, has to be believed and accepted like any other testimony unless there is material available to draw an inference as to her consent or else the testimony of prosecutrix be such as would be inherently improbable. The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case. (Paras 19 and 18)

In the present case, the prosecutrix had just crossed the age of 16 years. The perpetrator of the crime was an able-bodied youth bustling with energy and determined to fulfil his lust armed with a knife in his hand and having succeeded in forcefully removing the victim to a secluded place where there was none around to help the prosecutrix in her defence. The injuries which the prosecutrix suffered or might have suffered in defending herself and offering resistance to the accused were abrasions or bruises which would heal up in the ordinary course of nature within 2 to 3 days of the incident.

The prosecutrix clearly stated that she was subjected to sexual intercourse forcibly by the accused. She was not a consenting party. She offered resistance to the best of her ability but she succumbed and fell victim to the force employed by the accused. (Paras 18 and 19)

The statement of the father of the prosecutrix is admissible in evidence and relevant under Section 157 as her former statement corroborating her testimony as also under Section 8 of the Evidence Act as evidence of her conduct. The testimony of the father of the prosecutrix was trustworthy and unembellished. The prosecutrix and her father had both been subjected to lengthy cross-examination. The trial court found both the witnesses reliable. There is no reason to disbelieve their testimony. A father would not ordinarily subscribe to a false story of sexual assault involving his own daughter and thereby putting at stake the reputation of the family and jeopardizing the married life of the daughter. The testimony of the prosecutrix's father was reliable and lent support to the narration of the incident by the prosecutrix. No reason had been proved, nor even suggested during cross-examination of any of the witnesses why the prosecutrix or any member of her family would falsely implicate the accused roping him in a false charge of rape. It is not possible to draw an inference as to consent against the prosecutrix and to hold that she was a willing party to the sexual assault made by the accused. Upon an evaluation of the evidence available on record it must be held that the prosecutrix is a witness of truth. Her testimony inspires confidence. Other evidence available on record lends assurance to her testimony. The trial court had rightly held that sexual assault amounting to rape was committed on her by the accused-respondent. In spite of her having not been proved to be under 16 years of age the High Court was not justified in holding her to be a consenting party to the sexual assault on her. Therefore, the High Court has committed a clear error of law in interfering with the judgment of the trial court regarding proof of guilt of the accused. (Paras 19 and 20). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 SCR 377: 1952 Cri LJ 547; Sidheswar Ganguly v. State of W.B., AIR 1958 SC 143: 1958 Cri LJ 273; Madho Ram v. State of U.P., (1973) 1 SCC 533: 1973 SCC (Cri) 417; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598; State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490: 1996 SCC (Cri) 133; Sk. Zakir v. State of Bihar, (1983) 4 SCC 10: 1983 SCC (Cri) 76; Balwant Singh v. State of Punjab, (1987) 2 SCC 27: 1987 SCC (Cri) 249; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977, relied on

[8850] — Ss. 376 and 375 Secondly — Rape — Consent of victim to sexual intercourse — Voluntary consent — Question as to — Determination of — *Factors to be considered and approach of court — Held, what is voluntary consent and what is not would depend on facts of each case — Factors like the age of the girl, her education, her social status and likewise the social status of the boy has to be considered — Court should closely scrutinise evidence while taking into consideration the said factors — If attending circumstances lead to conclusion that it was not only the accused but the prosecutrix was also equally keen, then in that case the offence is condoned*

What is a voluntary consent and what is not a voluntary consent depends on the facts of each case. In order to appreciate the testimony, one has to see the factors like the age of the girl, her education and her status in the society and likewise the social status of the boy. The court of fact while appreciating evidence in such cases should closely scrutinise evidence while taking into consideration the said factors. If the attending circumstances lead to the conclusion that it was not only the accused but the prosecutrix was also equally keen, then in that case the offence is condoned. (Paras 10 and 11). *Yedla Srinivasa Rao* v. *State of A.P.*, (2006) 11 SCC 615.

Bench Strength **2**. Coram: **A.K. Mathur** and *Altamas Kabir*, JJ. [Date of decision: 29-9-2006]

[8851] — Ss. 376 and 375 Fifthly — Prosecutrix below or about 16 years of age — *Held, consent immaterial — Absence of violent or stiff resistance and the absence of marks of violence on private parts or elsewhere, held, of no consequence*

Where a person on whom rape is committed is under 16 years of age, even consent is immaterial (vide Fifthly of S. 375) and penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape (vide explanation to S. 375). The suggestion that, there being no marks of violence on the private parts or elsewhere on the person of the prosecutrix, there could be no offence of rape on her, is wholly misconceived. *Gurcharan Singh* v. *State of Haryana*, (1972) 2 SCC 749: 1972 SCC (Cri) 793: AIR 1972 SC 2661: (1973) 2 SCR 197: 1973 Cri LJ 179.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 13-9-1972]

3.(b) "Against her will" and "without her consent" *(contd.)*

[8852] — Ss. 376 and 506 — Rape — Consent — Burden of proof in respect of — Rape by teacher of his student — *Held, question of consent is really a matter of defence by the accused and it was for him to place materials to show that there was consent — High Court erred in putting burden on the victim to show that there was no consent — Evidence Act, 1872, Ss. 114-A and 101 & 103* (Para 15). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[8853] — Ss. 376 and 506 Pt. II — Rape — Consent — Meaning and inference of — Consent and submission — Distinction between — Victim, a girl whose mental faculties were undeveloped cannot legally give consent — *Where such a girl was ravished by accused several times, held, such a victim could not be said to have suffered sexual intercourses with consent — For constituting consent there must be exercise of intelligence based on the knowledge of the significance and the moral effect of the act — Consent is different from submission as every consent involves a submission but the converse does not follow — In law, an act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance or passive giving-in when the faculty is either clouded by fear or vitiated by duress or impaired due to mental retardation or deficiency, held, cannot be considered to be consent — It has to be a conscious and voluntary act — Evidence Act, 1872, S. 114-A* (Para 6). *Tulshidas Kanolkar* v. *State of Goa*, (2003) 8 SCC 590.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-10-2003]

[8854] — Ss. 376 Sixthly and 366-A — Rape and procuration of minor girl — Consent for sexual intercourse, held, immaterial — *Victim, girl aged about 13 years and 9 months going with the appellant-accused of her own free will and having sexual intercourse with him — High Court by the impugned judgment convicting accused under Ss. 376 and 366-A IPC — Held, clause "sixthly" of S. 376 clearly stipulates that sexual intercourse with a woman with her or without her consent when she is under 16 years of age, amounts to rape — In the instant case evidence clearly established that the victim was less than 16 years of age and, therefore, the conviction for offences punishable under S. 376 IPC cannot be faulted — As far as S. 366-A is concerned, since the essential ingredient that the intercourse must be with a person other than the accused has not been established, S. 366-A has no application* (Paras 7 to 10). *Iqbal* v. *State of Kerala*, (2007) 12 SCC 724: (2008) 3 SCC (Cri) 381: AIR 2008 SC 288: 2008 Cri LJ 436.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 24-10-2007]

Followed in State of Punjab v. Rakesh Kumar, (2008) 12 SCC 33

(c) Presumption against consent under S. 114-A, Evidence Act

See also 'B.4. Gang rape/Rape by multiple accused/Conspiracy', and

'C.22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act', below

[8855] — S. 376(2)(g) r/w S. 34 and S. 114-A, Evidence Act, 1872 — Gang rape — Presumption of non-consensual intercourse — *Prosecutrix consistently stating that she had never consented to intercourse and that she was forcibly caught, threatened at knife-point and thereafter subjected to gang rape — No dispute regarding place or alleged occurrence — FIR lodged promptly and accused arrested immediately — No evidence of false implication since accused were unknown to prosecutrix — Discrepancies found in her testimony insignificant considering that she was illiterate rustic village girl — Non-resistance because of fear, held, not unnatural — Consent by prosecutrix, even if assumed she was a major, not established — Hence, conviction of appellant under Ss. 376/34 and sentence of 10 years' RI along with fine of Rs 500, held proper — Evidence Act, 1872, S. 114-A* (Paras 46, 47, 37 and 38). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; State of U.P. v. Pappu, (2005) 3 SCC 594: 2005 SCC (Cri) 780; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of Orissa v. Thakara Besra, (2002) 9 SCC 86: 2003 SCC (Cri) 1080; State of H.P. v. Raghubir Singh, (1993) 2 SCC 622: 1993 SCC (Cri) 674; Wahid Khan v. State of M.P., (2010) 2 SCC 9: (2010) 1 SCC (Cri) 1208; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547, relied on

(d) Penetration/Intercourse

See also 'C.20.(c) Injuries on prosecutrix or absence thereof', below

[8856] — Ss. 375 and 376 — Rape — Ingredients of rape, reiterated — *Held, for satisfying ingredients of rape, it is not necessary that there should be complete penetration* (Para 20). *Satyapal* v. *State of Haryana*, (2009) 6 SCC 635: (2009) 3 SCC (Cri) 108: AIR 2009 SC 2190: (2009) 77 AIC 66 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-4-2009]

Aman Kumar v. State of Haryana, (2004) 4 SCC 379: 2004 SCC (Cri) 1266, followed

[8857] — Ss. 375 and 376 — Rape — Intercourse — When takes place — Genital of appellant-accused penetrating genital of prosecutrix and blood oozing from her private parts — *Doctor, after examining the prosecutrix finding superficial laceration just at the bottom of labia majora and labia minora, hymen torn, and vaginal orifice admitting one finger with difficulty — Submission by accused that offence under S. 354 or S. 511 made out, and not S. 376 — Held, "intercourse" envisaged under S. 375 means sexual connection — On facts held, act of the accused fell well within the purview of the provision — Hence, accused guilty of commission of actual rape and not of outraging modesty of woman or attempt to rape* (Paras 3, 8, 9, 10 and 11). *Ramkripal* v. *State of M.P.*, (2007) 11 SCC 265: (2007) 54 AIC 131 (SC): 2007 Cri LJ 2302.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-3-2007]

Raju Pandurang Mahale v. State of Maharashtra, (2004) 4 SCC 371: 2004 SCC (Cri) 1259, relied on

[8858] — Ss. 375 and 376 — Rape of minor — Injuries on prosecutrix — No definite medical opinion as to recent intercourse — *Hymen of the prosecutrix remaining intact but there was swelling on her private part which had become red — Doctor unable to give definite opinion as regards whether she was subjected to intercourse in the immediate past — Held, even slight penetration was sufficient to constitute offence of rape and the redness of the hymen would not have been possible but for penetration to some extent* (Paras 10, 11 and 12). *Guddu* v. *State of M.P.*, (2007) 14 SCC 654: (2006) 42 AIC 79 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision: 27-4-2006]

Koppula Venkat Rao v. State of A.P., (2004) 3 SCC 602: 2004 SCC (Cri) 840; Aman Kumar v. State of Haryana, (2004) 4 SCC 379: 2004 SCC (Cri) 1266, relied on

[8859] — S. 375 Expln. — Application — Hymen found intact — Finding of rape despite such finding — *Held, even slightest penetration is sufficient to make out offence of rape and depth of penetration is immaterial — Hence, conviction for rape, upheld*

Even the slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial. It was contended on behalf of the appellant that since hymen of the prosecutrix was found to be intact, it cannot be said that an offence of rape was committed on her by the appellant. This contention cannot be accepted as the offence of rape has been defined in Section 375 IPC. The medical report recorded that the hymen of the prosecutrix was intact, that her private part admitted only the tip of little finger with difficulty and that no intercourse was done with her. (Paras 19 to 22 and 8). *Wahid Khan* v. *State of M.P.*, (2010) 2 SCC 9.

Bench Strength **2**. Coram: *J.M. Panchal* and **Deepak Verma**, JJ. [Date of decision: 1-12-2009]

[8860] — S. 375 Expln. — Held, discovery of spermatozoa in victim's private part not necessary to establish penetration

Trial court recorded findings that victim's clothes were bloodstained. Chemical examination of the "Salwar" (trouser) which she was wearing showed presence of spermatozoa though it was not detected on her shirt. Spermatozoa was also detected on the underwear of accused.

Held :

Medico-legal examination of prosecutrix clearly reveals that she was subjected to rape. In her statement, she had spoken of "penetration". Discovery of spermatozoa in the private part of the victim is not a must to establish penetration. There are several factors which may negative the presence of spermatozoa. (Para 15). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

Narayanamma v. State of Karnataka, (1994) 5 SCC 728: 1994 SCC (Cri) 1573; Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598, relied on

Gian Chand v. State of H.P., (1996) 2 Crimes 213 (HP), reversed

[8861] — S. 375 Expln. — Rape — Ingredients of — Complete penetration not essential — *Even partial or slightest penetration with or without emission of semen and rupture of hymen or even an attempt at penetration sufficient*

Ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither S. 375 of IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Ss. 375 and 376 of IPC. That being so it

3.(d) Penetration/Intercourse *(contd.)*

is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. *State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[8862] — S. 375 Expln. — Rape — Penetration — How much necessary to constitute rape — Rape of minor girl (8 years) — *Held, even slightest penetration of penis into vagina without rupturing the hymen would constitute rape — Medical officer on examination of the victim after 5 days finding an abrasion on the medial side of labia majora and redness around labia minora with white discharge but hymen intact admitting tip of a little finger — In view of absence of signs of full penetration, medical officer opining that there was an attempt to rape — Held, on the basis of the medical findings alone, it can be safely concluded that there was partial penetration within the labia majora or vulva or pudenda which in the legal sense is sufficient to constitute rape — Besides,extra-judicial confessions of the accused,corroborated by the reliable testimony of the prosecutrix herself as well as of other PWs, also showing commission of rape by the accused — Hence the opinion of attempt to rape given by an inexperienced medical officer (then aged 28 years) not acceptable — Conclusion of High Court that the offence made out was only under S. 354 not reasonable and justifiable having regard to the totality of the evidence — Accused-respondent must be must be convicted under S. 376. Madan Gopal Kakkad* v. *Naval Dubey*, (1992) 3 SCC 204: 1992 SCC (Cri) 598.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 29-4-1992]

Natha v. Emperor, AIR 1923 Lah 536: (1925) 26 Cri LJ 1185: 88 IC 705; Abdul Majid v. Emperor, AIR 1927 Lah 735(2): 28 Cri LJ 241: 100 IC 113; Jantan v. Emperor, AIR 1934 Lah 797: (1934) 36 Punj LR 35; Ghanshyam Misra v. State, AIR 1957 Ori 78: 1957 Cri LJ 469; Das Bernard v. State, 1974 Cri LJ 1098; Anthony, In re, AIR 1960 Mad 308: 1960 Cri LJ 927, approved

[8863] — S. 375 Expln. — Word "penetrate" — Dictionary meaning referred to (Para 12). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

Concise Oxford Dictionary, referred to

[8864] — S. 376 — Rape — Penetration — *Drawing inference in respect of, by examination of smegma — Relevant factors*

The examination of smegma loses all importance after twenty-four hours of the performance of the sexual intercourse. In rape cases, if the gland of the male organ is covered by smegma, it negatives the possibility of recent complete penetration. If the accused is not circumcised, the existence of smegma around the corona gland is proof against penetration, since it is rubbed off during the act. The smegma accumulates if no bath is taken within twenty-four hours. (Para 7). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

S.P. Kohli (Dr.) v. High Court of Punjab and Haryana, (1979) 1 SCC 212: 1979 SCC (Cri) 252, relied on

Joseph Lines, IC&K 893, relied on

[8865] — S. 376 — Rape — Proof — Penetration, held, is sine qua non for the said offence — *But complete penetration with emission of semen and rupture of hymen, held, not necessary — A slight penetration in vulva with or without violence is sufficient — Depth of penetration, held, is immaterial — Irreconcilable discrepancies found when version of prosecutrix in court compared with the one given during investigation — Evidence of father of prosecutrix (hostile witness) that his wife told him that the prosecutrix was teased by the accused persons — Further, evidence of prosecutrix and doctor did not specifically refer to penetration — Neither rape nor attempt to rape established — Conviction under S. 376(2)(g) set aside — Accused-appellants convicted under S. 354 r/w S. 34 IPC*

Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little. The depth of penetration is immaterial in an offence punishable under Section 376 IPC. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The actus reus is complete with penetration. Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. (Para 7)

Though the prosecutrix's version in court was of rape, when it is compared with the one given during investigation, certain irreconcilable discrepancies are noticed. The evidence of PW 11, the father of the prosecutrix who according to the prosecution made a departure from what he allegedly stated during investigation, is to the effect that his wife PW 9 told him that the prosecutrix was teased by the accused persons. Merely because he was termed as a hostile witness his entire evidence does not get affected. Significantly, the evidence of the prosecutrix and the doctor does not specifically refer to penetration which is sine qua non for the offence of rape. (Para 12)

There is no material to show that the accused were determined to have sexual intercourse in all events. In the aforesaid background, the offence cannot be said to be an attempt to commit rape to attract culpability under Sections 376/511 IPC. But the case is certainly one of indecent assault upon a woman. (Para 13). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

[8866] — Ss. 376 and 342 — Rape of a minor — Appreciation of evidence — Conviction restored — Non-reliance on medical report since time of occurrence not determined — *Doctor who examined prosecutrix finding signs of recent sexual act but also accepting suggestion of accused that intercourse could have taken one week prior to her examination — Prosecutrix telling the doctor that accused had also sexually molested her one year prior to the alleged occurrence — Doctor finding hymen absent but categorically stating that prosecutrix was not habitual to sexual intercourse because her vagina admitted one finger only — Medical report, thus, corroborated by prosecutrix that she was earlier also raped by same accused — High Court acquitting the accused holding that when the doctor herself was unclear about the actual date of alleged rape, medical report could not be relied upon — While doing so, High Court ignoring the fact that doctor had also stated that there was possibility of recent intercourse i.e. within a week of her examination — Held, High Court appreciated the evidence erroneously by ignoring cogent and credible evidence of PWs 3, 4 and 5, which was further corroborated by medical evidence — Hence, impugned judgment acquitting accused set aside, and that of trial court convicting him under Ss. 376 & 342 restored*

Facts:

On 15-3-2000, when parents of the prosecutrix had gone to visit her maternal uncle, her elder sister PW 4 had gone to the jungle to fetch leaves for goats, the accused is alleged to have taken the prosecutrix (minor) to his home, bolted the door of the room from inside, switched on the TV, gagged, and raped her. Thereafter he gave her Rs 5 and some "shakkar". Prosecutrix narrated the incident to PW 4. Her parents were informed about the occurrence on 16-3-2000 on their return. PW 4 also handed over to PW 5 (mother) currency note of Rs 5 given to her by the prosecutrix.

The trial court convicted the accused under Ss. 376 and 342 and sentenced him to RI for 7 years and fine of Rs 2000, and RI for 1 year respectively. The High Court acquitted the accused in appeal filed thereagainst. Hence, the present appeal.

Allowing the appeal, the Supreme Court held as above.

Held :

It was clearly proved and established that prosecutrix was a minor on the date of occurrence. Prosecutrix was examined on 17-3-2000 and she told the doctor that she had been sexually molested by accused about a year back. On examining her the doctor found signs of recent sexual act, as there was small reddened area over the left upper margin of hymen. In the cross-examination, the doctor has categorically stated that the prosecutrix was not habitual to sexual intercourse because her vagina admitted only one finger. The doctor, however, admitted that absence of hymen proves that she had been used to sexual intercourse earlier. (Paras 10 and 11)

The aforesaid medical report of the doctor is corroborated by the statement made by the prosecutrix that she was earlier also raped by the same accused. As against the suggestion of the accused that the sexual intercourse as alleged would have taken place more than one week prior to 17-3-2000, the doctor while accepting the same also stated that there can be a possibility of recent sexual intercourse i.e. within a week from 17-3-2000, which cannot be ruled out because of the redness on the margin of hymen. (Para 12)

The High Court mainly relied upon the opinion of the doctor holding that the doctor herself was unclear about the actual date of the alleged rape, and therefore, the said medical report could not be relied upon. While doing so, the High Court ignored the fact that the doctor had also stated that there can be a possibility of recent sexual intercourse i.e. within a

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week from 17-3-2000. The alleged rape was in fact committed within a week from 17-3-2000 i.e. on 15-3-2000. The fact that the prosecutrix was subjected to rape on 15-3-2000 is proved and established from the statement of the prosecutrix, medical report and the statement of the doctor (PW 8), who had examined the prosecutrix. The doctor had also stated that hymenal appearance cannot rule out recent coitus. Therefore, it is also proved and established beyond doubt that the prosecutrix was subjected to rape on 15-3-2000. (Para 13)

Further, prosecutrix had categorically stated that it was the accused who had raped her, and her statement was corroborated by PWs 4 and 5. (Para 14)

Submission that there is no other independent witness to support the aforesaid allegation is also baseless. In case of this nature when the prosecutrix, who was a minor girl on the date of incident, has come forward and stated that she was raped by the accused and her testimony could not be shaken in the cross-examination, we have no reason to disbelieve her for no girl would ever lie on a vital issue of this nature. Even her sister and mother also stated as to what was reported by the prosecutrix herself immediately after the alleged occurrence. Besides, there was PW 6 who though turned hostile at one stage of her examination, admitted that PW 5 had come to her house along with her daughter and narrated the incident to her. (Paras 15 and 16)

Submission by the respondent-accused that the prosecutrix was habitual to sexual intercourse since her hymen was absent also liable to be rejected because the prosecutrix has stated that the accused himself had earlier raped her about a year back. It is also disclosed from the medical report that the prosecutrix was not habitual to sexual intercourse as the doctor herself stated that the prosecutrix was not used to sexual intercourse because her vagina admitted only one finger. She has explained that there was redness over the margin of hymen and on the basis of this redness, the possibility of recent sexual intercourse could not be ruled out. As the testimony of the prosecutrix, her sister and mother has not been shaken in the cross-examination, the statement of the doctor appears to be a plausible and convincing version. (Para 17)

Further submission of accused that evidence of PWs 3 and 4 should not be relied upon because they were child witnesses and tutored by their parents and police, is unacceptable. Testimonies of PWs 3 and 4 as regards the alleged occurrence was firm and convincing. There was no reason as to why a child of her age would falsely implicate the accused. Besides, it is settled position in law that conviction under Section 376 on sole testimony of a rape victim can be maintained if her evidence is found credible and convincing. (Paras 18 and 19)

Evidence of PWs 3 and 4 was found cogent, credible and uninfluenced by any tutoring. The High Court erroneously appreciated the evidence by ignoring credible evidence of two child witnesses statement of their mother, which was further corroborated by medical evidence. Hence, judgment of the High Court set aside and that of the trial court restored. (Paras 22 to 24). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210; Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, followed

Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, applied

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210, considered and relied on

[8867] — Ss. 376 and 375 — Rape — Ingredients — Hymen of victim remaining intact, hence submission that charge of rape under S. 376 as defined in S. 375 not made out — *Held on facts, victim was a very young girl of six years of age and it is quite likely that full penetration did not take place as the accused was a grown-up person of over 20 years of age — However, injuries clearly indicate that rape, as defined in S. 375, did take place* (Paras 15, 16 and 11). *Rajendra Datta Zarekar* v. *State of Goa*, (2007) 14 SCC 560: AIR 2008 SC 572: 2008 Cri LJ 710.

Bench Strength **2**. Coram: **G.P. Mathur** and *G.S. Singhvi*, JJ. [Date of decision: 4-12-2007]

Santosh Kumar v. State of M.P., (2006) 10 SCC 595: (2007) 1 SCC (Cri) 28, considered and relied on

Modi's Medical Jurisprudence and Toxicology, 21st Edn., at p. 369; Parikh's Textbook of Medical Jurisprudence and Toxicology, cited

[8868] — Ss. 376 and 375 — Rape on minor girl (aged 11 or 12 years) — Penetration — Proof of

It was argued that having regard to the girl's age and the fact that her vagina admitted one finger with difficulty, it is not possible to believe that there was penetration.

Held :

In the absence of penetration there would not be absence of hymen with the edges torn and profuse bleeding from the vagina staining the salwar. Merely because the doctor found that the vagina admitted one finger with difficulty, it cannot be inferred that there was no penetration as the muscles must have contracted by then. The accused-appellant, a robust man must have penetrated the vagina. *Prithi Chand* v. *State of H.P.*, (1989) 1 SCC 432: 1989 SCC (Cri) 206: AIR 1989 SC 702: (1989) 1 SCR 123: 1989 Cri LJ 841.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 17-1-1989]

[8869] — S. 376 or S. 376 r/w S. 511 — Rape or attempt to rape — Ejaculation without penetration — *Held, constitutes an attempt to commit rape and not actual rape — Sine qua non of offence of rape is penetration, and not ejaculation — Accused got on top of victim, but before actual intercourse ejaculated — On facts, held, commission of actual rape not established — Accused liable to be convicted for attempt to commit rape* (Paras 12 and 13). *Koppula Venkat Rao* v. *State of A.P.*, (2004) 3 SCC 602: 2004 SCC (Cri) 840: AIR 2004 SC 1874: 2004 Cri LJ 1804.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-3-2004]

[**Ed.**: *See also* (1997) 8 SCC 386 and (1997) 7 SCC 677]

[8870] — Ss. 376/511, 375 Expln., 366 and 354 — Rape — Basic ingredients of — Penetration of male organ into private parts of victim/prosecutrix, held, is necessary to constitute the said offence — *Slightest penetration with or without any emission of semen or even an attempt at penetration is sufficient — Rupture of hymen is not necessary — Appellant forcibly taking prosecutrix to his gumti with intention of committing illicit intercourse — But, before he could do anything, hearing alarm raised by prosecutrix, the father of prosecutrix and other villagers assembling there and rescuing the prosecutrix — Held, in absence of any attempt to penetrate, conviction under Ss. 376/511 was wholly illegal and unsustainable — However, ingredients of offences under Ss. 366 and 354 IPC being present, appellant held guilty under the said sections — Punished accordingly*

On 18-2-1998, at about 1.30 a.m., when the prosecutrix, aged about 12 years, came out of her house to answer the call of nature, the appellant forcibly took her to his gumti for committing illicit sexual intercourse with her. The said gumti of the appellant was only a few feet away from the house of the prosecutrix. The prosecutrix raised an alarm, and immediately thereafter several persons including the father of the prosecutrix came from the adjoining houses and caught the appellant before he could even make any attempt to ravish the prosecutrix.

The trial court convicted the appellant under Sections 376/511 IPC and sentenced him to seven years' rigorous imprisonment. The appellant preferred an appeal before the High Court, but the same was dismissed. Hence, the present appeal.

Partly allowing the appeal,

Held :

The important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration which is altogether missing in the instant case. No offence under Section 376 IPC can be made out unless there was penetration to some extent. In the absence of penetration to any extent, it would not bring the offence of the appellant within the four corners of Section 375 of the Penal Code. (Para 10)

Under Section 375 IPC, six categories indicated therein are the basic ingredients of the offence of rape. In view of the Explanation to Section 375, mere penetration of penis in vagina is an offence of rape. Slightest penetration is sufficient for conviction under Section 376 IPC. (Paras 10 and 13)

Therefore, the basic ingredient for proving a charge of rape is the accomplishment of the act with force. The other important ingredient is penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would be enough for the purpose of Sections 375 and 376 IPC. In order to constitute rape, what Section 375 IPC requires is medical evidence of penetration, and this may occur and the hymen remain intact. In this regard, the position of law in England is the same. There also, where a penetration was proved, but not of such a depth as to injure the hymen, still it was held to be sufficient to constitute the crime of rape. The view has been taken that "proof of the rupture of the hymen is unnecessary". It has been laid down that "it is now unnecessary to prove actual emission of seed; sexual intercourse is deemed complete upon proof of penetration only". (Paras 10, 13, 14 and 21)

In the present case, what to talk about the penetration, there has not been any attempt of penetration to the slightest degree. The appellant had neither undressed himself nor even asked the prosecutrix to undress so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Sections 376/511 IPC is wholly illegal and unsustainable. (Paras 22 and 58)

3.(e) Ss. 376-A to 376-D

However, the offence committed squarely covers the ingredients of Sections 366 and 354 IPC. (Para 36). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

State of U.P. v. Babul Nath, (1994) 6 SCC 29: 1994 SCC (Cri) 1585; R. v. Hill, (1781) 1 East PC 439; R. v. M'Rue, (1838) 8 C&P 641: 173 ER 653; R. v. Allen, (1839) 9 C&P 31: 173 ER 727; R. v. Hughes, (1841) 2 Mood 190: 169 ER 75; R. v. Lines, (1844) 1 C&K 393: 174 ER 861; R. v. Marsden, (1891) 2 QB 149; Aman Kumar v. State of Haryana, (2004) 4 SCC 379: 2004 SCC (Cri) 1266, relied on

State of Kerala v. Kundumkara Govindan, 1969 Cri LJ 818: 1968 Ker LJ 485, approved

Nirmal Kumar v. State of Haryana, 2002 Cri LJ 3352 (P&H), considered

Khalilur Rahman v. Emperor, AIR 1933 Rang 98: 34 Cri LJ 696 (FB); Rajendra v. State of Maharashtra, 1997 SCC (Cri) 840; Niranjan Singh v. State, (1986) 2 Crimes 335 (Del); Vishnu v. State of Maharashtra, 1997 Cri LJ 1724 (Bom); State of Kerala v. Hamsa, (1988) 3 Crimes 161 (Ker); State of Punjab v. Major Singh, AIR 1967 SC 63: 1967 Cri LJ 1; Kanhu Charan Patra v. State of Orissa, 1996 Cri LJ 1151 (Ori); Jai Chand v. State, 1996 Cri LJ 2039 (Del); Raja v. State of Rajasthan, 1998 Cri LJ 1608 (Raj); State of Karnataka v. Khaleel, 2004 Cri LJ (NOC) 10 (Kant); Nuna v. Emperor, 15 IC 309: (1912) 13 Cri LJ 469; Bisheshwar Murmu v. State of Bihar, 2004 Cri LJ 326 (Jhar); Keshab Padhan v. State of Orissa, 1976 Cutt LR (Cri) 236; Ram Mehar v. State of Haryana, 1998 Cri LJ 1999 (P&H); Rameshwar v. State of Haryana, 1984 Cri LJ 786 (P&H); Shoukat v. State of Rajasthan, 2002 Cri LJ 364 (Raj), considered

(e) Ss. 376-A to 376-D

See also 'B.2. Rape by person in authority', below

[8871] — S. 376-B — Sexual intercourse by public servant with a woman in his custody — Ingredients — *Accused, a teacher of a government school, having intimacy with a girl student of the school and having sexual intercourse with her outside the school premises — Held, ingredients of S. 376-B not fulfilled, hence accused cannot be convicted thereunder — Even assuming that accused, being a teacher of a govt. school, was a public servant, prosecutrix cannot be said to be in his custody — Moreover, intercourse had not taken place within the school premises — From the mere fact that accused was having a love affair with prosecutrix, it cannot be shown that he had taken advantage of his official position and induced or seduced prosecutrix to have intercourse*

The ingredients of Section 376-B are:

(*i*) the accused must be a public servant;

(*ii*) he must take advantage of his official position;

(*iii*) he must induce or seduce any woman;

(*iv*) such woman must be in his custody in such capacity or she is in the custody of public servant subordinate to him; and (*v*) he must have sexual intercourse with her which does not amount to the offence of rape. (Para 7)

It may be assumed that the appellant being a teacher of the government school was a public servant. But all the students of the school, only thereby, were not in the custody of the appellant. The expression "custody" implies guardianship. A custody must be a lawful custody. The same may arise within the provisions of the statute or actual custody conferred by reason of an order of a court of law or otherwise. (Para 12)

When these two ingredients are satisfied, the third ingredient, therefore, would be as to whether the public servant has taken advantage of his official position. If a student and a teacher fall in love with each other, the same would not mean that the teacher has taken undue advantage of his official position. Even then, there must be an inducement or seduction by a public servant so far as the woman in his custody is concerned. (Para 14)

Sexual intercourse, therefore, for the purpose of attracting Section 376-B of the Penal Code must take place at a place where the woman was in custody. In this case, the prosecutrix categorically admitted that the same did not take place within the precincts of the school but outside the school. (Para 15)

Thus the ingredients of the offence under Section 376-B of the Penal Code are not satisfied in the instant case. (Para 16). *Omkar Prasad Verma* v. *State of M.P.*, (2007) 4 SCC 323: (2007) 2 SCC (Cri) 293: AIR 2007 SC 1381: (2007) 52 AIC 7 (SC): 2007 Cri LJ 1831.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 8-3-2007]

[8872] — S. 376-B — "Sexual intercourse" to constitute offence under — Must be had at the place where the woman was in custody

Sexual intercourse, therefore, for the purpose of attracting Section 376-B of the Penal Code must take place at a place where the woman was in custody. In this case, the prosecutrix categorically admitted that the same did not take place within the precincts of the school but outside the school. (Para 15)

Thus the ingredients of the offence under Section 376-B of the Penal Code are not satisfied in the instant case. (Para 16). *Omkar Prasad Verma* v. *State of M.P.*, (2007) 4 SCC 323: (2007) 2 SCC (Cri) 293: AIR 2007 SC 1381: (2007) 52 AIC 7 (SC): 2007 Cri LJ 1831.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 8-3-2007]

[8873] — Ss. 376-B & 376(2)(b) — "Custody" — Meaning — Implies guardianship — *It must be a lawful custody under provisions of a statute or under order of court* (Para 12). *Omkar Prasad Verma* v. *State of M.P.*, (2007) 4 SCC 323: (2007) 2 SCC (Cri) 293: AIR 2007 SC 1381: (2007) 52 AIC 7 (SC): 2007 Cri LJ 1831.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 8-3-2007]

[8874] — Ss. 376-B, 376-C, 376-D and 376(2) — Distinction — *While to constitute offence punishable under S. 376(2), consent of prosecutrix would be absent, under Ss. 376-B to 376-D there would be consent but obtained by taking advantage of the peculiar status of the accused mentioned therein — Ss. 376-B to 376-D do not stricto sensu deal with rape as generally understood*

Section 376-A to 376-D inserted by Act 43 of 1983 were sought to deal with such cases which are not covered by Section 376. They have thus, been inserted to meet a situation which was otherwise not provided for under Section 376. A new offence against the public servant is created under Sections 376(2)(*b*), 376-B and 376-C of the Penal Code. Intercourse by a man with his wife during separation and by any member of the management or staff of a hospital with any woman in that hospital would be the offences falling under Sections 376-A and 376-D of the Code. (Para 8)

A distinction must be made out between an offence of rape as contained in Section 375 of the Penal Code which is punishable under Section 376 and an offence of sexual intercourse with a woman in the situations specified in the Sections 376-B, 376-C and 376-D. The distinction is that whereas under Section 376(2), there is no consent at all, under Sections 376-B, 376-C and 376-D, there would be consent on the part of the prosecutrix but such consent has been obtained by taking undue advantage of the position as public servant, superintendent or member of the management. Sections 376-B to 376-D, stricto sensu, therefore, do not deal with rape as is understood in its ordinary parlance. (Para 9). *Omkar Prasad Verma* v. *State of M.P.*, (2007) 4 SCC 323: (2007) 2 SCC (Cri) 293: AIR 2007 SC 1381: (2007) 52 AIC 7 (SC): 2007 Cri LJ 1831.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 8-3-2007]

(f) Habituated to Sex

See also 'A.4. Prior sexual history/conduct — Relevance, if any, and

'C.20.(c) Injuries on prosecutrix or absence thereof', below

[8875] — Ss. 375 and 376 — Rape — Appreciation of evidence — Absence of hymen — Whether indicative of habitual intercourse — *Submission by respondent-accused that prosecutrix was habitual to sexual intercourse since her hymen was absent — Held, prosecutrix had stated that accused had raped her about a year back — Besides, the doctor had also stated that prosecutrix was not habitual to intercourse because her vagina admitted only one finger — Hence, submission rejected* (Para 17). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength 2. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

[8876] — S. 376 — Rape — Medical evidence — Rape on minor girl aged 14 years — Statement of the doctor that hymen of the prosecutrix was ruptured and admitted two fingers — *Held, this cannot be viewed as if the prosecutrix was habitual to sexual intercourse*

According to the doctor hymen of the prosecutrix was ruptured, admitted two fingers, bled on touch, was reddish in colour, and was painful and tender. On this basis, the doctor opined that these were signs of rape. The ability of admission of two fingers and the hymen being ruptured was viewed by the High Court as if the prosecutrix was habitual to sexual intercourse. When the doctor had opined that the hymen was ruptured, she did not qualify her statement that it stood ruptured as of old or carried an old tear. With clear objective in view, the doctor must be presumed to have noticed the hymen as freshly ruptured, as otherwise, the doctor would not have described it in that fashion to be bleeding, tender and painful. The factum of admission of two fingers could not be held adverse to the prosecutrix for it would depend upon the size of the fingers inserted. When medical experts try to opine about the medical condition of a woman used to sexual intercourse, it is described as admission of two fingers *easily*, but here the doctor qualified her statement by saying that it was painful and bleeding on touch. These conditions obviously related to the hymen. The doctor was thus clear in her opinion that rape had been committed on the prosecutrix. *Narayanamma* v. *State of Karnataka*, (1994) 5 SCC 728: 1994 SCC (Cri) 1573.

Bench Strength 2. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-8-1994]

3.(f) Habituated to Sex *(contd.)*

[8877] — Ss. 376 and 342 — Rape of a minor — Appreciation of evidence — Conviction restored — Non-reliance on medical report since time of occurrence not determined — *Doctor who examined prosecutrix finding signs of recent sexual act but also accepting suggestion of accused that intercourse could have taken one week prior to her examination — Prosecutrix telling the doctor that accused had also sexually molested her one year prior to the alleged occurrence — Doctor finding hymen absent but categorically stating that prosecutrix was not habitual to sexual intercourse because her vagina admitted one finger only — Medical report, thus, corroborated by prosecutrix that she was earlier also raped by same accused — High Court acquitting the accused holding that when the doctor herself was unclear about the actual date of alleged rape, medical report could not be relied upon — While doing so, High Court ignoring the fact that doctor had also stated that there was possibility of recent intercourse i.e. within a week of her examination — Held, High Court appreciated the evidence erroneously by ignoring cogent and credible evidence of PWs 3, 4 and 5, which was further corroborated by medical evidence — Hence, impugned judgment acquitting accused set aside, and that of trial court convicting him under Ss. 376 & 342 restored*

Facts:

On 15-3-2000, when parents of the prosecutrix had gone to visit her maternal uncle, her elder sister PW 4 had gone to the jungle to fetch leaves for goats, the accused is alleged to have taken the prosecutrix (minor) to his home, bolted the door of the room from inside, switched on the TV, gagged, and raped her. Thereafter he gave her Rs 5 and some "shakkar". Prosecutrix narrated the incident to PW 4. Her parents were informed about the occurrence on 16-3-2000 on their return. PW 4 also handed over to PW 5 (mother) currency note of Rs 5 given to her by the prosecutrix.

The trial court convicted the accused under Ss. 376 and 342 and sentenced him to RI for 7 years and fine of Rs 2000, and RI for 1 year respectively. The High Court acquitted the accused in appeal filed thereagainst. Hence, the present appeal.

Allowing the appeal, the Supreme Court held as above.

Held :

It was clearly proved and established that prosecutrix was a minor on the date of occurrence. Prosecutrix was examined on 17-3-2000 and she told the doctor that she had been sexually molested by accused about a year back. On examining her the doctor found signs of recent sexual act, as there was small reddened area over the left upper margin of hymen. In the cross-examination, the doctor has categorically stated that the prosecutrix was not habitual to sexual intercourse because her vagina admitted only one finger. The doctor, however, admitted that absence of hymen proves that she had been used to sexual intercourse earlier. (Paras 10 and 11)

The aforesaid medical report of the doctor is corroborated by the statement made by the prosecutrix that she was earlier also raped by the same accused. As against the suggestion of the accused that the sexual intercourse as alleged would have taken place more than one week prior to 17-3-2000, the doctor while accepting the same also stated that there can be a possibility of recent sexual intercourse i.e. within a week from 17-3-2000, which cannot be ruled out because of the redness on the margin of hymen. (Para 12)

The High Court mainly relied upon the opinion of the doctor holding that the doctor herself was unclear about the actual date of the alleged rape, and therefore, the said medical report could not be relied upon. While doing so, the High Court ignored the fact that the doctor had also stated that there can be a possibility of recent sexual intercourse i.e. within a week from 17-3-2000. The alleged rape was in fact committed within a week from 17-3-2000 i.e. on 15-3-2000. The fact that the prosecutrix was subjected to rape on 15-3-2000 is proved and established from the statement of the prosecutrix, medical report and the statement of the doctor (PW 8), who had examined the prosecutrix. The doctor had also stated that hymenal appearance cannot rule out recent coitus. Therefore, it is also proved and established beyond doubt that the prosecutrix was subjected to rape on 15-3-2000. (Para 13)

Further, prosecutrix had categorically stated that it was the accused who had raped her, and her statement was corroborated by PWs 4 and 5. (Para 14)

Submission that there is no other independent witness to support the aforesaid allegation is also baseless. In case of this nature when the prosecutrix, who was a minor girl on the date of incident, has come forward and stated that she was raped by the accused and her testimony could not be shaken in the cross-examination, we have no reason to disbelieve her for no girl would ever lie on a vital issue of this nature. Even her sister and mother also stated as to what was reported by the prosecutrix herself immediately after the alleged occurrence. Besides, there was PW 6 who though turned hostile at one stage of her examination, admitted that PW 5 had come to her house along with her daughter and narrated the incident to her. (Paras 15 and 16)

Submission by the respondent-accused that the prosecutrix was habitual to sexual intercourse since her hymen was absent also liable to be rejected because the prosecutrix has stated that the accused himself had earlier raped her about a year back. It is also disclosed from the medical report that the prosecutrix was not habitual to sexual intercourse as the doctor herself stated that the prosecutrix was not used to sexual intercourse because her vagina admitted only one finger. She has explained that there was redness over the margin of hymen and on the basis of this redness, the possibility of recent sexual intercourse could not be ruled out. As the testimony of the prosecutrix, her sister and mother has not been shaken in the cross-examination, the statement of the doctor appears to be a plausible and convincing version. (Para 17)

Further submission of accused that evidence of PWs 3 and 4 should not be relied upon because they were child witnesses and tutored by their parents and police, is unacceptable. Testimonies of PWs 3 and 4 as regards the alleged occurrence was firm and convincing. There was no reason as to why a child of her age would falsely implicate the accused. Besides, it is settled position in law that conviction under Section 376 on sole testimony of a rape victim can be maintained if her evidence is found credible and convincing. (Paras 18 and 19)

Evidence of PWs 3 and 4 was found cogent, credible and uninfluenced by any tutoring. The High Court erroneously appreciated the evidence by ignoring credible evidence of two child witnesses statement of their mother, which was further corroborated by medical evidence. Hence, judgment of the High Court set aside and that of the trial court restored. (Paras 22 to 24). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength 2. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210; Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, followed

Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, applied

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210, considered and relied on

4. Prior sexual history/conduct — Relevance, if any

See also 'A.3.(f) Habituated to Sex', above

[8878] — Ss. 375 Secondly, 376, 376-B, 376-C and 376-D — Past promiscuous behaviour of the prosecutrix held is no ground to condone rape — *Even such a prosecutrix has a right to refuse to submit herself to sexual intercourse*

The trial court not only erroneously disbelieved the prosecutrix, but quite uncharitably and unjustifiably even characterised her as "a girl of loose morals" or "such type of a girl". We express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack sobriety expected of a Judge. Suchlike stigmas have the potential of not only discouraging an even otherwise reluctant victim of sexual assault to bring forth complaint for trial of criminals, thereby making the society suffer by letting the criminal escape even a trial. The courts are expected to use self-restraint while recording such findings which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole — where the victim of crime is discouraged — the criminal encouraged and in turn crime gets rewarded! Even in cases, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of "loose moral character" is permissible to be drawn from that circumstance alone. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma, like the one as cast in the present case should be cast against such a witness by the courts, for after all it is the accused and not the victim of sex crime who is on trial in the court. *State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

[8879] — S. 376 — Even if the prosecutrix was a woman of easy virtue, she could not be raped by the accused for that reason. *Ranvir Singh* v. *State of M.P.*, (1996) 11 SCC 595.

Bench Strength 2. Coram: **G.N. Ray** and *B.L. Hansaria*, JJ. [Date of decision: 1-11-1996]

[8880] — S. 376 — Rape — Casting stigma on the character of prosecutrix deprecated — *Absence of hymen — Even if it be concluded that the prosecutrix was used to sexual intercourse prior to the rape, she had every right to refuse to submit herself to sexual intercourse against her will*

In the instant case the High Court after considering the medical evidence, while dealing with the question of rape opined:

"There is no direct evidence to show that the accused alone had sexual intercourse with her. The deceased was aged 16 years."

Held :

By using the word "alone" the High Court almost cast a stigma on the prosecutrix as if, apart from the appellant, there were other persons also who had sexual intercourse with her. There is no basis at all for such an assumption. There was no warrant for recording such a finding and if we may say so, with respect, the finding is an irresponsible finding. We express our strong disapproval of the approach of the High Court and its casting a stigma on the character of the deceased prosecutrix. Even if the Court formed an opinion, from the absence of hymen, that the victim had had sexual intercourse prior to the time when she was subjected to rape by the appellant, she had every right to refuse to submit herself to sexual intercourse by the appellant, as she certainly was not a vulnerable object or prey for being sexually assaulted by anyone and this position becomes all the more clear from the contents of the letter written by the deceased to the accused deprecating the idea of a married man enjoying another woman by terming it an act of grave sin. *State of A.P.* v. *Gangula Satya Murthy*, (1997) 1 SCC 272: 1997 SCC (Cri) 325: AIR 1997 SC 1588: 1997 Cri LJ 774.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 19-11-1996]

[8881] — S. 376 — Rape — Conviction — Character of the victim — Relevance of — *Prosecutrix alleged to be a girl of easy virtue, habituated to sexual intercourse — Even assuming that she was previously accustomed to sexual intercourse, held, that cannot be a ground to absolve the accused from the charge of rape — Further held, consent must be for that particular act/occasion*

Even assuming that the victim was previously accustomed to sexual intercourse, that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give licence to any person to rape her. Even if the mother of the prosecutrix has accepted that character of her daughter was not good, that does not dilute the offence. It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. In this case the High Court's view that the girl being of loose morals and easy virtue the accused were entitled to acquittal is indefensible. (Paras 11, 10 and 13). *State of U.P.* v. *Pappu*, (2005) 3 SCC 594: 2005 SCC (Cri) 780: AIR 2005 SC 1248: 2005 Cri LJ 331.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-12-2004]

[8882] — S. 376 — Rape — Medical evidence — Signs of previous sexual intercourse on victim — Effect — *Held, would not affect the testimony of victim adversely — It cannot be a ground to acquit an alleged rapist*

The victim's evidence has been discarded by holding that it is at variance with the medical evidence. Mere statement that according to the doctor, the victim's vagina admitted two fingers and she could on earlier occasions have had sexual intercourse five, ten or fifteen times rules out rape by the accused once as alleged, in no way casts doubt on the victim's evidence. Signs of previous sexual intercourse on the victim cannot, by any stretch of imagination, be a ground to acquit an alleged rapist. Even assuming that the victim was previously accustomed to sexual intercourse, that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give licence to any person to rape her. It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. (Paras 11 and 13). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

[8883] — S. 376 — Rape — Past conduct of prosecutrix — Relevance of

Though the past conduct of the prosecutrix is an irrelevant matter, in the instant case, Ms *X* asserted that she was a virgin till the alleged incident, but the medical evidence supported by her physical features revealed that she was habituated to sex. (Para 19). *Sudhansu Sekhar Sahoo* v. *State of Orissa*, (2002) 10 SCC 743: 2003 SCC (Cri) 1484: AIR 2003 SC 2136.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **K.G. Balakrishnan**, JJ. [Date of decision: 18-12-2002]

[8884] — Ss. 376 and 511 — Evidence of prosecutrix of easy virtue — *Merely because woman was of easy virtue her evidence cannot be discarded but has to be cautiously appreciated. State of Maharashtra* v. *Madhukar Narayan Mardikar*, (1991) 1 SCC 57: 1991 SCC (Cri) 1: AIR 1991 SC 207: (1991) 1 LLJ 269: (1991) 1 SLJ 164: (1991) 1 SLR 140.

Bench Strength **2**. Coram: *K. Jagannatha Shetty* and **A.M. Ahmadi**, JJ. [Date of decision: 23-10-1990]

[8885] — Ss. 376 and 511 — Evidence of prosecutrix of easy virtue — Non-supply of documents — Transcripts supplied instead — *Enquiry against Police Inspector on charge of visiting alone in uniform the house of a woman for ravishing her and preparing false documents and making entries in Station Diary to cover the misdeed — Overwhelming evidence, both direct and circumstantial, tendered to establish the charges — Even though original note book of police constable and log book of the police jeep which reached the spot on being summoned by the delinquent Inspector were missing, transcript thereof prepared earlier supplied to the delinquent and hence in the circumstances mere non supply of the original documents would not efface the evidence against him — Merely because the woman was of easy virtue her evidence cannot be discarded but has to be cautiously appreciated — Held, High Court erred in embarking upon a reappreciation of evidence as if it were sitting in appeal against decision of departmental authorities — Its reappreciation was also unsustainable on merits — Evidence Act, 1872, S. 118. State of Maharashtra* v. *Madhukar Narayan Mardikar*, (1991) 1 SCC 57: 1991 SCC (Cri) 1: AIR 1991 SC 207: (1991) 1 LLJ 269: (1991) 1 SLJ 164: (1991) 1 SLR 140.

Bench Strength **2**. Coram: *K. Jagannatha Shetty* and **A.M. Ahmadi**, JJ. [Date of decision: 23-10-1990]

[8886] — S. 376(2) proviso — Sentence — Police officials (appellants) convicted under S. 376 for committing rape on prosecutrix and awarded minimum sentence of 10 years' RI — *Paramour of the prosecutrix also convicted on charge of rape — On appeal High Court finding that the prosecution failed to prove age of the prosecutrix as below 18 years and that she was willingly going around with her paramour and was having sex with him of her free will, acquitted the paramour but confirmed the conviction and sentence imposed on the appellants — Having regard to peculiar facts and circumstances of the case and the promiscuous conduct of the prosecutrix, held, proviso to S. 376(2) can be invoked and a sub-minimum sentence of 5 years' RI would meet the ends of justice — Sentence accordingly reduced. Prem Chand* v. *State of Haryana*, 1989 Supp (1) SCC 286: 1989 SCC (Cri) 418: AIR 1989 SC 937: 1989 Cri LJ 1246.

Bench Strength **2**. Coram: *B.C. Ray* and **S. Ratnavel Pandian**, JJ. [Date of decision: 31-1-1989]

[Ed.: For review of this case on question of sentence see (1990) 1 SCC 249.]

5. Prosecution of woman for rape

[8887] — Ss. 375 and 376 — Rape — Prosecution of a woman for — *Held, as per the definition of rape in Ss. 375 and 376, rape can be committed only by a man*

A bare reading of Section 375 makes the position clear that rape can be committed only by a man. *Priya Patel* v. *State of M.P.*, (2006) 6 SCC 263: (2006) 3 SCC (Cri) 96: AIR 2006 SC 2639: (2006) 130 DLT 696: (2006) 3 KLT 398: (2006) 3 Guj LH 118.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-7-2006]

[8888] — Ss. 375, 376(2)(g) & Expln. 1, 34 and 110 — Gang rape — Prosecution of a woman for — Gang rape and abetment of rape — Distinction — *Held, under the definition of rape under Ss. 375 and 376 a woman cannot be prosecuted for gang rape even if she facilitates the act of rape — By virtue of S. 376(2) Expln. 1 a woman cannot be convicted for rape — This is conceptually inconceivable since as per the definition of rape in Ss. 375 and 376, rape can be committed only by a man — Expression "in furtherance of their common intention" in S. 376(2) Expln. 1 relates to the intention to commit rape — A woman cannot be said to have an intention to commit rape — However, question whether appellant-accused, a woman, could be prosecuted for abetment of rape, left open for courts below to decide*

A complaint was lodged by the prosecutrix alleging that she was returning by Utkal Express after attending a sports meet. When she reached her destination at Sagar, the accused, Bhanu Pratap Patel (husband of the accused-appellant) met her at the railway station and told her that her father had asked him to pick her up from the railway station. Since the prosecutrix was suffering from fever, she accompanied accused Bhanu Pratap Patel to his house. He committed rape on her. When commission of rape was going on, the wife of the accused, the present appellant reached there. The prosecutrix requested the appellant to save her. Instead of saving her, the appellant slapped her, closed the door of the house and left the place of incident. On the basis of the complaint lodged, investigation was undertaken and charge-sheet was filed. While the accused Bhanu Pratap Patel was charged for offences punishable under Sections 323 and 376 IPC, the appellant was charged for commission of offences punishable under Sections 323 and 376(2)(*g*) IPC. The revision filed before the High Court questioned the legality of the charge framed so far as the appellant was concerned, relatable to Section 376(2)(*g*) IPC. It was contended that a woman cannot be charged for commission of the offence of rape. The High Court was of the view that though a woman cannot commit rape, but if a woman facilitates the act of rape, Explanation I to Section 376(2) comes into operation and she can be prosecuted for "gang rape". (Para 4)

Negating the view of the High Court and allowing the appeal in the terms below

Held :

A bare reading of Section 375 makes the position clear that rape can be committed only by a man. The section itself provides as to when a man can be said to have committed rape. Section 376(2) makes certain categories of serious cases of rape as enumerated therein attract more severe punishment. One of them relates to "gang rape". The language of Section 376(2)(*g*) provides that whoever commits "gang rape" shall be punished, etc. The Explanation only clarifies that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each such person shall be deemed to have committed gang rape within Section 376(2). That cannot make a woman guilty of committing rape. This is conceptually inconceivable. By operation of the deeming provision in the Explanation, a person who has not actually committed rape is deemed to have committed rape even if only one of the group in furtherance of the common intention has committed rape. The expression "in furtherance of their common intention" as appearing in the Explanation to Section 376(2) relates to the intention to commit rape. A woman cannot be said to have an intention to commit rape. Therefore, the appellant wife cannot be prosecuted for alleged commission of the offence punishable under Section 376(2)(*g*). (Para 8)

The residual question is whether the appellant wife can be charged for abetment. This is an aspect which has not been dealt with by the trial court or the High Court. If in law, it is permissible and the facts warrant such a course to be adopted, it is for the court concerned to act in accordance with law. (Para 9). *Priya Patel* v. *State of M.P.*, (2006) 6 SCC 263: (2006) 3 SCC (Cri) 96: AIR 2006 SC 2639: (2006) 130 DLT 696: (2006) 3 KLT 398: (2006) 3 Guj LH 118.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-7-2006]

[8889] — Ss. 375 and 377 — Grounds of dissolution under S. 10, Divorce Act, 1869 — Held, not discriminatory against husband — *As regards the ground of adultery and exchange of profession of Christianity, available to wife, she is in a more disadvantageous position — Ground of rape rightly made available to wife alone since the word 'rape' used in S. 10 has to be assigned the same meaning as defined in S. 375 of Penal Code i.e. forcible sexual intercourse by man with a woman and not vice versa — Though sodomy and bestiality can be committed by wife also, conferring those grounds to wife alone cannot be said to be discriminatory having regard to the weaker position of Indian women — Besides it is also open to the parties to marry under Special Marriage Act, but once having married under Divorce Act one cannot allege its disadvantages — Hence S. 10 not violative of Art. 14 — Divorce Act, 1869, S. 10*

There is no substance in the challenge by the petitioner-husband to the vires of the provisions of S. 10 as being discriminatory against the husband and, therefore, violative of Art. 14 of the Constitution.

As far as the ground of adultery is concerned, it is the husband who is in a favourable position as against the wife, since it is not enough for the wife to prove adultery simpliciter on the part of her husband. To that extent, undoubtedly, it is the wife who is discriminated against.

For the ground of exchange of profession of Christianity by husband, the wife has also to prove that the husband has married another woman.

Since, however, the husband can seek dissolution of the marriage only on the ground of adultery, the husband is not at a disadvantage as against his wife because a mere marriage with another man whether after exchanging the profession of religion or not, would give a ground to the husband to seek dissolution of marriage. Thus even as far as this ground is concerned, it is the wife who is at a disadvantage.

The only other grounds unavailable to the husband are of rape, sodomy or bestiality. Although the modern usage of the word 'rape' extends also to the forcible sexual intercourse by a woman with a man, the dictionary meaning of the said word as well as the offence of rape as defined in the Indian Penal Code speak only of forcible sexual intercourse by a man with a woman. Therefore, the latter meaning of the said word has to be accepted while construing the provisions of the Act which is one of the vintage enactments on our statute book. Hence, it cannot be said that there is any discrimination between husband and wife because the ground of rape is not available to the husband for dissolving the marriage.

However, a woman can also be guilty of sodomy. So will be the position in the case of the offence of bestiality. The discrimination, therefore, can be alleged by the husband only on the basis that these two grounds, viz., sodomy and bestiality, are not available to him for claiming dissolution of his marriage whereas the same are available to the wife for the purpose. But taking into consideration the muscularly weaker physique of the woman, her general vulnerable physical and social condition and her defensive and non-aggressive nature and role particularly in this country, the legislature can hardly be faulted if the said two grounds are made available to the wife and not to the husband for seeking dissolution of the marriage. For the same reasons, it can hardly be said that on that account the provisions of S. 10 of the Act are discriminatory as against the husband.

Moreover, the individuals not willing to submit to the Indian Divorce Act or any other personal law are not obliged to marry exclusively under that law. They have the freedom to marry under the Special Marriage Act, 1954. Having, however, married under the Divorce Act and accepted its discipline, they cannot be heard to complain of its rigours, if any. *Anil Kumar Mahsi* v. *Union of India*, (1994) 5 SCC 704: (1994) 2 KLT 399.

Bench Strength **2**. Coram: **P.B. Sawant** and *Yogeshwar Dayal*, JJ. [Date of decision: 20-7-1994]

[8890] — S. 376(2)(g) with Expln. 1 thereto — Gang rape — Prosecution of a woman therefor — Held, impermissible — *A woman committing rape is conceptually inconceivable — Expression "in furtherance of their common intention" in Expln. 1 to S. 376(2)(g) relates to intention to commit rape — A woman cannot be said to have an intention to commit rape* (Paras 5 and 6). *State of Rajasthan* v. *Hemraj*, (2009) 12 SCC 403: AIR 2009 SC 2644.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 27-4-2009]

Priya Patel v. State of M.P., (2006) 6 SCC 263: (2006) 3 SCC (Cri) 96, followed

B. PARTICULAR KINDS OF RAPE AND WITH OTHER OFFENCES

Synopsis

1. Rape and murder/death **461**
2. Rape by person in authority **477**
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10. Rape or outraging modesty/indecent assault/other lesser sexual offences **559**
11. Rape of mentally deficient woman **565**
12. Other offences and rape **565**

1. Rape and murder/death

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C.19. Rape & other sexual offences', in Vol. 2

[8891] — Ss. 375 & 376(2)(f) or S. 302 or S. 304 Pt. II — Death occurring due to brutal manner of rape (of 7/8-year-old child) — Death sentence if warranted — *Brutal rape of a young child aged 7/8 years by the appellant aged 31 years leading to her death due to excessive bleeding — Culpability of the appellant in the heinous crime for all practical purposes established — Death sentence imposed by the trial court, confirmed by the High Court on reference — Death of the victim occurring because of*

1. Rape and murder/death *(contd.)*

excessive bleeding and not because of any specific overt act on the part of the appellant — Thus, intention of the appellant to kill the deceased not proved — Hence held, imposition of death sentence was not proper — Manner in which the deceased was raped may be brutal but it could have been a momentary lapse on the part of the appellant, seeing a lonely girl at a secluded place — No premeditation for commission of the offence proved — Offence, though, may look heinous, but under no circumstances, can it be said to be the rarest of rare cases — However, considering the brutality with which the offence was committed maximum sentence of RI for life imposed (Paras 21, 22 and 10). *Amrit Singh* v. *State of Punjab*, (2006) 12 SCC 79: (2007) 2 SCC (Cri) 397: AIR 2007 SC 132: 2007 Cri LJ 298.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-11-2006]

[8892] — S. 376 — Rape — Proof — Rape and murder — Injuries absent — Presence of semen and spermatozoa found on examination of vaginal smear — *Held on facts, rape not proved — Semen also detected on one of the underskirts found on the body of the victim — Though accused-appellant found to be potent but no stains of blood or semen found on the dhoti of the appellant — No injuries found on the vagina/private parts of the victim*

If there had been any forcible sexual intercourse, the victim must have made some strong resistance being a grown-up lady and in the process, some injuries would have been found on the vagina/private parts of the body or some other parts indicative of any such use of force and it would be too much to assume that there would have been no injuries whatsoever on the body, on this account. Though injuries on the body is not always a must or sine qua non to prove a charge of rape, having regard to the case of the prosecution that the victim had been subjected to brutal rape and forced sexual intercourse, this aspect of the matter cannot be completely lost sight of. The deceased was stated to be of about 26 years of age, when she died and she is the sister of the wife of the appellant. It is not as though they were shown earlier to be on inimical terms. Anything possible might have happened and the facts found proved do not irresistibly lead to the only conclusion of the guilt of the appellant in respect of an offence under Section 376 IPC. Consequently, appellant can be given benefit of doubt and acquitted of the offence under Section 376 IPC, and the conviction recorded and sentence imposed by the High Court upon the appellant on this account is set aside. (Para 15). *Joseph* v. *State of Kerala*, (2000) 5 SCC 197: 2000 SCC (Cri) 926: AIR 2000 SC 1608: 2000 Cri LJ 2467.

Bench Strength **3**. Coram: *K.T. Thomas*, **Doraiswamy Raju** and *S.N. Variava*, JJ. [Date of decision: 27-4-2000]

[8893] — S. 376 — Rape and murder — Absence of semen or spermatozoa in vaginal swab collected from dead body of the deceased — *Held, by itself would not disprove sexual molestation when post-mortem report indicated bruising of tissues on right side of vagina 2 x 1 x ½ cm in reddish blue colour and bruising 1 x ½ x ½ cm over the anterior lip of the cervix — This feature is consistent with the victim offering resistance against forcible intercourse. State of T.N.* v. *Suresh*, (1998) 2 SCC 372: AIR 1998 SC 1044.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 5-12-1997]

[8894] — S. 376 — Rape trial — Vaginal swabs and slides — Late deposit in malkhana — Whether on facts weakened prosecution case — Explanation if satisfactory — *Post-mortem examination of victim conducted on 25-1-1996 — Samples of vaginal swabs and slides deposited in malkhana after a gap of three days on 29-1-1996 — Post-mortem report handed over by hospital to police on 25-1-1996 itself along with dead body whereas samples handed over on 29-1-1996 — In the intervening period, there were three holidays from 26-1-1996 to 28-1-1996 — Held, delay in deposit of samples satisfactorily accounted for — No adverse inference could be drawn against prosecution due to intervening period of three days between preparation of samples and deposit in malkhana* (Para 56). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

[8895] — Ss. 376 and 302 — Child witness — Examination of — Must be nearabout the date and time of the incident — Rape and murder of a girl aged 5 years — *Solitary testimony of a child aged 4 years that while returning home along with the deceased after purchasing a balloon, accused took the deceased inside his house saying that her feet were mudstained — Not clear from her statement whether that happened before the date and time of the incident or on the date on which dead body of deceased was found — How and in what manner investigating officer came to know about this child witness so as to record her statement during investigation also remaining a mystery — Child* *witness examined by trial court about one year after the incident — On asking a few questions by way of preliminary examination, trial Judge finding that the witness could "answer some of the questions" — Even taking her testimony at its face value, no incriminating inference could be drawn against the accused on that basis so as to connect him with the crime — Evidence Act, 1872, Ss. 8 and 3. Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

[8896] — Ss. 376 & 302 — Conviction — Rape and murder of a 6 year old girl — *Sessions Court and High Court concurrently finding the appellant guilty — On reappreciation of evidence, conviction under Ss. 302 and 376 confirmed*

According to the prosecution the accused-appellant had taken the deceased girl aged 6 years to a cinema show. When the girl did not return home a report was lodged at the police station and next day her dead body was found lying in the bushes standing across the railway line. It was noticed that the underwear of the deceased was lying near the dead body and that there were bloodstains and tooth-mark on her cheek. The doctor who carried out post-mortem examination noticed that the deceased was in a school uniform and she stated that three doctors who had examined the dead body arrived at the conclusion that rape had been committed and the murder of the deceased was committed by pressing her nose and mouth and obstructing breath of the deceased. It was also noticed that there was a thin mark of a scratch on the upper portion of penis of the accused. According to the witnesses, the deceased was last seen in the company of the appellant. On appreciation of evidence the trial court convicted the appellant under Sections 302 and 376 IPC and sentenced him to death. The High Court confirmed the judgment and order passed by the trial court. The accused preferred the present appeal before the Supreme Court against the conviction and sentence. As regards the sentence it was submitted that the accused on the relevant day was less than 22 years and that even though the act is heinous, considering the fact that no injuries were found on the deceased, it is probable that death might have occurred because of gagging her mouth and nostrils by the accused at the time of incident so that she may not raise a hue and cry. The death, it was submitted, was accidental and an unintentional one. Allowing the appeal partly,

Held:

After going through the entire evidence it cannot be held that the High Court or the Sessions Court committed any error in appreciating the evidence led by the prosecution. Hence, the conviction of the appellant for the offence punishable under Sections 302 and 376 IPC is confirmed. (Para 7). *Bantu* v. *State of M.P.*, (2001) 9 SCC 615: AIR 2002 SC 70.

Bench Strength **2**. Coram: **M.B. Shah** and *Doraiswamy Raju*, JJ. [Date of decision: 17-10-2001]

[8897] — Ss. 376 & 302 — Conviction — Rape and murder of girl aged 11 years — Circumstantial evidence — *Accused seen enticing deceased by offering toffee, thereafter both last seen together going out in the evening, they having not returned to house PWs searched for them whole night and in the morning dead body of deceased found — Immediately thereafter FIR lodged — Extrajudicial confession made by accused to PW 3 that he committed rape of the deceased and killed her by causing injury on her head by brick when she stated that she would report at the house about the rape — Bloodstained earth, bloodstained brick with hair stuck to it, shawl, chappals taken into possession by police — Bloodstains found on trousers and shirt and blood and semen stains found on underwear for which no explanation given by accused — At the stage of statement under S. 313 CrPC accused abjured his guilt and denied all the allegations made against him — Held, High Court rightly confirmed the conviction order passed by Sessions Court. Raju* v. *State of Haryana*, (2001) 9 SCC 50: AIR 2001 SC 2043: 2001 Cri LJ 2580.

Bench Strength **2**. Coram: **M.B. Shah** and *Brijesh Kumar*, JJ. [Date of decision: 2-5-2001]

[8898] — Ss. 376 and 302 — Death sentence — When not warranted — No rigid standards and norms can be laid down — *Rape of child aged 1½ years by appellant aged 30 years — In the process of committing rape, injuries inflicted on liver, apart from other injuries which resulting in death of the child — Held, case does not fall within the rarest of the rare category — Hence death sentence not justified — CrPC, 1973, S. 354(3)*

Regarding the question of laying down standards and norms restricting the area of imposition of death penalty, if by "laying down standards", it is meant that "murder" should be categorised beforehand according to the degrees of its culpability and all the aggravating and mitigating circumstances should be exhaustively and rigidly enumerated so as to exclude all free play of discretion, the argument merits

1. Rape and murder/death *(contd.)*

rejection. Such standardisation is well-nigh impossible. Firstly, degree of culpability cannot be measured in each case; secondly, criminal cases cannot be categorised, there being infinite, unpredictable and unforeseeable variations; thirdly, on such categorisation, the sentencing process will cease to be judicial; and fourthly, such standardisation or sentencing discretion is a policy-matter belonging to the legislature beyond the court's function. Only broad guidelines consistent with the policy indicated by the legislature in Section 354(3) can be laid down. (Paras 10 and 12)

In the present case the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible. It reveals a dirty and perverted mind of a human being who has no control over his carnal desires. But treating the case on the touchstone of the guidelines laid down in *Bachan Singh*, *Machhi Singh* and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, the case cannot be appropriately called one of the rarest of the rare cases. The appellant cannot be said to be such a dangerous person that to spare his life will endanger the community. It cannot be held that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. The case is one in which a humanist approach should be taken in the matter of awarding punishment. Accordingly, the capital sentence imposed against the appellant by the courts below is set aside. Instead the appellant shall suffer rigorous imprisonment for life. (Paras 25 and 26). *Mohd. Chaman* v. *State (NCT of Delhi)*, (2001) 2 SCC 28: 2001 SCC (Cri) 278: 2001 Cri LJ 725.

Bench Strength **2**. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 11-12-2000]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Nirmal Singh v. State of Haryana, (1999) 3 SCC 670: 1999 SCC (Cri) 472; Anshad v. State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204, relied on

[8899] — Ss. 376 & 302 — FIR — Fardbeyan — Delay in recording — Rape and murder — *According to prosecution, informant had gone to the police station, narrated the occurrence and after 10-20 minutes' stay there, returned to his village where the officer in charge of the police station recorded his fardbeyan naming appellant as having committed the offence — But while in police station, informant had not disclosed the name of appellant — Held, recording of fardbeyan at the house of informant instead of at police station when he had gone there shows that there was inordinate delay in recording the fardbeyan — This further shows that by the time the informant was at the police station he did not suspect complicity of the appellant with the crime and subsequently, after due deliberations, fardbeyan was given by the informant at his house alleging therein that the appellant had committed the crime — Thus the evidence of this witness makes the prosecution case showing complicity of the appellant with the crime doubtful — CrPC, 1973, S. 154* (Para 7). *Kanhai Mishra* v. *State of Bihar*, (2001) 3 SCC 451: 2001 SCC (Cri) 537: AIR 2001 SC 1113: 2001 Cri LJ 1259.

Bench Strength **3**. Coram: *K.T. Thomas*, *R.P. Sethi* and **B.N. Agrawal**, JJ. [Date of decision: 27-2-2001]

[8900] — Ss. 376 and 302 — Genuineness of swabs and slides in rape and murder case — Malkhana register — Credibility of entries made therein — Entries relating to vaginal swabs and slides appeared to have been missed initially but subsequently made by incharge of malkhana — There was plausible explanation for omission — *Initially, articles mentioned on first page of post-mortem examination report were entered in the register and then it was noticed that some more articles (swabs and slides) were mentioned on third page of report — Malkhana incharge, in his evidence, denying theory of interpolation — Even otherwise, there was evidence on record that swabs and slides were received in malkhana from hospital in a sealed jar and were delivered in the same condition to Centre for Cellular & Molecular Biology (CCMB), Hyderabad, for DNA profiling of accused — No suggestion made during cross-examination of doctors and police officials that seals of jar were tampered with — Held, genuineness of samples could not be doubted in such circumstances*

PW 47, Constable Rajinder Singh of CBI, who was the incharge of the malkhana on the day in question deposed that there was no mention that swabs and slides were contained in a glass jar, but the fact that the entries had been interpolated has been emphatically denied by him. These items had been taken by Inspector Shekhawat from the malkhana on 31-1-1996 in a sealed condition and in a glass jar and handed over to CCMB, Hyderabad in an identical condition. PW 49, Dr. Lalji Singh from CCMB deposed on oath that all the aforesaid items along with several others had been received in a sealed condition as his organisation did not accept any item which was without a seal. He further stated that along with samples he had received the sample seals which had been affixed on the bundle of clothes and the bottle carrying vaginal swabs and slides. (Para 58)

The vaginal swabs and slides find mention on the third page of the post-mortem report whereas the other items taken from the dead body are on internal p. 1. This raises the possibility that the Head Constable had, at the initial stage, missed the articles on p. 3 and thereafter rectified the mistake. No adverse inference against the prosecution can be drawn with regard to the retention of the items in the malkhana. No suggestion was put either to the doctors or to DSP Ohri or to Sub-Inspector Shekhawat that the seals of the aforesaid articles had been tampered with. (Para 59). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

[8901] — Ss. 376 and 302 — Motive for commission of crime — Relevance — *Held, motive alone cannot form basis for conviction but in the light of other circumstances, motive goes a long way in forging links in chain of evidence — Rape and murder case — Appellant's advances towards deceased, his junior in college, and his subsequent frustration and anger when deceased did not respond positively — Held, amply proved appellant's motive for commission of crime*

The motive stands proved beyond any doubt. It appears that as the appellant's overtures had been rebuffed by the deceased, he had resorted to harassing her in a manner which became more and more aggressive and crude as time went by. It is evident that the appellant was well aware of her family background and despite several complaints against him and the provision of a PSO, he had fearlessly and shamelessly pursued her right to the doorsteps of her residence ignoring the fact that she had first lived in the house of Lt. Col. S.K. Dhar, an army officer from the end of 1994 onwards and after January 1996 with her parents, her father too being a very senior officer in a semi-government organisation. (Paras 79 and 81). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

[8902] — Ss. 376 and 302 — Murder and rape — Recovery of underwear stained with blood (Group B) and semen on information given by accused — But the same not produced and exhibited in court — *Nothing to show that the same was of the accused — No evidence to show as to what was the blood group of the accused and therefore, possibility of blood on the underwear being of the accused himself not ruled out — Number and extent of spread of stains also not known — Held, recovery of stained underwear was not an incriminating circumstance*

In the present case the age of the accused was about 21 years at the time of the incident. On his arrest he was subjected to medical examination and found to be a potent and capable person. Presence of semen stain on underwear, assuming that the underwear belonged to the accused, though there is no evidence adduced in this regard, is not by itself an incriminating piece of evidence connecting the accused with the crime in question. So also the discovery of Group B bloodstain on the underwear cannot be treated as an incriminating piece of evidence against the accused connecting him with the crime because there is no evidence that the underwear belonged to the accused and further the possibility of the underwear being stained with the blood of the person to whom it belonged, or the accused if he was wearing it has not been ruled out. (Para 19). *Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315, relied on

[8903] — Ss. 376 and 302 — Rape and murder — Death sentence — Mitigating circumstances — *Considering that (i) the accused was a young man, (ii) he was a student, (iii) there was no record of any previous heinous crime, and (iv) no evidence that he would be a danger to the society if death penalty is not awarded, held, the instant case did not fall in the category of rarest of the rare cases — Sentence of death altered to life imprisonment* (Para 10). *Amit* v. *State of Maharashtra*, (2003) 8 SCC 93: 2003 SCC (Cri) 1959: AIR 2003 SC 3131: 2003 Cri LJ 3873.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *Brijesh Kumar*, JJ. [Date of decision: 6-8-2003]

[8904] — Ss. 376 and 302 — Rape and murder of a four-year-old girl — Prosecution case based on circumstantial evidence — *Circumstances of last seen together, recovery of dead body from the place pointed out by the accused, evidence of test identification parade, injuries found in the male organ of the accused and detection of stains of human blood and semen on underclothes of the accused at the time of his arrest — Held, on facts, circumstances sufficient to convict the accused respondent with the offence of rape and murder of the minor girl. State of Maharashtra* v. *Suresh*, (2000) 1 SCC 471: 2000 SCC (Cri) 263.

Bench Strength **2**. Coram: *G.T. Nanavati* and **K.T. Thomas**, JJ. [Date of decision: 10-12-1999]

1. Rape and murder/death *(contd.)*

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, relied on

[8905] — Ss. 376 & 302 — Rape and murder of a girl aged 7-8 years — Conviction — Punishment — Conviction of appellants on basis of circumstantial evidence — Sustainability of death sentence — *Death sentence imposed by the Sessions Judge confirmed by the High Court — Held, if guilt is proved by circumstantial evidence, ordinarily, death penalty would not be awarded — Moreover, Appellant 1 showed his remorse and repentance and accepted his guilt even in his statement under S. 313 CrPC — Hence, instead of extreme death penalty, punishment of RI for life imposed — CrPC, 1973, Ss. 235(2) and 354(3)* (Paras 57 to 65). *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

State of Rajasthan v. Kheraj Ram, (2003) 8 SCC 224: 2003 SCC (Cri) 1979; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559; Sahdeo v. State of U.P., (2004) 10 SCC 682: 2004 SCC (Cri) 1873; Raju v. State of Haryana, (2001) 9 SCC 50: 2002 SCC (Cri) 408; Amrit Singh v. State of Punjab, (2006) 12 SCC 79: (2006) 2 SCC (Cri) 397; Sk. Ishaque v. State of Bihar, (1995) 3 SCC 392: 1995 SCC (Cri) 534; Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

[8906] — Ss. 376 and 302 — Rape and murder of a girl of five years — *Vital link in the chain of circumstances snapped — Held on facts, offence under Ss. 376 and 302 not established*

The crucial link in the chain of circumstances in the present case is the presence of the accused-appellant in his house at the time when the dead body of the deceased was discovered. Once that link snaps, the entire case would have to rest on slender titbits here and there.

The discovery of a blood-stain of the deceased's group ('B' Group) measuring 0.5 cms in diameter on the accused-appellant's pant could be a circumstance against the accused only if it is shown that that was not his blood group. Presence of a dried stain of semen on the underpant of accused, aged 30, is also a circumstance too feeble to establish the guilt. Absence of smegma around the accused's corona glandis cannot by itself prove that he had sexual intercourse. The presence of smegma may perhaps exclude the possibility of recent sexual intercourse but its absence will not necessarily establish that the person has had a recent intercourse. A small abrasion over the base of the glans-penis and its bluish discoloration are also inconclusive circumstances. Nor indeed can the bruises on the appellant thigh establish his involvement in the crime.

The circumstances that the total ignorance of the incident pleaded by the accused was false, cannot be said to have itself furnished a link in the chain of causation. Falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused. Moreover, from the facts and circumstances of the case it is clear that the accused was not present in the house at the time when the deceased's dead body was discovered from the accused's house. That makes it impossible that the accused's plea was false. *Shankarlal Gyarasilal Dixit* v. *State of Maharashtra*, (1981) 2 SCC 35: 1981 SCC (Cri) 315: AIR 1981 SC 765: 1981 Cri LJ 325: 1981 MLJ (Cri) 320.

Bench Strength **3**. Coram: **Y.V. Chandrachud, C.J.** and *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 17-12-1980]

[8907] — Ss. 376 and 302 — Rape and murder of a minor girl — Recovery of dead body at the instance of the accused — Circumstance not mentioned in inquest report — *No panchnama prepared for the recovery made under S. 27, Evidence Act — No evidence showing that accused was present near the place where dead body was found — Though father of the victim and the investigating officer deposing about the circumstance of the recovery, their testimony contradictory and unacceptable — Held on facts, the circumstance not established. Jaharlal Das* v. *State of Orissa*, (1991) 3 SCC 27: 1991 SCC (Cri) 527: AIR 1991 SC 1388: (1991) 2 Crimes 268: (1991) 72 CLT 298.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 12-4-1991]

[8908] — Ss. 376 & 302 — Rape and murder of a minor girl aged 4 years — *Three PWs seeing a little girl crying in the company of a man on the day of the incident — Both accused and victim were strangers to the PWs — Reason for the PWs remembering them was that next day when they heard about the murder of a little girl, they recollected seeing the man along with the little girl the previous day — PWs later identifying the accused in test identification parade — Held, recollection about the victim in the company of the accused was natural — Contention that there was inherent incredibility in the evidence of the PWs as normally accused would have taken precaution not to be seen by any other person on the way cannot be accepted*

If a criminal court is to view the testimony of the three witnesses as unnatural it would be easy to brush it aside with the stereotyped reasoning that those persons had no cause to remember having seen the man with the girl accompanying him. Such a reasoning overlooks the broad aspect that a human mind, on hearing about any shocking incident, would have the tendency to recollect any previous event which could have had a connection with that incident. If as a matter of fact those witnesses had occasion to see a crying girl of that age on the very day of the gruesome episode as happened in this case, there is nothing improbable in those witnesses remembering the person who was seen in the company of that girl. If they had immediately informed the police that they noticed a similarly-aged girl crying in the company of an utter stranger of that locality that cannot be brushed aside as a doubtful conduct. Either the three witnesses concocted the story falsely or what they said must be true. No reason was suggested for those three witnesses to bother themselves to concoct such a canard. (Para 17)

It is not possible to accept that there is "an inherent incredibility in the evidence" on the premise that a culprit kidnapping a minor girl with a sinister design would normally take the precaution not to be seen by any other person on the way, but in this case the culprit along with the girl had moved from place to place in the town. Such a reasoning as a proposition of human conduct cannot be accepted. The victim would certainly have been abducted by somebody (even assuming that it was not this respondent) and that person had taken the abducted girl from her house up to the place of occurrence (farm). Unless it is suggested that there was another alternative and a safer route for the culprit to take the girl unnoticed by any shopkeeper or even a pedestrian, there is no rationale in the reasoning that there is "inherent incredibility" in the version that the respondent would have taken the girl through this route. (Para 19). *State of Maharashtra* v. *Suresh*, (2000) 1 SCC 471: 2000 SCC (Cri) 263.

Bench Strength **2**. Coram: *G.T. Nanavati* and **K.T. Thomas**, JJ. [Date of decision: 10-12-1999]

[8909] — Ss. 376 & 302 — Sentence — Rape and murder of 6 year old girl — *On facts held, not a "rarest of the rare" case — Hence sentence of death commuted to that of life imprisonment*

However, in the present case, there is nothing on record to indicate that the appellant was having any criminal record nor can it be said that he will be a grave danger to the society at large. It is true that his act is heinous and requires to be condemned but at the same time it cannot be said that it is the rarest of the rare case where the accused requires to be eliminated from the society. Hence, there is no justifiable reason to impose the death sentence. Therefore, the sentence is modified by commuting the sentence of death to an imprisonment for life. For the offence punishable under Section 376 IPC, he is sentenced to undergo rigorous imprisonment for 10 years. Both the sentences to run concurrently. (Paras 8 and 9). *Bantu* v. *State of M.P.*, (2001) 9 SCC 615: AIR 2002 SC 70.

Bench Strength **2**. Coram: **M.B. Shah** and *Doraiswamy Raju*, JJ. [Date of decision: 17-10-2001]

[8910] — Ss. 376 & 302 — Sentence — Rape and murder of girl aged 11 years — Accused had no intention to commit murder of the deceased — *When deceased said that she would disclose about the commission of rape to her house, accused on the spur of the moment without any premeditation caused injury on her head by hurling brick which resulted in her death — Accused having no criminal record nor can he be said to be a grave danger to the society at large — Held, it was not a rarest of the rare cases and hence imposition of death sentence not justified — Instead life imprisonment proper. Raju* v. *State of Haryana*, (2001) 9 SCC 50: AIR 2001 SC 2043: 2001 Cri LJ 2580.

Bench Strength **2**. Coram: **M.B. Shah** and *Brijesh Kumar*, JJ. [Date of decision: 2-5-2001]

State of Haryana v. Raju, 2000 Cri LJ 2726 (P&H), partly affirmed

[8911] — Ss. 376, 302 and 201 — Rape and murder — Victim, a girl aged about 10 years — Eyewitness claiming having seen the accused throttling the victim — *Evidence as to last seen together — Acquittal by the High Court — Propriety — Victim seen chewing sugarcane at "**kolhu**" of accused **D** — Later on seen going with **D** towards his sugarcane field — Not returning to her home — Complainant **B** (father of victim) going to the sugarcane field of **D** for searching the victim there — **D** not permitting him to do so — Thereafter, **B** taking "**Pardhan**" of the village and other persons with him making search there — Dead body of victim found buried in the said field — On such facts, held, conviction by trial court was proper — High Court erred in setting aside the same — CrPC, 1973, Ss. 386 and 374(2)* (Paras 7 to 9). *State of U.P.* v. *Devendra Singh*, (2004) 10 SCC 616: AIR 2004 SC 3690: 2004 Cri LJ 3118.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-4-2004]

1. Rape and murder/death *(contd.)*

[8912] — Ss. 376 and 302 or 304 Pt. II — Gang rape and murder — Commission of rape by the accused persons established — *Nature of the injuries inflicted on the person of the deceased indicating that accused had not intended to cause her death — But according to post-mortem report, injuries showing violent type of sexual intercourse inasmuch as any violent assault even without rape could cause those injuries and the corresponding internal injuries, one of which was sufficient to cause the death — That being so, held, accused must be assumed to be having knowledge that by their action, it was likely that the deceased would have died — Hence accused liable to be convicted under S. 304 Pt. II r/w S. 34 as well as under S. 376*

Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely, by such act, to cause death, is responsible for the commission of the offence of culpable homicide. Culpable homicide is murder if the act by which the death is caused is done with the intention of causing death and is not covered by any of the exceptions of Section 300 of the Indian Penal Code. In this case, there is no evidence to show that the accused persons proved to have been involved in the occurrence, had intended to cause the offence of murder within the meaning of Section 300 as punishable under Section 302 of the Indian Penal Code. However, on proof of the commission of offence of gang rape found to have been committed in a violent manner, they are assumed to be having the knowledge that by their action, it was likely that the deceased would have died. The aforesaid accused are, therefore, guilty of the offence, punishable under Part II of Section 304 read with Section 34 IPC and are sentenced to 10 years' RI. Their conviction and sentence under Section 376 read with Section 34 recorded by the trial court are also upheld. (Para 24). *State of Orissa* v. *Dibakar Naik*, (2002) 5 SCC 323: 2002 SCC (Cri) 1128: AIR 2002 SC 2148: 2002 Cri LJ 2826.

Bench Strength **2**. Coram: **R.P. Sethi** and *Doraiswamy Raju*, JJ. [Date of decision: 23-4-2002]

[8913] — Ss. 376, 302, 363 & 201 — Child rape — Sentence — *Rape and murder of a 3 year old girl — Trial court imposing death sentence but High Court acquitting the accused-respondent — Held, though this case is perilously near the region of "rarest of the rare cases", but as the accused was once acquitted by High Court the extreme penalty need not be imposed, the lesser option being not unquestionably foreclosed — Hence death sentence altered to that of life imprisonment* (Para 23). *State of Maharashtra* v. *Bharat Fakira Dhiwar*, (2002) 1 SCC 622: 2002 SCC (Cri) 217: AIR 2002 SC 16: 2002 Cri LJ 218: (2002) 1 CHN (Supp) 7.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 2-11-2001]

[8914] — Ss. 376, 302, 363 and 366 — Rape and murder of child by watchman — Death sentence, held, not warranted in this case — *Appellant-accused aged about 27 years was watchman of building where deceased was residing — Death sentence imposed by trial court affirmed by High Court — Difference of opinion amongst Judges of Division Bench of Supreme Court as regards award of capital punishment in* Rameshbhai (1) case, *(2009) 5 SCC 740 — Possibility of rehabilitation and reformation of young offender — Uncertainty due to nature of circumstantial evidence — Hence held, death sentence cannot be maintained — Considering gravity of offence, behaviour of appellant, and fear and concern such incident generate in ordered society, death sentence commuted to life imprisonment directing that life sentence would extend to full life of appellant subject to any remission/commutation at instance of Government for good and sufficient reasons — CrPC, 1973, Ss. 366, 368, 415, 432 and 433 — Constitution of India, Arts. 72 and 161* (Paras 9 to 12). *Rameshbhai Chandubhai Rathod (2)* v. *State of Gujarat*, (2011) 2 SCC 764.

Bench Strength **3**. Coram: **H.S. Bedi**, *P. Sathasivam* and *C.K. Prasad*, JJ. [Date of decision: 24-1-2011]

Ramraj v. State of Chhattisgarh, (2010) 1 SCC 573: (2010) 1 SCC (Cri) 842; Mulla v. State of U.P., (2010) 3 SCC 508: (2010) 2 SCC (Cri) 1150; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358, distinguished on facts

Opinion of A.K. Ganguly, J. in Rameshbhai Chandubhai Rathod (1) v. State of Gujarat, (2009) 5 SCC 740: (2009) 2 SCC (Cri) 881, affirmed

[8915] — Ss. 376, 302 and 404 — Offences of rape, murder and theft committed as an integral part of same transaction — *Recovery of stolen property belonging to deceased at the instance of accused within 2 days of the offence — Incriminating circumstances not explained — Presumption regarding the connection of accused with the aforesaid three offences — Tests required to be satisfied for said presumption, stated — Rape and subsequent murder of 11 year old girl — Medical evidence supporting the prosecution case — Ornaments worn by the victim, crime articles and clothes* *of accused stained with blood and semen recovered at the instance of accused — Accused seen with victim near the place of occurrence just before the incident — Injuries present on the person of accused — Identification of ornaments by victim's parents — Held, the existing chain of unexplained incriminating circumstantial evidence were sufficient for proving the guilt of the accused charged with the said offences — Evidence Act, 1872, S. 114 Ill. (a)*

Where several offences have taken place as part of one transaction, recent and unexplained possession of property belonging to the deceased by the accused may enable a presumption being raised against him that he is guilty not only of the offence of theft or dacoity but also of other offences forming part of that transaction. While raising such presumption, the time factor between the date of the offence and recovery of stolen property from the possession of the accused would play a significant role. Precaution has to be taken that the presumption may not be so stretched as to permit suspicion taking the place of proof. No hard-and-fast rule can be laid down in this regard. (Paras 12 and 14)

Recovery of stolen property from the possession of the accused enables a presumption as to commission of offence other than theft or dacoity being drawn against the accused so as to hold him a perpetrator of such other offences on the following tests being satisfied: (i) the offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to have been committed as an integral part of the same transaction; (ii) the time-lag between the date of commission of the offence and the date of recovery of articles from the accused is not so wide as to snap the link between recovery and commission of the offence; (iii) availability of some piece of incriminating evidence or circumstance, other than mere recovery of the articles, connecting the accused with such other offence; (iv) caution on the part of the court to see that suspicion, howsoever strong, does not take the place of proof. In such cases the explanation offered by the accused for his possession of the stolen property assumes significance. (Para 15)

In the present case, a little before the probable time of commission of the crime, the accused was seen near the place of occurrence. The recovery of ornaments worn by the deceased and the blood-stained axe used in the crime was made at the instance of the accused and there is a time-lag of just two days between the offence and the recovery. The clothes of the accused, which were stained with blood and semen, were also recovered on being produced by the accused from his house. The injuries on the person of accused appear to have been caused at or about the time of occurrence. Besides the said facts, the medical evidence has also supported the case of prosecution. (Para 19)

Thus, offences of rape, murder and theft were committed in one transaction and the accused had failed to offer any explanation to the aforesaid incriminating circumstances and therefore they can be used as inculpatory circumstances against him. It is not only the recovery of stolen property but also availability of other strong circumstances which have fastened inescapable connectivity of the accused with the aforesaid offences. (Para 19). *Ganesh Lal* v. *State of Rajasthan*, (2002) 1 SCC 731: 2002 SCC (Cri) 247: 2002 Cri LJ 967.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 31-10-2001]

Baiju v. State of M.P., (1978) 1 SCC 588: 1978 SCC (Cri) 142; Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447: Gulab Chand v. State of M.P., (1995) 3 SCC 574: 1995 SCC (Cri) 552; Mukund v. State of M.P., (1997) 10 SCC 130: 1997 SCC (Cri) 799; A. Devendran v. State of T.N., (1997) 11 SCC 720: 1998 SCC (Cri) 220; State of Maharashtra v. Suresh, (2000) 1 SCC 471: 2000 SCC (Cri) 263; Shivappa v. State of Mysore, (1970) 1 SCC 487: 1970 SCC (Cri) 215, relied on

[8916] — Ss. 376, 302/34 and 201/34 — Guilt based on circumstantial evidence, established — *Accused labourers taking pleas that semen stains found in their underwears cannot be used as an incriminating circumstance and that circumstances regarding extra-judicial and judicial confessions and part of circumstance relating to carnal intercourse were not proved — Chemical examination of seized underwears, not in dispute — Accused A-1 to A-4, after raping and murdering a minor girl (six years old), were throwing the deceased in a gunny bag, were seen, caught and handed over to police by PWs 2 to 5 established — Accused not disputing chemical examination showing their underwears stained with human semen and spermatozoa — Nothing on record that PWs 2, 3, 4 and 5 had any enmity with A-1, A-2, A-3 and A-4 or had any special relations with the police — Medical evidence of doctor PW 1 establishing that the victim was subjected to rape and murder — Pleas regarding inadmissibility of semen stains evidence and not proving of confessions, held, have no merit — Circumstances were sufficiently proved and completed the chain cumulatively and unerringly pointed towards the guilt of the accused*

1. Rape and murder/death *(contd.)*

On 25-9-2003, the six year old prosecutrix, daughter of PW 4 (a migrant labourer from Nepal) left home at about 8.00 a.m. When she did not return for quite some time and the efforts of PW 4 and other prosecution witnesses to find her out failed, PW 4 lodged an FIR in the police station at around 4.00 p.m. At about 1.30 p.m. in the night, when PWs 2, 3 and 5 (other migrant labourers from Nepal) were waiting for the prosecutrix four persons came from the side of the road up to the vacant plot of one Sardarji in that locality and were seen throwing the dead body of the prosecutrix from the gunny bag in that plot. The gunny bag was also thrown over there. PW 2, PW 3, PW 4 and PW 5 raised alarm and caught hold of them (Accused A-1, A-2, A-3 and A-4). The dead body and A-1, A-2, A-3 and A-4 were taken to police station.

PW 4 lodged the written report at about 2.00 a.m. (26-9-2003) and a case under Sections 302/201/34 IPC was registered against A-1, A-2, A-3 and A-4. Their formal arrest was made. In the morning of 26-9-2003 at about 6.30 a.m. seizure memo of the dead body was prepared by the IO (PW 11). PW 1 (doctor) conducted post-mortem of dead body at about 1.00 p.m. The accused persons were also sent for medical examination. On the basis of the disclosure statement of A-1 and A-2, two feet long electric wire of yellow colour from the house of one *R* where the accused were then residing was recovered.

The trial court awarded death sentence to the four appellant accused. The trial court also convicted the accused-appellants for the offences punishable under Sections 376 and 377 IPC and sentenced them to life imprisonment. Each of the appellants was also convicted for the offence punishable under Sections 201/34 IPC and sentenced to undergo seven years' rigorous imprisonment and fine of Rs 2000 and in default of payment of fine, additional imprisonment of six months. Since death sentence was awarded, the trial court made a reference to the High Court for confirmation.

The accused-appellants challenged the judgment of the trial court in separate appeals before the High Court. The death reference and the appeals were heard together. The High Court maintained the conviction of the appellants under Sections 302/34, 376 and 201/34 IPC. The sentence of death awarded under Sections 302/34 IPC to each of the appellants was commuted to that of rigorous imprisonment for life. The sentence awarded by the trial court under Sections 376 and 201/34 IPC was maintained. The High Court, however, acquitted the appellants of charge under Section 377 IPC and their conviction and sentence under this count was set aside. It is from the judgment dated 12-7-2005 that these four criminal appeals by special leave arise.

The High Court discarded the circumstances mentioned at Serial Nos. (*vi*), (*viii*) and (*x*) and the prosecution case of carnal intercourse. Despite that, the High Court was convinced that all other circumstances have been cogently and firmly established. The High Court discarded the following circumstance (1) That A-1, A-2, A-3 and A-4 made extra-judicial confession of their guilt before PW 1, PW 2, PW 3 and PW 4, (2) That at the instance and on the disclosure statement of A-1 and A-2, a piece of wire was recovered from the house of one *R*, and (3) That A-2 made a confession of his guilt before the Judicial Magistrate on 7-10-2003.

Dismissing the appeal,

Held :

Where the entire case hinges on circumstantial evidence, great care must be taken in evaluating circumstantial evidence to ensure that the circumstances on which the prosecution relies are wholly consistent with the sole hypothesis of the guilt of the accused. There is no eyewitness account and the case depends wholly upon circumstantial evidence. While evaluating circumstantial evidence, which of course has to be done carefully, the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged and the circumstances so shown by the prosecution are compatible with no other reasonable hypothesis. (Paras 15, 13 and 17)

There is no merit in the contention that the accused being labourers, not changing their underwears daily, semen stains found in their underwears cannot be used as an incriminating circumstance. That the underwears of the accused were seized on 27-9-2003 when they were in jail and these articles were sent for chemical examination is not in dispute. That the evidence pertaining to chemical examination of underwears shows that those underwears were found stained with human semen and spermatozoa is also not in dispute. Nothing has been brought on record that PW 2, PW 3, PW 4 and PW 5 had any enmity with A-1, A-2, A-3 and A-4 or had any special relations with the police. That A-1, A-2, A-3 and A-4 were seen throwing the dead body of the victim in the intervening night of 25-9-2003/26-9-2003 is established. (Paras 31, 27 and 33)

It is true that circumstances regarding extra-judicial and judicial confessions and part of circumstance relating to carnal intercourse were not proved, but the remaining circumstances were sufficiently proved and completed the chain cumulatively and, therefore, there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else as the proved circumstances unerringly point towards the guilt of the accused. The medical evidence of (PW 1) establishes that the victim was subjected to rape and murder. The injuries and medical evidence make it highly improbable that four persons raped the minor girl. Firstly, no question or suggestion has been put to PW 1 in this regard. Secondly, and more importantly, semen stains with spermatozoa were found on the underwears of all the four accused. Thirdly, chemical examination of the vaginal smear of the victim has also confirmed presence of human blood, semen and spermatozoa. In view of this evidence, rape of the victim by more than one culprit can be safely held to be established. The medical evidence proves beyond reasonable doubt that the victim died of homicidal death and that she was raped before being murdered. The view taken by the High Court is the only possible view on a proper appraisement of evidence and no other view is possible and it has not committed any error in upholding the conviction of the accused persons for the offences punishable under Sections 302/34, 376 and 201/34 IPC. The sentence awarded to them calls for no interference. (Paras 34, 32 and 43). *Pawan* v. *State of Uttaranchal*, (2009) 15 SCC 259: (2009) 2 ECrN 789 (SC): (2009) 3 All LJ 637: 2009 Cri LJ 2257.

Bench Strength **3**. Coram: *S.B. Sinha*, *A.K. Ganguly* and **R.M. Lodha**, JJ. [Date of decision: 26-2-2009]

Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315; Subhash Chand v. State of Rajasthan, (2002) 1 SCC 702: 2002 SCC (Cri) 256; Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92: (2007) 1 SCC (Cri) 161, distinguished

[8917] — **Ss. 376 & 304 Pt. II — Rape and murder — Identification of the accused at night** — *According to eyewitness, he had seen the occurrence by flashing torchlight — Failure on the part of the investigating agency to seize the torchlight, held, not fatal to the prosecution case* (Para 20). *State of Orissa* v. *Dibakar Naik*, (2002) 5 SCC 323: 2002 SCC (Cri) 1128: AIR 2002 SC 2148: 2002 Cri LJ 2826.

Bench Strength **2**. Coram: **R.P. Sethi** and *Doraiswamy Raju*, JJ. [Date of decision: 23-4-2002]

Balo Yadav v. State of Bihar, (1997) 5 SCC 360: 1997 SCC (Cri) 701, relied on

[8918] — **Ss. 376, 363 and 302 — Rape and murder of minor — Minor incongruity — Though there is an incongruity in prosecution evidence regarding recovery of body and inquest thereof, held, there is strong evidence to show guilt of appellant** — *Clothes of deceased recovered with bloodstains and lacerated wound found on private parts with hymen completely ruptured — Doctor opining cause of death as asphyxiation — Clothes worn by appellant at time of incident recovered with bloodstains thereon, underwear recovered also having semen stains — No rational explanation could be given by appellant as to presence of said stains on his clothes — Appellant seen near time of alleged abduction of deceased with a girl child on his shoulder, mistaken to be a niece of the appellant by a witness (PW 7) — Held, even though PW 7 had not identified that the girl was the deceased, it is a serious incriminating circumstance, and appellant being an unmarried man, could not have been found at night with a girl — Circumstance clearly shows that he had kidnapped the child during the night — Moreover, previous conduct of appellant (having been rejected sexual favours by mother of deceased and admonished and scolded therefor by mother, uncle and brother of deceased, earlier in the night) though not strictly admissible in evidence, would prove that appellant was prone to do the crimes alleged — Hence, Sessions Judge and High Court appreciated evidence in correct perspective and found appellant guilty and there were no reasons to disbelieve this finding — Evidence Act, 1872, S. 8*

The appellant was staying in one of the rooms of a building owned by the complainant *K*, a widow having three children. On 11-9-2002 at about 10 p.m., the appellant came to PW 2 *K* and offered Rs 150 and sought sexual favours. PW 2 got angry and she asked him to go away, but the appellant declined to leave the place. PW 2 told her brother and her son that the appellant had been harassing her. They came and scolded the appellant and he left the place. During the night, PW 2 along with her two minor daughters was sleeping on a cot lying outside the room. At about midnight she felt cold and went inside and at 1.00 o'clock she came back and then she saw that one of her daughters, namely, *S* was missing. She immediately called her brother and her son who were sleeping in another portion of the same house. They searched for *S* at nearby places, and as they had suspicion on the appellant, they went in search of him to his house but he was not found there. They made enquiry with PW 7. He stated that he had seen appellant going away with a girl on his shoulder but he thought that the girl must

1. Rape and murder/death *(contd.)*

be the daughter of a relative of the appellant. The people in the locality collected and at about 4 o'clock in the morning they saw the appellant coming from a nearby road. PW 2 and others took him to the police station. It seems that he made certain revelations and PW 2 gave the FI statement and on the basis of the FI statement a case was registered and investigation was started.

The dead body of *S* was recovered from a pond. The body was found floating on the water and it was identified by relatives. An inquest was held on the dead body and on post-mortem examination it was found that there were a series of injuries on the body of deceased *S*. The clothes were stained with blood and some mud particles. There was lacerated wound on the private parts of the deceased, and the hymen was completely ruptured. The doctor opined that the victim must have died due to asphyxia.

Commuting the sentence of death to life imprisonment,

Held :

There is incongruity in the prosecution evidence regarding recovery of the body and the inquest of the dead body. PW 19, the investigating officer could not throw much light on this infirmity in the investigation. Therefore no importance is being given to the alleged recovery of dead body at the instance of the appellant. (Para 6)

However, there is strong evidence to show that the appellant committed the offence. According to the prosecution, the appellant was immediately arrested and brought to the police station. His clothes were recovered and sent for chemical examination. Items F, G, H and I are the shirt, banyan, pants and underwear respectively worn by the appellant at the time of incident. The chemical analyst's report shows that on Items F, G and H there were presence of bloodstains and Item I was also having bloodstains mixed with semen. The appellant could not give any rational explanation for the presence of bloodstains on his clothes. (Para 7)

Another circumstance is the evidence of PW 7. He went to bed and at about 1 a.m. he got up to answer the call of nature and came to the bathroom situated outside his house, then he found the appellant moving around and he was having a child on his shoulder. In the FI statement also reference has been made to the statement made by Rambaran. Of course PW 7 had not identified that the girl was deceased *S*. Nevertheless, it is a serious incriminating circumstance and the appellant being an unmarried man, he could not have been found at night with a girl and this circumstance clearly shows that the appellant had kidnapped the child during night for the purpose of commission of this crime. The dead body of deceased *S* was found in the early morning of 12-9-2002 and the appellant was arrested immediately and previous conduct also though not strictly admissible in evidence would prove that the appellant was prone to do such crime. The Sessions Judge as well as the High Court appreciated the evidence in the correct perspective had found the appellant guilty and there are no reasons to disbelieve this finding. (Paras 8 and 9). *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127: 2005 SCC (Cri) 653: AIR 2004 SC 4862: 2004 Cri LJ 4642.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 16-9-2004]

[8919] — Ss. 376, 363 and 302 — Rape and murder of victim — If a "rarest of rare case" — Award of death penalty by trial court — *Held, case not "rarest of the rare" — In facts and circumstances of case, death penalty not justified — Commuted to sentence of life imprisonment* (Para 8). *State of Maharashtra* v. *Mansingh*, (2005) 3 SCC 131: 2005 SCC (Cri) 657.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 19-8-2004]

[8920] — Ss. 376, 364 and 302 — Circumstantial evidence — Conviction on the basis of — Sustainability — *Appellant-accused alleged to have raped and murdered deceased, aged five years — Accused caught red-handed in completely naked state thrusting a stem/stick of dhanicha in vagina of deceased — Held, for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission — Offence can be proved by circumstantial evidence also — Principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts — Circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed — In the instant case accused wanted to camouflage the serious crime of rape and so in a planned manner, after committing rape, he mercilessly inserted stem/stick deep inside the fragile vagina of the girl to the extent of 33 cm to cause her death, with a view to masquerade the crime as an accident — It was just by providence* *that due to timely reach of the witnesses (PWs 2, 3 and others) who were frantically searching the girl that he could be caught in naked condition while inserting a stick into the vagina of the lifeless body of the victim — Hence, conviction of appellant for offences punishable under Ss. 364, 376 & 302 IPC imposed by trial court and as affirmed by High Court, held, sustainable* (Paras 3, 17, 18 and 19). *Bantu* v. *State of U.P.*, (2008) 11 SCC 113.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 23-7-2008]

Wills' Circumstantial Evidence' (Chapter VI), cited

[8921] — Ss. 376(2) and 302 — Rape and murder of minor aged less than six years — If a "rarest of rare case" — *Held, rape is one of the most depraved acts — Such iniquitous, flagitious act becomes abominable when the victim is a child — The diabolic act reaches the lowest level of humanity when the rape is followed by brutal murder — Hence, Supreme Court has no hesitation in holding that present case falls in the rarest of rare category and death sentence awarded by trial court was appropriate — Guidelines and tests for imposition of death sentence laid down in —* Bachan Singh, *(1980) 2 SCC 684 and* Machhi Singh, *(1983) 3 SCC 470, pp. 471-72 and p. 489, para 38 [set out in para 26 in SCC], applied — Death sentence awarded by trial court restored*

The victim, who was not six years old lost her life on account of bestial acts of the respondent who allegedly raped her and thereafter murdered her. The victim had gone to school and did not return at the usual time. On the next morning her dead body was found in a sugarcane field around 6.00 a.m. She was found lying in a dead condition and blood was oozing from her private parts and there were marks of pressing on her neck. PW 7, the doctor conducted the post-mortem around 2.00 p.m. on the same day and opined that death had occurred within the preceding 24 hours.

Three persons claimed to have seen the accused nearby the place of occurrence between 1.00 p.m. to 2.00 p.m. on the date of occurrence. Two of them, namely, PW 3 and PW 5 claimed to have seen the deceased being carried on a bicycle by the accused who was taking the bicycle with the deceased sitting on the handle-bar thereof. PW 2 stated that he had seen the accused in perplexed state around 2.00 p.m. near the place from where the dead body of the deceased was found. Investigation was undertaken. During such investigation, there was recovery of the accused's underwear as also the undergarment the deceased was wearing.

Allowing the appeals and restoring the death sentence awarded by the trial court,

Held :

Rape is one of the most depraved acts. The iniquitous, flagitious act becomes abominable when the victim is a child. The diabolic act reaches the lowest level of humanity when the rape is followed by brutal murder. The Supreme Court has no hesitation in holding that the case at hand falls in the rarest of rare category and death sentence awarded by the trial court was appropriate. The acquittal of the respondent-accused is clearly unsustainable and is set aside. Guidelines and tests for imposition of death sentence laid down in *Bachan Singh*, (1980) 2 SCC 684 and *Machhi Singh*, (1983) 3 SCC 470, pp. 471-72 and p. 489, para 38 [set out in para 26 in SCC], applied. (Paras 2, 24, 26 and 31). *State of U.P.* v. *Satish*, (2005) 3 SCC 114: 2005 SCC (Cri) 642: AIR 2005 SC 1000: 2005 Cri LJ 1428.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 8-2-2005]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, applied

(2004) 1 All Cri R 760 (All), reversed

[**Ed.**: But in a similar situation (or worse, of abduction as well) other Benches of the Supreme Court in *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127 and *State of Maharashtra* v. *Mansingh*, (2005) 3 SCC 131, have felt defferently and awarded life imprisonment instead. On the other hand, earlier decisions of the Supreme Court in *Laxman Naik* v. *State of Orissa*, (1994) 3 SCC 381: 1994 SCC (Cri) 656; *Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220: 1994 SCC (Cri) 358; *Kamta Tiwari* v. *State of M.P.*, (1999) 9 SCC 581 have held death sentence appropriate where rape and murder of a minor girl was involved. Besides deterrence, retribution still survives as an object of punishment [*Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220: 1994 SCC (Cri) 358 and *Jacabo George (Dr.)* v. *State of Kerala*, (1994) 3 SCC 430: 1994 SCC (Cri) 774] and one may consider looking at the situation intimately from the perspective of John Grisham: A Time to Kill.]

[8922] — S. 376(2) and 302 — Sentence — Commutation of death sentence — Accused raping and murdering minor after abducting her in middle of the night, while asleep, from her home (after having had an altercation with her mother, brother and uncle, the mother having refused him sexual favours) and throwing body into a pond — *Appellant aged 36 years at time of occurrence, impecunious, a migrant labourer and there being no evidence that he had been involved in any other criminal case previously — Held, it could not be said that he would be a menace to society in future, and no materials had been placed on record*

1. Rape and murder/death *(contd.)*

to draw such a conclusion — This is not a "rarest of rare" case — Death penalty was not warranted — Hence death sentence commuted to life imprisonment

This is not a "rarest of rare case" in which death penalty should be imposed on the appellant. The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had been involved in any other criminal case previously and the appellant was a migrant labourer from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to society in future and no materials have been placed on record to draw such a conclusion. The death penalty was not warranted in this case. The conviction of the appellant is confirmed on all the counts, but the sentence of death penalty imposed on him for the offence under Section 302 IPC is commuted to life imprisonment. (Para 13). *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127: 2005 SCC (Cri) 653: AIR 2004 SC 4862: 2004 Cri LJ 4642.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 16-9-2004]

[**Ed.**: It is noted in para 9 that the "previous conduct ... would prove that the appellant was prone to do such crime". In this regard see *State of U.P.* v. *Satish*, (2005) 3 SCC 114, above.]

[8923] — Ss. 376(2)(g), 302 and 201 r/w S. 34 — Gang rape and murder of child aged 7-8 years — Conviction justified — Sentence to be imposed — *Appellants alleged to have lifted the little girl from the waiting room, where she was sleeping along with her parents and younger brother, committed rape and then murdered her — Appellants seen talking in a suspicious manner — No explanation offered by Appellant 2 as regards his stained undergarments/injuries on his face (and which he accepted) — Lock and key of waiting room always in possession of Appellant 1 (chowkidar) — Absence of Appellant 2 from the bus in question, his effort to sleep in another bus leaving his own bus, his absence for about 1 to 1½ hour, and change of his garments during that period, proved — Appellant 1 making voluntary judicial confession wherein the roles played by the appellants were explicitly detailed — Possibility of some other passenger committing the offence ruled out on basis of circumstantial evidence — Held, S. 30 Evidence Act, 1872, can be taken aid of to take into consideration the confessional effect of the statements made by Appellant 1 as against Appellant 2 for arriving at an opinion that by reason thereof involvement of both of them amply stood proved — Judicial confession of Appellant 1, statement of Appellant 2 in his examination under CrPC 1973, S. 313 and other circumstantial evidence, prove the guilt of the appellants beyond reasonable doubt — Death sentence reduced to rigorous life imprisonment*

Appellants were charged with and convicted for commission of offences under Sections 376(2)(*g*), 302 and 201 read with Section 34 of the Penal Code, 1860 for rape and murder of one *B* (deceased) aged 7-8 years. Deceased along with her parents and younger brother was travelling to Dimapur (State of Nagaland) in a private transport service known as Network Travels from Dharmanagar (Tripura). They reached Guwahati at around 10.30 p.m. on 12-7-2002. There was no connecting bus to Dimapur at that time. Appellant 1 was a night chowkidar of the waiting room of the said Network Travels. He represented that they could stay there for the night and therefore should not have any apprehension in regard to their safety. Their luggage was carried by Appellant 1 to the waiting room. The waiting room had two openings. It was covered by grills. Only the front gate was open, which was kept under lock and key, the key whereof was with Appellant 1. PW 23 (father of the deceased) and the two children slept. However, PW 22 (mother of the deceased) stayed awake. Appellant 1 insisted to her repeatedly that she should go to sleep stating that as the waiting room would be locked, there was nothing for her to worry about. As she had not been sleeping, Appellant 1, allegedly, scolded her to do so. At that time, a bus bearing No. AS 25C 1476 arrived at the said bus-stop. *P*, Appellant 2 was the "handyman" of the said bus. While the manager, driver and the conductor slept in the said bus, he did not. He was seen talking with Appellant 1.

PW 22 slept for a while and got up when her son cried out. She did not find *B* and raised hue and cry. They requested Appellant 1 to open the gates of the waiting room. He showed his reluctance at the first instance. He was thereafter told about the missing of the girl. On being so informed, he opined that she might be somewhere else within the room. A search was carried out in the three buses, which were at the bus-stop belonging to the travel agency. Nearabout places as also the railway station were searched. The bathroom situated in the said premises was also searched.

The dead body of *B* was found in a septic tank on 14-7-2000. FIR was lodged wherein apart from Appellant 1, suspicion was raised about the involvement of driver, PW 26, conductor, PW 25 and the handyman, *P* Appellant 2 herein of the bus bearing No. AS 25C 1476. The said bus had already left for its destination at about 6.30 in the morning. Even prior thereto, PW 2 was persuaded that the said bus be permitted to leave early for Jorhat, which was declined.

During the course of investigation, Appellant 1 made a confessional statement before the Magistrate under Section 164 CrPC. He gave a vivid description as to how the offence was committed by him and Appellant 2. On basis of circumstantial evidence and judicial confession of Appellant 1, appellants were convicted and sentenced to death by the trial court. Their appeal was dismissed by the High Court. Hence, the present appeal. *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

[8924] — Ss. 376(2)(g), 302/34 and 201 — Rape and murder — Sentence — Death sentence justified — Rarest of rare cases — *Jail officer sending to his quarter a guard and a prisoner to work in the house and in the garden attached thereto, respectively — 16-year-old daughter of the said officer was at that time alone in the quarter and was preparing for her Class 10th examination — Taking advantage of her loneliness, both the guard and the prisoner committing rape on her, strangulating and then stabbing her, removing her cycle and throwing her dead body in septic tank — In such circumstances sentence of death, held, was the only proper punishment — CrPC, 1973, S. 354(3)* (Para 36). *Molai* v. *State of M.P.*, (1999) 9 SCC 581: AIR 2000 SC 177.

Bench Strength **3**. Coram: **S.P. Kurdukar**, *K.T. Thomas* and *N. Santosh Hegde*, JJ. [Date of decision: 26-10-1999]

State of M.P. v. Molai, 1999 Cri LJ 2698 (MP), affirmed

[8925] — S. 376 r/w Ss. 302 and 511 — Rape and murder alleged — Improbable prosecution case — Unreliable dying declaration — *Both deceased and accused-appellant found lying in a pool of blood in appellant's room having suffered serious injuries — Deceased found totally naked and underclothes of both the deceased and appellant found in the same room — Appellant and deceased had love affair and deceased had gone to appellant's place alone — Deceased taken to hospital by her brother (PW 5) where she was found dead — Complaint given by PW 5 to police which formed the basis of formal FIR — In the complaint PW 5, after stating that deceased had told him that appellant had tried to rape her and on her refusal he had stripped and stabbed her, adding his own assessment that deceased died due to deep head injuries caused by appellant and that appellant had thereafter tried to kill himself — Last words in the complaint that appellant had also tried to commit suicide by stabbing himself in the stomach appeared to have been inserted later — But on the basis of medical evidence serious nature of injuries found on appellant cannot be said to be self-inflicted — Having regard to facts and circumstances of the case, held, the uncorroborated alleged oral dying declaration was unreliable — Prosecution case of rape and murder of deceased by appellant appears to be improbable — Evidence Act, 1872, S. 32*

In the absence of explanation as to the serious nature of injuries sustained by the appellant giving rise to serious doubt as to the very genesis of the incident, the last portion of the statement in the complaint of PW 5 (wherein he had said that the deceased died due to deep head injuries caused by the appellant, who also tried to kill himself by stabbing in the stomach) appears to have been inserted after deliberation and consultation. This insertion probabilises the defence version that the appellant and the deceased were in love. The very fact that the deceased was totally naked and the underclothes of both the deceased and the appellant were found in the same room probabilises the theory of intercourse by consent and negatives the story of rape. The story that the appellant tried to kill himself by jumping from the upper floor cannot also be accepted. That apart, in the earliest version given in the report given to the police by PW 5, there is no mention about the appellant jumping from the upper floor. In view of the injuries found on the deceased and the defence taken by the appellant that she died on the spot and in the absence of any other evidence except the statement of PW 5, it is difficult to accept that the deceased was alive or at any rate she was in a position to make the statement to PW 5 as sought to be made out. The theory that the appellant tried to kill himself does not appear to be probable as both PW 4 and PW 5 admitted that the deceased and the appellant knew each other; the deceased voluntarily went to the house of the appellant to say goodbye, since she was going back to her country. In this background it appears improbable that the appellant forcefully tried to rape the deceased. It appears that both the appellant and the deceased may have been in a compromising position and were surprised and attacked by an assailant. Since the injuries found on the appellant could not be said to be self-inflicted, his defence that he sustained injuries at the hands of an unknown person when he tried to

1. Rape and murder/death *(contd.)*

save the deceased, appears to be probable. It was enough to show that the defence was probable in the given circumstances. In this case the defence statement is probabilised by the surrounding circumstances and the evidence brought on record. The so-called dying declaration does not appear to be in the words of the deceased. It does not inspire confidence. There was considerable delay in registering the FIR and the explanation given for the delay is not convincing. Further, except the interested statement of PW 5 there is no other evidence to corroborate the dying declaration. Having regard to all these infirmities, improbabilities and contradictions found in the case, it is unsafe to act upon the said dying declaration. (Paras 7 to 9). *Ronald Kiprono Ramkat* v. *State of Haryana*, (2001) 6 SCC 423: 2001 SCC (Cri) 1034: AIR 2001 SC 2488.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **Shivaraj V. Patil**, JJ. [Date of decision: 31-7-2001]

[8926] — Ss. 376/34 & 302/34 — Deceased raped and thrown into well — *Where evidence was limited to appellant's giving assistance in dragging the deceased out of her house, the conviction under Ss. 302/34 cannot stand. Naresh Kumar* v. *State of Maharashtra*, (1980) 2 SCC 358: 1980 SCC (Cri) 453: AIR 1980 SC 1168: 1980 Cri LJ 920.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**, *P.S. Kailasam* and *A.D. Koshal*, JJ. [Date of decision: 1-2-1980]

[8927] — Ss. 376/34 and 304 Pt. II/34 — Committing rape and causing death of a female child aged 4 years by two respondents — Prosecution case based on circumstantial evidence — *Circumstances found established on the basis of evidence of PWs — Post-mortem examination report showing that the child was violently and bestially ravished, molested, raped and sodomised — Child died due to "intracranial damage consequent upon surface force impact to the head" — Trial court convicting the accused under Ss. 364, 376, 377 and 302 r/w S. 34 on the basis of established circumstances and sentencing the first respondent to life imprisonment and the second respondent to death for murder and awarding lesser sentences for the remaining counts — But High Court acquitting both the respondents — Held on facts, though accused-respondents cannot be convicted on charge of murder but they had knowledge that the acts done by them on the child of tender age were likely to cause her death — Hence both of them are liable to be convicted under Ss. 376 and 377 r/w S. 34 and S. 304 Pt. II r/w S. 34 and sentenced to life imprisonment*

On the day of occurrence, mother (PW 10) of the victim, a female child aged 4 years, went to factory for work leaving the child in the custody of PW 8 who was residing close by. Accused-Respondent 1 (A-1), who was known to PWs 10 and 8, took the child and her clothes and utensils by about noon during the short time when PW 8 had gone out to fetch milk. When PW 10 came home in the night, she learnt from PW 8 that her daughter had been taken by A-1. So she went to A-1's house at about 9 p.m. There she found her child lying completely nude next to accused-Respondent 2 (A-2) on the second floor of the house, who was then deep in his sleep. Then A-1 who was found in an inebriated condition, hurled a remark that he had despatched the deceased to heaven. It was then she realised that her child was not breathing. PW 10 Sharda then took the child to the hospital. The doctor who initially examined her noted only "multiple bruises all over the body" in the Medico-Legal Certificate (MLC) and pronounced her dead. But the doctor (PW 1) who conducted autopsy on her body gave full details in his post-mortem report about the features noticed by him on the dead body. The corpse was full of abrasions and contusions. The prominent among them were counted by the doctor as 25 in number and he described the situs and dimensions of all of them. Among them, oval fashioned multiple abrasions on the left cheek appeared to him as marks of biting. Both the upper and lower lips of the child were bruised violently. Marks of violent handling of both the thighs, lower abdomen and pubic region were also described by the doctor. The doctor noted that the vaginal orifice was so badly mutilated that one middle finger could be easily admitted into it. Even the tongue was not spared in that violence. The doctor also examined the head injury and opined that the child died "due to intracranial damage consequent upon surface force impact to the head". The Sessions Court accepted this medical report as reliable. It found that the prosecution had established the following circumstances: (1) A-1 had taken the child from the house of PW 8 by about noon on the fateful day; (2) the child was recovered from the house of A-1 and she was then found breathless; (3) the child was lying naked by the side of A-2 who was in deep sleep when PW 10 lifted her up; (4) A-1 who was then in an inebriated condition, blurted out that the child was sent to heaven; (5) the bloodstained knickers of the victim were later recovered from the house of A-2 on the basis of the statement given to the police. The trial court concluded on the strength of those circumstances that both the respondents are liable to be convicted for murder, rape and unnatural offence, while A-1 was additionally liable for kidnapping the child for murder. Accordingly the trial court convicted both the respondents under Sections 364, 376, 377 and 302 r/w Section 34 IPC and sentenced A-2 to death and A-1 to life imprisonment on the charge of murder and awarded lesser sentences for the remaining counts. However, the High Court doubted the correctness of the medical report of PW 1 in view of the entry made in the MLC by the doctor who had first examined her. The High Court also found discrepancy in the evidence of PWs 8, 10 and 12 (a neighbour). The High Court also declined to place any weight on the circumstances relating to recovery of bloodstained knickers of the victim on the ground that the seizure memo was not attested by any independent witness. Thus the High Court declined to believe the police version as true and consequently it acquitted the two accused-respondents. Disposing of the State's appeal,

Thus on consideration of the entire evidence in this case, there is no doubt that the trial court had come to the correct conclusion that the two respondents were the rapists who subjected the child to such savage ravishment. The Division Bench of the High Court has grossly erred in interfering with such a correct conclusion made by the trial court as the reasons adopted by the High Court for such interference are very tenuous. Nonetheless, it is difficult to enter upon a finding that the respondents are equally guilty of murder of the child. The opinion of PW 1 that the child died due to "intracranial damage consequent upon surface force impact to the head" was made with reference to the subdural haematoma which resulted in subarachnoid haemorrhage. Such a consequence happened during the course of the violent ravishment committed by either both or by one of the rapists without possibly having any intention or even knowledge that their action would produce any such injury. Even so, the rapists cannot disclaim knowledge that the acts done by them on a little infant of such a tender age were likely to cause its death. Hence they cannot escape conviction from the offence of culpable homicide not amounting to murder. In the result the impugned judgment of the High Court is set aside and the conviction passed by the trial court under Sections 376 and 377 read with Section 34 IPC is restored. The trial court awarded the maximum sentence to the respondents under the said counts i.e. imprisonment for life. The fact-situation in this case does not justify any reduction of that sentence. The respondents are also liable to be convicted under Section 304 Part II, read with Section 34 IPC though it is unnecessary to award any sentence thereunder, in view of the sentence of imprisonment for life awarded to the respondents under the other two counts. (Paras 23 and 24). *State (Govt. of NCT of Delhi)* v. *Sunil*, (2001) 1 SCC 652: 2001 SCC (Cri) 248: 2001 Cri LJ 504.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 29-11-2000]

State v. Ramesh, 1998 Cri LJ 4233 (Del), reversed

[8928] — Ss. 376/511, 302/34 and 201/34 — Prosecution case solely based on circumstantial evidence — Circumstances should form a chain which should point to the guilt of the accused — *Evidence should prove particular facts relevant for the purpose of the case — Proved facts should be wholly consistent with the guilt — On facts held, circumstances shown by prosecution were not sufficient to prove the guilt of the accused — Courts below erred in convicting the appellants under Ss. 376/511, 302/34 and 201/34 IPC on the basis of discrepant and fragile evidence. Sudama Pandey* v. *State of Bihar*, (2002) 1 SCC 679: 2002 SCC (Cri) 239: AIR 2002 SC 293: 2002 Cri LJ 582: (2002) 1 CHN (Supp) 65.

Bench Strength **2**. Coram: *U.C. Banerjee* and **K.G. Balakrishnan**, JJ. [Date of decision: 5-12-2001]

Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156: 1997 SCC (Cri) 1004; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487, relied on

2. Rape by person in authority

See also 'A.3.(e) Ss. 376-A to 376-D', above

[8929] — S. 375 — Gang rape by police of women participating in public rally — Compensation to — Quantum of — Limits on power of High Court when matter at premature stage — *Writ petition by Uttarakhand Sangharsh Samity seeking directions to State authorities in connection with confrontation ensued between the agitators and the administration which resulted in death, injuries and molestation of women — High Court directing the State Govt. to pay huge amounts as compensation to the victims and to make fund allotment (in several crores of rupees) for development of Kumaon and Garhwal regions by way of reparation to the people of those regions — Such directions which resulted in great financial burden on the State at the premature stage and which were made without trial, without consideration of evidence, without having regard to financial capacity, resources of the State and legislative mandates involving State funding, held, were in excess of'*

2. Rape by person in authority *(contd.)*

High Court's jurisdiction under Act. 226 and unwarranted and hence liable to be set aside — Constitution of India, Arts. 226 and 19(1)(a), (b), (c) & (d) and 21

A public rally was organised for protesting against a State Government notification pertaining to reservation in educational institutions based on regionwise domicile and to press the demand for a separate State of Uttarakhand comprising certain hilly regions of the State of U.P. and some other areas. The administration took stern measures to resist the protestors' march towards the national capital as the officials claimed to have received secret information that the proposed rallyists were carrying lethal weapons in violation of the prohibitory orders issued by the Government and might create serious law and order situation. The confrontation which ensued resulted in a lot of bloodshed including loss of many lives, infliction of injuries on persons belonging to both sides, outraging the modesty of women ranging to ravishments. An association styling itself as Uttarakhand Sangharsh Samity moved a writ petition in the High Court for directions to be issued to the authorities to meet the consequences of the said confrontation. A Division Bench of the High Court issued certain interim directions, one of which was to the CBI to enquire into the allegations of 'human rights violations'. CBI took up investigation pursuant to the directions and laid charge-sheet against certain officers for offences under Sections 109 and 120-B read with Sections 341 and 342 of the Indian Penal Code. Sanction of the State Government was obtained for launching prosecution in respect of those offences. Some of the accused who were arrayed in the said charge-sheet filed writ petitions before the High Court in challenge to the validity of the sanction order issued by the State Government for prosecuting them. The Division Bench disposed of the first-mentioned writ petition filed by the Samity issuing several directions. It ordered the Government to pay Rs 10 lakhs each to the dependants of all the persons who died in police firing. Rs 10 lakhs each were given to the victims of molestation, Rs fifty thousand each to 398 persons who were detained by the police. The Division Bench also issued the following directions regarding fund allotment for development of certain regions: "Damages and compensation for constitutional wrongs committed subjecting injuries to the class of people of Kumaon and Garhwal for their only fault that they were securing their civil rights on the guarantee already given by the legislature, as discussed in the judgment. The reparation to the people of Kumaon and Garhwal Divisions shall stand related to their population (5,926,146: Kumaon — 2,943,199, Garhwal — 2,982,947) in the equation of a rupee per month per person for a plan period of five years and this compensation shall be invested amongst the population of Kumaon and Garhwal earmarked specifically for a programme for the upliftment of the women; 50 paise of this reparation shall come from the State of Uttar Pradesh and the other 50 paise from the Union of India. This would be in addition to the normal plan allocation which this area would receive as what the Court is suggesting is damages beyond the normal allocation." Allowing the appeals,

Held :

The High Court was not justified in fixing such a huge sum as compensation at a premature stage. The High Court while imposing such a heavy liability on the State has not made any attempt to discuss the relevant questions which are to be answered for fixing the liability of compensation and for quantification of the amount of compensation. Therefore, the direction for payment of compensation is clearly unsustainable and is liable to be vacated. (Para 12)

The magnitude of the financial burden for complying with the direction regarding fund allotment has been approximately estimated as amounting to several crores of rupees. The money has to come out of the State coffers. This is not a case where the High Court was ordering compensation to one individual or even to a limited number of persons dehors its legal liability enjoined by statutory provisions. Major revenue of the State Government is through taxation. But no taxation is possible without legislative sanction. The Government must have other resources to meet the direction. The High Court did not take into account the financial capacity of the State Government, nor its resources for making up the said amount nor the priorities to be honoured by the State Government nor even the legislative mandates involving State funding, while ordering the Government to incur such a huge expenditure of a recurring nature. Judicial creativity has, no doubt, expanded to newer dimensions in the recent past, but that is no justification for using judicial power for imposing such an unbearable burden on the State which in turn would be compelled to extract money out of the common man's coffers to meet such a massive financial burden. Suffice it to say that the above direction cannot stand judicial scrutiny and it is hereby set aside. (Paras 14 to 17). *A.K. Singh* v. *Uttarakhand Jan Morcha*, (1999) 4 SCC 476: 1999 SCC (Cri) 580: AIR 1999 SC 2193.

Bench Strength 3. Coram: **K.T. Thomas**, *D.P. Mohapatra* and *U.C. Banerjee*, JJ. [Date of decision: 13-5-1999]

[8930] — S. 375 Thirdly — Rape by a policeman in police station — *Onus on the prosecution to establish ingredients of the offence — Passive consent or submission out of fear by the prosecutrix — Circumstantial evidence regarding — Held, offence not established — Charge against companion policeman under S. 354 for fondling the private parts of the prosecutrix also fails*

The onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It was, therefore, incumbent on it to make out that all the ingredients of S. 375 were present in the case. For the proposition that the requisite consent was lacking in the present case reliance on behalf of the State can be placed only on clause Thirdly so that it would have to be shown that the girl had been put in fear of death or hurt and that that was the reason for her consent. In the absence of such a finding, the alleged fear would not vitiate the consent. Further, for circumstantial evidence to be used in order to prove an ingredient of an offence, it has to be such that it leads to no reasonable inference other than that of guilt. The fear which clause Thirdly of S. 375 speaks of is negatived by the circumstance that the girl is said to have been taken away by the accused policeman right from amongst her near and dear ones at a point of time when they were all leaving the police station together and were crossing the entrance gate. The circumstantial evidence available, therefore, is not only capable of being construed in a way different from that adopted by the High Court but actually derogates in no uncertain measure from the inference drawn by it.

Moreover, no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false. It is further clear that the averments on the part of the girl that she had been shouting loudly for help are untrue.

Thus the sexual intercourse in question is not proved to amount to rape and no offence is brought home to the appellant.

As regards another policeman who was alleged to have fondled the private parts of the girl, the girl's version could not be believed in view of the shifting positions taken by her in this regard. Further the circumstance that this policeman was present at the time of occurrence is not inculpatory and is capable of more explanations than one. *Tukaram* v. *State of Maharashtra*, (1979) 2 SCC 143: 1979 SCC (Cri) 381: AIR 1979 SC 185: 1978 Cri LJ 1864: (1979) 16 ACC 7.

Bench Strength **3**. Coram: *Jaswant Singh, P.S. Kailasam* and **A.D. Koshal**, JJ. [Date of decision: 15-9-1978]

See comments at (1974) 4 SCC (Jour) 17

[8931] — Ss. 375 Thirdly, 376/34 & 342/34 — Rape — Consent — Duress — Rape of rustic woman by police constable and his accomplice — Involuntary surrender of victim obtained by threat to use force, instead of actual use of force, given by police constable in uniform to the effect that she and her husband would be put in police remand and subjected to third degree treatment — *Victim not shown to be a prostitute — In the circumstances non-resistance of victim to the rape would not show her consent to the act — Accuseds' total denial of the charge without indicating any animus or motive of the PWs to falsely implicate them also corroborating the prosecution case — In the circumstances held, offence of rape established on the basis of evidence of the victim, her husband and another police constable on whose suggestion FIR had been lodged*

In connection with the Ganapati festival in the village concerned, an idol of Ganapati was installed in the courtyard of respondent 2, a businessman. Respondent 1, a police constable was deputed to the village for bandobast duty at the time of Ganapati festival. PW 1, the victim and PW 2 her husband, were poor rustic village labourers. In the middle of night of the occurrence, PW 2 was called by respondent 1 through respondent 2 and he was beaten by respondent 1 on the allegation that he wanted to desecrate and destroy the idol of Ganapati. The respondents asked the PWs to accompany them to the house of respondent 2 where PW 1 was asked to sign on certain papers under a threat that her husband would be placed in police custody in case of her denial to sign the papers. The two respondents then committed rape on her one by one. The respondents thereafter threatened the PWs not to report the matter to police. Being afraid the PWs went back and spent the rest of the night. Next morning PW 2 met another police constable and on his suggestion PW 2 lodged an FIR at the police station. The respondents denied the offence altogether claiming that they had been falsely implicated. The trial court convicted the respondents under S. 376 r/w S. 34 as well as under S. 342 r/w S. 34 IPC and sentenced them to 3 years' RI on the first count and two months' RI on the second count. A Single Judge of High Court, while agreeing with the trial court that the PWs had been taken to the house of respondent 2

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where both the respondents had sexual intercourse with PW 1, however, concluded that in view of absence of marks of violence on the body of PW1, no force was used on her and thus she had voluntarily gone to the house of respondent 2 and was a willing partner to the act of sexual intercourse. The only question is whether the said intercourse had taken place with the consent of PW 1. Allowing the appeal,

Held :

The Single Judge of the High Court has thoroughly erred in appreciation of the evidence of PWs 1 and 2. For the offence of rape, it is not necessary that there should be actual use of force. A threat of use of force is sufficient in view of clause thirdly of S. 375.

The police constable was in uniform and on bandobast duty. By show of his authority, he coerced PWs 1 and 2 into total abject surrender. To these poor rustic helpless villagers, the police constable represents absolute authority. They had no option but to submit to his will. It is, therefore, not a case of PW 1 being a willing party to sexual intercourse. It is a case where she had surrendered herself involuntarily, under duress and threat held out by the first accused. She was deprived of her will by show of authority and by the beating administered to her husband accompanied by threat of putting him in police remand, where, as the common belief of rustic villagers goes, they would be subjected to 'third degree methods'. Not only that, after the act they were threatened not to report to the police. This explains their silence for a few hours. It is not suggested that PW 1 agreed to the said intercourse either out of love or for money. It is also not suggested that PW 1 was a prostitute. Both the accused had entered into an unholy plan and adopted a stratagem to fulfil their illegal desires. In all the circumstances of this case, the minor contradictions between her oral testimony and the report are of little consequence.

The respondents-accused denied the charge totally. Their only plea was that they have been falsely implicated. It is not even stated as to who implicated them and why. It is also not suggested that PWs 1 and 2 had any animus or motive against the accused or that they were being used by someone else to implicate the respondents falsely. In the circumstances, the mere allegation of false implication has no significance. This also is a minor corroborating aspect.

Though the offence had taken place in the year 1978 and the accused were acquitted by the High Court as far back as August 1981 and the reversal of the acquittal at this stage would be after a lapse of 10 years, but having regard to the nature of the offence and the circumstances in which it was perpetrated, the respondents deserve no mercy. They should suffer for their deed.

The appeal is, accordingly, allowed. The High Court judgment is set aside and that of trial court restored. The respondents shall undergo the sentence awarded by the trial court. *State of Maharashtra* v. *Prakash*, 1993 Supp (1) SCC 653: 1993 SCC (Cri) 411: AIR 1992 SC 1275.

Bench Strength **2**. Coram: *Kuldip Singh* and **B.P. Jeevan Reddy, JJ.** [Date of decision: 24-3-1992]

[8932] — S. 375 Thirdly & Sixthly — Rape — Consent — Consent for having sexual intercourse obtained by accused from the victim girls by deceitful means in some cases and under threat of dire consequences in some other cases and therefore, held, their acts fell under cl. thirdly, while some of the victims being aged below 16 years, their consent was immaterial in view of cl. sixthly — *Moreover, accused had dominion or control over the victims — Held, charge of rape against the accused made out*

It is in the evidence of the prosecutrix that consent of many of the prosecutrix had been obtained by deceitful means that if they had sex with A-1 they would be cured of asthma or that if they had sex with A-1 it is service to God or some of the girls have been raped under threat of dire consequences. A-1 had dominion/control over the Ashram girls and most of them are orphans and no alternative place to go. Therefore the case clearly falls within the thirdly clause of Section 375 IPC. Furthermore, if the consent is obtained by deceitful means or under threat of death or hurt, it is no consent at all and it is without her consent. Therefore, the charge of rape levelled against A-1 falls within the definition of Section 375 IPC. This apart, under the sixthly clause the consent is immaterial when the prosecutrix is under 16 years of age. Some of the prosecutrix were below 16 years of age when they were raped by A-1. In view of the facts and circumstances of the case, A-1 was rightly charged and convicted under Section 376(2)(*c*) IPC. (Para 40). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema, JJ.** [Date of decision: 5-4-2005]

[8933] — S. 376 — Complaint against a spiritual teacher that he committed rape on 3 girls at different times — *High Court erred in discharging the accused merely on ground that the accused was a saintly old man who had thousands/millions of disciples all over India or that there was delay on the part of the victims in disclosing those illegal acts to their parents and police — They were not required to give detailed explanations while making complaint to the police*

In the instant case the High Court was much influenced by the submission made on behalf of the defence that the accused is a saintly old man, who has renounced the world, who is engrossed in spiritual activity and who has thousands/millions of disciples all over India and, therefore, he was not likely to indulge in the illegal acts alleged against him. It failed to appreciate that it is not unusual to come across cases where the so-called spiritual heads exploit young girls and women who become their disciples and come under their spell. Moreover, the reasoning of the High Court that it also does not stand to reason that a saintly man who has thousands/millions of disciples all over India would commit sexual intercourse with the pracharak of his cult in the presence of his disciples stands vitiated because of the vice of misreading the statements. The three rape victims have nowhere stated that the accused had sexual intercourse with them in the presence of other disciples. The High Court gave too much importance to the conduct of the three victims and the delay in disclosing those illegal acts to their parents and the police. What the High Court has failed to appreciate is how a victim of such an offence will behave would depend upon the circumstances in which she is placed. It often happens that such victims do not complain against such illegal acts immediately because of factors like fear or shame or uncertainties about the reactions of their parents or husbands in case of married girls or women and the adverse consequences which, they apprehend, would follow because of disclosure of such acts. What the three girls had stated in their statements was not inherently improbable or unnatural. They have disclosed the reasons why they could not immediately complain about those illegal acts for such a long time. What the High Court has failed to appreciate is that while making a complaint to the police or giving their statements they were not required to give detailed explanations. *State of Maharashtra* v. *Priya Sharan Maharaj*, (1997) 4 SCC 393: 1997 SCC (Cri) 584: AIR 1997 SC 2041: 1997 Cri LJ 2248.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 11-3-1997]

[8934] — S. 376 — Evidence of rape victim — If a person in authority such as a police officer is accused of rape, evidence of the prosecutrix should be judged in the backdrop of the particular fact situation in which she was placed — *Absence of resistance by prosecutrix to be viewed in the context of the sense of awe attached to the authority and her helplessness — Evidence Act, 1872, S. 114-A*

The infrastructure of our criminal investigation system recognises and protects the right of a woman to decent and dignified treatment at the hands of the investigating agency. This is evident from the proviso to sub-section (2) of S. 47, sub-section (2) of S. 53 and proviso to S. 160 of the Code. If a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behaviour must be judged in the backdrop of the situation in which she was placed. The purpose and setting, the person and his position, the misuse or abuse of office and the despair of the victim which led to her surrender are all relevant factors which must be present in the mind of the court while evaluating the conduct evidence of the prosecutrix. A person in authority, such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his victim. The court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped. A woman who is subjected to sex violence would always be slow and hesitant about disclosing her plight. The court must, therefore, evaluate her evidence in the above background.

In this case though the version of the prosecutrix is that she had tried to resist the accused respondent that the respondent being a strong man was able to overpower her and take her by force. Besides, he was a man in authority in police uniform. The prosecutrix was alone and helpless. In the circumstances the resistance would be considerably dampened. *State of Maharashtra* v. *Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550: 1990 SCC (Cri) 210: AIR 1990 SC 658: 1990 Cri LJ 889.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1990]

[8935] — S. 376 — Offence committed by military personnel

As the appellant was alleged to have committed rape in relation to a person who was not subject to military, naval or air law, under S. 70 normally he could be tried by the ordinary Criminal Court, but

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inasmuch as he was on active service at the time of the alleged offence, the Court-martial also gets jurisdiction to try the appellant. Therefore, this is a case where both the Court-martial and the ordinary Criminal Court had concurrent jurisdiction to try the appellant. To meet such a situation suitable provisions have been made in Ss. 125 and 126 of the Act and the rules framed under S. 549, CrPC. *Joginder Singh* v. *State of H.P.*, (1971) 3 SCC 86: 1971 SCC (Cri) 269: AIR 1971 SC 500: 1971 Cri LJ 511.

Bench Strength **2**. Coram: *J.M. Shelat* and **C.A. Vaidialingam**, JJ. [Date of decision: 30-11-1970]

[8936] — S. 376 — Rape — Proof and corroboration of — Appellant doctor alleged to have raped prosecutrix, a patient visiting his clinic — Sessions Court as well as the High Court convicting the appellant relying on the testimony of prosecutrix — *Held, though in rape cases conviction on the sole testimony of prosecutrix is sustainable (provided it inspires confidence), but in the instant case version given by the prosecutrix is unsupported by medical evidence and the surrounding circumstances belie the case set up by her — There were many persons in the clinic and it is highly improbable that the appellant would have sexually assaulted her when they were present in the near vicinity — It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique — Absence of injuries on the body improbabilise the prosecution version — Moreover, there was absence of spermatozoa in the vaginal swab of the prosecutrix — Presence of semen on the undergarments of the appellant as also on her petticoat and sari not sufficient by itself to prove the offence though may cause some suspicion on the conduct of the appellant — Further, the doctor who examined the appellant on the same day negatived sexual intercourse on the basis of scientific evidence — No injury found on the body or the private parts of the prosecutrix — Doctor who examined her unable to give any opinion about the alleged sexual intercourse — Held, appellant entitled to benefit of doubt — Conviction and sentence set aside*

It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen. (Para 9)

In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbabilise the prosecution version. (Para 10)

Besides the absence of spermatozoa in the vaginal swab of the prosecutrix casts a serious doubt on the prosecution evidence. (Paras 7 and 13)

Moreover, the appellant also was medically examined on the same day by PW 10 who stated that smegma was present around the corona glandis. He further deposed that his examination negatived sexual intercourse and for collection of smegma around corona glandis a period of 24 hours is required. This scientific evidence also does not support the prosecution. Had there been a vigorous sexual act as alleged by the prosecutrix there could not have been the presence of smegma on his private part. (Para 8)

It is true that the petticoat [**Ed.**: of the prosecutrix] and the underwear allegedly worn by the appellant had some semen but that by itself is not sufficient to treat that the appellant had sexual intercourse with the prosecutrix. That would only cause some suspicion on the conduct of the appellant but not sufficient to prove the case, as alleged by the prosecution. (Para 12)

On a consideration of the entire evidence in this case, there is a serious doubt regarding the sexual intercourse allegedly committed by the appellant on the prosecutrix. The appellant is entitled to the benefit of doubt. (Para 14). *Sadashiv Ramrao Hadbe* v. *State of Maharashtra*, (2006) 10 SCC 92: (2007) 1 SCC (Cri) 161.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *R.V. Raveendran*, JJ. [Date of decision: 17-1-2006]

[8937] — S. 376 — Rape of a minor student by the teacher, twice — *Prosecutrix divulging about it only when her mother came to know that she was pregnant i.e. after more than 3 months of occurrence — Held, her not informing anyone about the* *incident in the circumstances cannot detract from her reliability — Moreover, defence put forth by the appellant was too vague to be acceptable — Conviction upheld* (Paras 3, 6 and 7). *Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

[8938] — S. 376 — Rape on a newly married teen-aged girl by a police officer after separating her husband by booking him on false charges — *On facts held, offence under S. 376 established — Conviction and sentence of 5 years' RI and fine of Rs 1000 recorded by trial court upheld — High Court's order of acquittal, based on erroneous appreciation of evidence, reversed — No two reasonably possible views present — Interference with High Court's order justified — CrPC, 1973, Ss. 378 and 386*

When a person in uniform commits such a serious crime of rape on a young girl in her late teens, there is no room for sympathy or pity. The punishment must in such cases be exemplary. Therefore, the sentence of five years' RI and fine of Rs 1000 and in default six months' RI awarded by the trial court is upheld. *State of Maharashtra* v. *Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550: 1990 SCC (Cri) 210: AIR 1990 SC 658: 1990 Cri LJ 889.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1990]

[8939] — Ss. 376 and 366 — Sentence — Accused guilty of abduction and rape — Accused holding responsible positions of Lambardar and Sarpanch in village — *Held, sentence of three years' and four years' R.I. and fine justified. Gurcharan Singh* v. *State of Haryana*, (1972) 2 SCC 749: 1972 SCC (Cri) 793: AIR 1972 SC 2661: (1973) 2 SCR 197: 1973 Cri LJ 179.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 13-9-1972]

[8940] — Ss. 376 and 506 — Rape — Consent — Burden of proof in respect of — Rape by teacher of his student — *Held, question of consent is really a matter of defence by the accused and it was for him to place materials to show that there was consent — High Court erred in putting burden on the victim to show that there was no consent — Evidence Act, 1872, Ss. 114-A and 101 & 103* (Para 15). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[8941] — Ss. 376 and 506 — Rape — False implication — Plea of — Sustainability — Accused was teacher of victim — *Stand of accused that he was falsely implicated because the brother of the victim was not successful in the examination and therefore his family had grudge against him, held, unacceptable — The incident involving the accused and mother and brother of the victim took place about a decade back — Not even a remote possibility of the same being the foundation for false implication — That apart, no girl of a tender age and her parents would like to jeopardise her entire future by falsely implicating a person alleging forcible sexual intercourse — Hence contention regarding false implication rejected* (Para 22). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[8942] — Ss. 376 and 511 — Bar on Court Martial's jurisdiction to try the offence of rape, held, not applicable to the offence of attempting to commit rape — *Provisions of Sch. I to CrPC in respect of Ss. 511 and 376 IPC could not be invoked to reach a different conclusion as the question of Court Martial's jurisdiction to try an offence has to be adjudged from the provisions of the Army Act itself and not with reference to CrPC — CrPC, 1973, S. 26(a)(ii) & (iii) and Sch. I — Army Act, 1950 — S. 70* (Para 2). *Madan Lal* v. *Union of India*, (2002) 10 SCC 185.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *N. Santosh Hegde*, JJ. [Date of decision: 21-9-1999]

State v. Jaikaran Singh, AIR 1955 NUC 1721 (All), overruled

[8943] — S. 376(2) proviso — Award of less than minimum sentence — Conviction of police officials under S. 376 and minimum sentence of 10 years' RI recorded by trial court and confirmed by High Court — *Having regard to the facts and circumstances of the case including conduct of the prosecutrix in not disclosing about the incident of rape for five days to anyone, held, accused entitled to sub-minimum sentence of five years. State of Haryana* v. *Prem Chand*, (1990) 1 SCC 249: 1990 SCC (Cri) 93: AIR 1990 SC 538: 1990 Cri LJ 454.

Bench Strength **2**. Coram: *B.C. Ray* and *S. Ratnavel Pandian*, JJ. [Date of decision: 14-12-1989]

[8944] — S. 376(2) proviso — Sentence — Police officials (appellants) convicted under S. 376 for committing rape on prosecutrix and awarded minimum sentence of 10 years' RI — *Paramour of the prosecutrix also convicted on charge of rape — On appeal High Court finding that the prosecution failed to prove age of the prosecutrix as below*

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18 years and that she was willingly going around with her paramour and was having sex with him of her free will, acquitted the paramour but confirmed the conviction and sentence imposed on the appellants — Having regard to peculiar facts and circumstances of the case and the promiscuous conduct of the prosecutrix, held, proviso to S. 376(2) can be invoked and a sub-minimum sentence of 5 years' RI would meet the ends of justice — Sentence accordingly reduced. Prem Chand v. *State of Haryana*, 1989 Supp (1) SCC 286: 1989 SCC (Cri) 418: AIR 1989 SC 937: 1989 Cri LJ 1246.

Bench Strength **2**. Coram: *B.C. Ray* and **S. Ratnavel Pandian**, JJ. [Date of decision: 31-1-1989]

[**Ed.**: For review of this case on question of sentence see (1990) 1 SCC 249.]

[8945] — S. 376(2)(a) — Custodial rape — *Appellants, Head Constable and Constable, forcibly taking the prosecutrix and her husband to the police station and confining them in separate rooms — Head Constable committing rape on the prosecutrix and the Constable keeping a watch over the husband — Evidence of the prosecutrix amply corroborated by other evidences on record — No explanation by the appellants as to why they have been falsely implicated in the case — Conviction upheld. Ram Kumar* v. *State of H.P.*, 1995 Supp (4) SCC 67: 1996 SCC (Cri) 100: AIR 1995 SC 1965.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 10-1-1995]

[8946] — S. 376(2)(a) — Rape by Police Official — Version of prosecutrix found to be natural — *She correctly identifying the appellant in the identification parade — Bare denial by accused not of any consequence — Evidence of prosecutrix most important — Conviction upheld. Ram Pal* v. *State of Haryana*, 1994 Supp (3) SCC 656: 1995 SCC (Cri) 136.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 28-9-1993]

[8947] — S. 376(2)(a) — Rape of a tribal woman while in the police custody — *Commission appointed by Supreme Court holding the incident of custodial rape to be true — Undue delay on part of the State Government in concluding the departmental enquiries pending against officers responsible for the incident — Explanation furnished by State Government found to be unsatisfactory — State Government directed to conclude the enquiry within three months and pay a sum of Rs 50,000 as interim compensation to the victim of the rape. P. Rathinam* v. *State of Gujarat*, 1994 SCC (Cri) 1163.

Bench Strength **2**. Coram: *B.P. Jeevan Reddy* and *N. Venkatachala*, JJ. [Date of decision: 2-4-1993]

[8948] — Ss. 376(2)(c) & 376/106 — Rape of 13 girls of an Ashram by its founder, A-1, systematically abetted by co-accused of the Ashram — *Victims being orphans, entirely dependent upon A-1 for their survival, A-1 had dominion/control over them physically, mentally and spiritually — Held, conviction of A-1 under S. 376(2)(c) and sentence of life imprisonment with fine of Rs 5,10,000 on each count justified — Conviction of co-accused under Ss. 376/106 and sentence of life imprisonment (except in case of A-3 who had been awarded RI for the period already undergone with fine of Rs 10,000) justified*

In the present case, most of the victim girls were orphans brought from Sri Lanka. A-1 provided them food, clothing and shelter. They were entirely dependent on A-1 for their survival. Once they were thrown out by A-1 they had no alternative place to stay. A-1 had dominion/control over the prosecutrix physically, mentally and spiritually. In fact, many of them believed that A-1 was God to them. It is in these circumstances there is no reason why the prosecutrix should depose falsely against A-1 who was the source of their survival physically, mentally and spiritually, by providing shelter, food and clothes to them. The testimony of the prosecutrix inspires confidence, on the basis of which alone conviction can be safely sustained. Moreover, in the instant case the statements of the prosecutrix are well corroborated by medical and other contemporaneous documents. It is also well-established principle of law that minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. (Paras 33 and 34). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[8949] — Ss. 376/511 — Attempt to commit rape — Incident taking place in a doctor's clinic — *Prosecutrix, an illiterate villager coming to the clinic with her father-in-law, M — The accused sent away M to fetch hot water — On his return he found the appellant scantily dressed in his underclothes (kachha and banian) while coaccused (Doctor) standing naked near the prosecutrix who was lying unconscious with half folded salwar — Held, in the circumstances the scanty dress clearly makes the appellant guilty of attempt to commit rape. Nathu*

Ram v. *State of Haryana*, (1994) 1 SCC 491: 1994 SCC (Cri) 88: 1994 Cri LJ 1095: (1994) 1 An LT (Cri) 3: (1994) 31 ACC 25.

Bench Strength **2**. Coram: *P.B. Sawant* and **S. Mohan**, JJ. [Date of decision: 27-10-1993]

[8950] — S. 376-B — Sexual intercourse by public servant with a woman in his custody — Ingredients — *Accused, a teacher of a government school, having intimacy with a girl student of the school and having sexual intercourse with her outside the school premises — Held, ingredients of S. 376-B not fulfilled, hence accused cannot be convicted thereunder — Even assuming that accused, being a teacher of a govt. school, was a public servant, prosecutrix cannot be said to be in his custody — Moreover, intercourse had not taken place within the school premises — From the mere fact that accused was having a love affair with prosecutrix, it cannot be shown that he had taken advantage of his official position and induced or seduced prosecutrix to have intercourse*

The ingredients of Section 376-B are:

(*i*) the accused must be a public servant;

(*ii*) he must take advantage of his official position;

(*iii*) he must induce or seduce any woman;

(*iv*) such woman must be in his custody in such capacity or she is in the custody of public servant subordinate to him; and

(*v*) he must have sexual intercourse with her which does not amount to the offence of rape. (Para 7)

It may be assumed that the appellant being a teacher of the government school was a public servant. But all the students of the school, only thereby, were not in the custody of the appellant. The expression "custody" implies guardianship. A custody must be a lawful custody. The same may arise within the provisions of the statute or actual custody conferred by reason of an order of a court of law or otherwise. (Para 12)

When these two ingredients are satisfied, the third ingredient, therefore, would be as to whether the public servant has taken advantage of his official position. If a student and a teacher fall in love with each other, the same would not mean that the teacher has taken undue advantage of his official position. Even then, there must be an inducement or seduction by a public servant so far as the woman in his custody is concerned. (Para 14)

Sexual intercourse, therefore, for the purpose of attracting Section 376-B of the Penal Code must take place at a place where the woman was in custody. In this case, the prosecutrix categorically admitted that the same did not take place within the precincts of the school but outside the school. (Para 15)

Thus the ingredients of the offence under Section 376-B of the Penal Code are not satisfied in the instant case. (Para 16). *Omkar Prasad Verma* v. *State of M.P.*, (2007) 4 SCC 323: (2007) 2 SCC (Cri) 293: AIR 2007 SC 1381: (2007) 52 AIC 7 (SC): 2007 Cri LJ 1831.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 8-3-2007]

3. Rape of servant

[8951] — S. 376 — Rape — Appreciation of evidence — Fallacy in reasoning of High Court about lack of evidence — Rape on maidservant — *High Court's finding that there was no evidence that victim was employed in house of accused — Held, not proper where defence itself suggested that the victim was engaged as maidservant* (Para 13). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

4. Gang rape/Rape by multiple accused/Conspiracy

See also 'A.3.(c) Presumption against consent under S. 114-A, Evidence Act', above, and

'C.22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act', and

'C.24.(f) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos', below

[8952] — S. 375 — Gang rape by police of women participating in public rally — Compensation to — Quantum of — Limits on power of High Court when matter at premature stage — *Writ petition by Uttarakhand Sangharsh Samity seeking directions to State authorities in connection with confrontation ensued between the agitators and the administration which resulted in death, injuries and molestation of women — High Court directing the State Govt. to pay huge amounts as compensation to the victims and to make fund allotment (in several crores of rupees) for development of Kumaon and Garhwal regions by way of reparation to the people of those regions — Such directions which resulted in great financial burden on the State at the premature stage and which were made without trial, without consideration of evidence, without having regard to financial capacity, resources of the State and legislative mandates involving State funding, held, were in excess of High Court's jurisdiction under Act. 226 and unwarranted and hence liable to be set aside — Constitution of India, Arts. 226 and 19(1)(a), (b), (c) & (d) and 21*

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

A public rally was organised for protesting against a State Government notification pertaining to reservation in educational institutions based on regionwise domicile and to press the demand for a separate State of Uttarakhand comprising certain hilly regions of the State of U.P. and some other areas. The administration took stern measures to resist the protestors' march towards the national capital as the officials claimed to have received secret information that the proposed rallyists were carrying lethal weapons in violation of the prohibitory orders issued by the Government and might create serious law and order situation. The confrontation which ensued resulted in a lot of bloodshed including loss of many lives, infliction of injuries on persons belonging to both sides, outraging the modesty of women ranging to ravishments. An association styling itself as Uttarakhand Sangharsh Samity moved a writ petition in the High Court for directions to be issued to the authorities to meet the consequences of the said confrontation. A Division Bench of the High Court issued certain interim directions, one of which was to the CBI to enquire into the allegations of 'human rights violations'. CBI took up investigation pursuant to the directions and laid charge-sheet against certain officers for offences under Sections 109 and 120-B read with Sections 341 and 342 of the Indian Penal Code. Sanction of the State Government was obtained for launching prosecution in respect of those offences. Some of the accused who were arrayed in the said charge-sheet filed writ petitions before the High Court in challenge to the validity of the sanction order issued by the State Government for prosecuting them. The Division Bench disposed of the first-mentioned writ petition filed by the Samity issuing several directions. It ordered the Government to pay Rs 10 lakhs each to the dependants of all the persons who died in police firing. Rs 10 lakhs each were given to the victims of molestation, Rs fifty thousand each to 398 persons who were detained by the police. The Division Bench also issued the following directions regarding fund allotment for development of certain regions: "Damages and compensation for constitutional wrongs committed subjecting injuries to the class of people of Kumaon and Garhwal for their only fault that they were securing their civil rights on the guarantee already given by the legislature, as discussed in the judgment. The reparation to the people of Kumaon and Garhwal Divisions shall stand related to their population (5,926,146: Kumaon — 2,943,199, Garhwal — 2,982,947) in the equation of a rupee per month per person for a plan period of five years and this compensation shall be invested amongst the population of Kumaon and Garhwal earmarked specifically for a programme for the upliftment of the women; 50 paise of this reparation shall come from the State of Uttar Pradesh and the other 50 paise from the Union of India. This would be in addition to the normal plan allocation which this area would receive as what the Court is suggesting is damages beyond the normal allocation." Allowing the appeals,

Held :

The High Court was not justified in fixing such a huge sum as compensation at a premature stage. The High Court while imposing such a heavy liability on the State has not made any attempt to discuss the relevant questions which are to be answered for fixing the liability of compensation and for quantification of the amount of compensation. Therefore, the direction for payment of compensation is clearly unsustainable and is liable to be vacated. (Para 12)

The magnitude of the financial burden for complying with the direction regarding fund allotment has been approximately estimated as amounting to several crores of rupees. The money has to come out of the State coffers. This is not a case where the High Court was ordering compensation to one individual or even to a limited number of persons dehors its legal liability enjoined by statutory provisions. Major revenue of the State Government is through taxation. But no taxation is possible without legislative sanction. The Government must have other resources to meet the direction. The High Court did not take into account the financial capacity of the State Government, nor its resources for making up the said amount nor the priorities to be honoured by the State Government nor even the legislative mandates involving State funding, while ordering the Government to incur such a huge expenditure of a recurring nature. Judicial creativity has, no doubt, expanded to newer dimensions in the recent past, but that is no justification for using judicial power for imposing such an unbearable burden on the State which in turn would be compelled to extract money out of the common man's coffers to meet such a massive financial burden. Suffice it to say that the above direction cannot stand judicial scrutiny and it is hereby set aside. (Paras 14 to 17) . *A.K. Singh* v. *Uttarakhand Jan Morcha*, (1999) 4 SCC 476: 1999 SCC (Cri) 580: AIR 1999 SC 2193.

Bench Strength 3. Coram: **K.T. Thomas**, *D.P. Mohapatra* and *U.C. Banerjee*, JJ. [Date of decision: 13-5-1999]

[8953] — Ss. 375 and 376 — Delay in lodging FIR — When does not affect prosecution case — *In instant case of gang rape, delay in lodging FIR stood properly explained — CrPC, 1973, S. 154*

When FIR by a Hindu lady is to be lodged with regard to commission of offence like rape, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of the victim who has been criminally assaulted in such a manner. Obviously, the victim must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reason for little delayed FIR. The delay was found to be properly explained by both the courts below. (Para 13). *Sohan Singh* v. *State of Bihar*, (2010) 1 SCC 68.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 9-10-2009]

[8954] — S. 376 — Conduct of prosecutrix — Relevance — Resistance — Absence of — Inference — *Held, would merely suggest want of violent resistance on part of prosecutrix and not consensus — Prosecutrix was forcibly caught, threatened at knife-point and thereafter gang raped — Non-resistance because of fear in such circumstances not unnatural* (Paras 25, 26 and 46). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

Gurcharan Singh v. State of Haryana, (1972) 2 SCC 749: 1972 SCC (Cri) 793; Devinder Singh v. State of H.P., (2003) 11 SCC 488: 2004 SCC (Cri) 185, followed

[8955] — S. 376 — Gang rape — Prosecution case based on uncorroborated solitary testimony of prosecutrix — *Testimony of prosecutrix not inspiring confidence — Delay in filing of FIR by 10 days not explained — Medical examination of prosecutrix not brought on record — Held, conviction of accused persons under S. 376 cannot be sustained*

The prosecutrix who has married twice and was deserted by her husbands, claimed that while she was proceeding alone in the dark on the night of occurrence through an open field, the sky was overcast and it was drizzling in full swing, she was caught hold of by six persons who one by one committed rape on her. She did not divulge it to anybody for several days and after ten days she informed the police about the incident. Though she was subjected to medical examination but the prosecution did not show the result of the medical examination before the court, nor was it explained as to why the same was not brought in evidence. The version of the prosecutrix was accepted by the trial court and the High Court by assuming that she had no reason to falsely implicate the six persons for rape.

Allowing the accused persons' appeals,

Held :

The argument adopted by the High Court is a fragile one on the fact situation of this case. Though it cannot be laid down as a proposition of law that the uncorroborative testimony of the prosecutrix is not sufficient for entering conviction for an offence under Section 376 IPC, but then the evidence of that solitary witness should inspire confidence in the judicial mind, and be of such a nature that the court must be able to certify that the testimony is wholly reliable. In this case the inordinate delay in lodging the complaint before the police i.e. 10 days, has not even been attempted to be explained. Even when she was examined as a witness in the court, no question was put to her on that long delay. In a case where six indicted persons should be visited with a minimum sentence of 10 years' RI, the court cannot afford to act on the uncorroborated testimony of the prosecutrix unless the said evidence is wholly reliable. Looking at the testimony of the prosecutrix from all the different angles, it is not possible to hold that the testimony is wholly reliable. In such a situation, materials for corroborating the testimony of the prosecutrix could not be obviated. But there is none. Therefore, the conviction and sentence passed on the appellants under Section 376 cannot be confirmed. (Paras 2 and 4). *Surjan* v. *State of M.P.*, (2002) 10 SCC 214: 2004 SCC (Cri) 471: AIR 2002 SC 476.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 13-3-2001]

[8956] — S. 376 — Rape — Conviction on sole testimony of prosecutrix — Effect of S. 114-A, Evidence Act, 1872 — Presumption against allegations of consensual sex in case of alleged rape — *Held, whereas Ss. 113-A and 113-B inserted in the Evidence Act by same amendment raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under S. 114-A is extremely restricted in its applicability — As far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth — Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely*

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

— On facts, allegations of gang rape made by prosecutrix found not proved and hence, benefit of doubt granted to appellant-accused — Evidence Act, 1872, Ss. 114-A, 113-A and 113-B (Para 12). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 3-12-2008]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635: 1998 SCC (Cri) 1725, considered

[8957] — S. 376 — Rape — Proof — Penetration, held, is sine qua non for the said offence — *But complete penetration with emission of semen and rupture of hymen, held, not necessary — A slight penetration in vulva with or without violence is sufficient — Depth of penetration, held, is immaterial — Irreconcilable discrepancies found when version of prosecutrix in court compared with the one given during investigation — Evidence of father of prosecutrix (hostile witness) that his wife told him that the prosecutrix was teased by the accused persons — Further, evidence of prosecutrix and doctor did not specifically refer to penetration — Neither rape nor attempt to rape established — Conviction under S. 376(2)(g) set aside — Accused-appellants convicted under S. 354 r/w S. 34 IPC*

Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little. The depth of penetration is immaterial in an offence punishable under Section 376 IPC. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The actus reus is complete with penetration. Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. (Para 7)

Though the prosecutrix's version in court was of rape, when it is compared with the one given during investigation, certain irreconcilable discrepancies are noticed. The evidence of PW 11, the father of the prosecutrix who according to the prosecution made a departure from what he allegedly stated during investigation, is to the effect that his wife PW 9 told him that the prosecutrix was teased by the accused persons. Merely because he was termed as a hostile witness his entire evidence does not get affected. Significantly, the evidence of the prosecutrix and the doctor does not specifically refer to penetration which is sine qua non for the offence of rape. (Para 12)

There is no material to show that the accused were determined to have sexual intercourse in all events. In the aforesaid background, the offence cannot be said to be an attempt to commit rape to attract culpability under Sections 376/511 IPC. But the case is certainly one of indecent assault upon a woman. (Para 13). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

[8958] — Ss. 376, 147, 323/149, 342, 458 and 366 — Abduction and rape — Conviction justified — Marriage alleged by rapist not proved — *Appellants convicted under Ss. 147, 323/149, 342, 458 and 366, while Appellant 1, also additionally convicted under S. 376 — Five accused armed with iron rod and lathis alleged to have abducted the prosecutrix (PW 5) and assaulted PW 2 during the occurrence — It was further alleged that they dressed her in new ornaments and clothes and Appellant 1 raped her on two consecutive nights — Defence of Appellant 1 that since victim was married to him there was no rape as contended, rejected by courts below — No evidence of marriage as claimed brought on record — DW 2 in his cross-examination admitting that Kazi wrote their nikah — But no signature or thumb impression was obtained and Kazi Y who was claimed to have solemnised the nikah was not examined — DW 1 who is claimed to have settled the marriage accepted that same is the procedure for proving the marriage — Thus, factum of marriage not proved — Held, that being so the conviction of Appellant 1 as recorded by trial court and maintained by High Court cannot be faulted — So far as the role played by Appellant 2 is concerned, the same was clearly established by the evidence of injured witnesses PW 2 and PW 4, apart from the evidence of PW 5 (prosecutrix) — Hence, his conviction also sustained — But so far as other appellants were concerned there was no evidence to link them with crime — Hence, their* *conviction set aside* (Paras 8 and 9). *Neku Khan* v. *State of Rajasthan*, (2009) 11 SCC 86: (2009) 3 SCC (Cri) 1245: AIR 2009 SC 1954: (2009) 1 ECrN 859 (SC): (2009) 75 AIC 132 (SC): (2009) 1 APLJ 41 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-1-2009]

[8959] — Ss. 376 and 302 or 304 Pt. II — Gang rape and murder — Commission of rape by the accused persons established — *Nature of the injuries inflicted on the person of the deceased indicating that accused had not intended to cause her death — But according to post-mortem report, injuries showing violent type of sexual intercourse inasmuch as any violent assault even without rape could cause those injuries and the corresponding internal injuries, one of which was sufficient to cause the death — That being so, held, accused must be assumed to be having knowledge that by their action, it was likely that the deceased would have died — Hence accused liable to be convicted under S. 304 Pt. II r/w S. 34 as well as under S. 376*

Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely, by such act, to cause death, is responsible for the commission of the offence of culpable homicide. Culpable homicide is murder if the act by which the death is caused is done with the intention of causing death and is not covered by any of the exceptions of Section 300 of the Indian Penal Code. In this case, there is no evidence to show that the accused persons proved to have been involved in the occurrence, had intended to cause the offence of murder within the meaning of Section 300 as punishable under Section 302 of the Indian Penal Code. However, on proof of the commission of offence of gang rape found to have been committed in a violent manner, they are assumed to be having the knowledge that by their action, it was likely that the deceased would have died. The aforesaid accused are, therefore, guilty of the offence, punishable under Part II of Section 304 read with Section 34 IPC and are sentenced to 10 years' RI. Their conviction and sentence under Section 376 read with Section 34 recorded by the trial court are also upheld. (Para 24). *State of Orissa* v. *Dibakar Naik*, (2002) 5 SCC 323: 2002 SCC (Cri) 1128: AIR 2002 SC 2148: 2002 Cri LJ 2826.

Bench Strength **2**. Coram: **R.P. Sethi** and *Doraiswamy Raju*, JJ. [Date of decision: 23-4-2002]

[8960] — Ss. 376 and 366 — Conviction confirmed — Appellant-accused (three in number) alleged to have gagged mouth of prosecutrix, bodily lifted her to house of one of the accused and gang raped her — *On failure by police concerned to take necessary action, a written complaint (Ext. DA) was filed before the SSP, who forwarded the same to DSP, DW 2 — Facts establishing diabolical role played by police, in particular DW 2 to sabotage entire prosecution case in order to save accused — On the other hand, testimonies of prosecutrix and PW 4 found credible — Hence held, no interference with impugned judgment convicting appellants called for* (Paras 2, 3 and 9 to 14). *Jaswant Singh* v. *State of Punjab*, (2009) 16 SCC 201.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *J.M. Panchal*, JJ. [Date of decision: 5-11-2009]

[8961] — Ss. 376 and 366 — Prosecutrix alleged to have been forcibly taken away by accused and gang raped — Charge under S. 366 not established — Hence, submission that conviction under S. 376(2)(g) on the same evidence was uncalled for — Tenability — *Held, evidence of rape is distinct from the other charge and the matter should be examined in that background — Merely because the accused have been acquitted for the offence punishable under S. 366 IPC is ipso facto no reason to disbelieve the entire prosecution story on this solitary ground — Veracity of the story projected by the prosecution qua allegations of rape would be required to be examined* (Paras 6 and 13). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 3-12-2008]

Raja Ram v. State of M.P., (1994) 2 SCC 568: 1994 SCC (Cri) 573; Arokia Thomas v. State of T.N., (2006) 10 SCC 542: (2007) 1 SCC (Cri) 140; Suresh Chaudhary v. State of Bihar, (2003) 4 SCC 128: 2003 SCC (Cri) 801, followed

[8962] — Ss. 376 and 376/120-B — Rape and conspiracy to commit rape — *Four accused, using affluence and pretensions of friendship luring innocent school/college girls and then forcibly raping and sexually exploiting them — While two of them actually committing the rape and sexual exploitation, the third accused though shown not to have committed rape, making overtures to one of the victims and the fourth accused, a driver ferrying the girls to and from the farmhouse where they were exploited — Accused-appellants found present at the farmhouse and named by several victims as persons involved in the offence — Held, first two*

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

accused on the basis of the evidence liable to be convicted under S. 376 — The third and fourth accused, though not rapists, held, liable to be convicted under Ss. 376/120-B since all co-conspirators need not act in an identical manner — Sentence reduced to 10 years' RI from life sentence, for all four accused

The trial court as well as the High Court have carefully considered the evidence on record and have concurrently found the aforesaid appellants guilty of the offence under Section 376 read with Section 120-B IPC. *P* and *I* have been found guilty of the offence under Section 376 IPC. So far as *A* is concerned, he is not as innocent as he pretends to be. In fact, he also made overtures to PW 43 but she was able to extricate herself from the situation. This only shows that *A*, accused was not a silent spectator or a casual visitor to the farm or to the house of *F* where these nefarious activities were carried on. So far as *M* is concerned, it is no doubt true that there is no allegation of his having raped any girl or having misbehaved with any one of them. What, however, is apparent from the evidence on record is that he used to transport the girls to the farmhouse and the house of *F* from their respective residences or the school. The evidence also discloses that he was responsible for arranging food etc. for them.

It is not necessary that in order to be a co-conspirator, each one of the conspirators should act in an identical manner. What is essential is that they must agree to do or cause to be done an illegal act. Different members of the conspiracy may be assigned different roles with the object of committing the agreed illegal act. The driver was certainly aiding the others to commit the illegal act which was the object of their conspiracy. Having regard to his conduct and the evidence on record it is quite obvious that *M* was aware of what was happening and the role played by him establishes the fact that he was also a member of the conspiracy in which he was assigned the role of transporting the victims. He was, therefore, clearly guilty of the offence of conspiracy. So far as the other two accused *P* and *I* are concerned, there is clear evidence of one of the prosecutrix that she had been raped by these two accused apart from others. Unfortunately, many of the victim girls who appeared as witnesses turned hostile and one can easily appreciate the reason why they did not want to depose against the appellants as that would have exposed them as well, and would have adversely affected their future life. (Paras 29 to 32, 33 and 40). *Moijullah* v. *State of Rajasthan*, (2004) 2 SCC 90: 2004 SCC (Cri) 512.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 19-12-2003]

[8963] — Ss. 376, 457 and 380 — Rape — Alleged to have been committed by five persons — Medical evidence — Proof — *No injury found on the body of prosecutrix — No matting of pubic hair with discharge — No injuries, or tenderness on genital areas — Hymen ruptured and old scars present — No fresh scars or tenderness found — Prosecutrix was used to sexual intercourse — Held, the fact that no injury was found on her body only goes to show that she did not put up any resistance — On facts, held, medical evidence did not support the prosecution case*

It would appear from the medical evidence on record that no evidence could be found by the medical officer to prove that she had been subjected to sexual assault by five persons. Having regard to the facts and circumstances of the case, particularly in view of the fact that the prosecutrix was habituated to sexual intercourse and was examined six days after the occurrence, the fact that no injury was found on her body only goes to show that she did not put up any resistance. That may be on account of the fact that she was overpowered by five persons and as described by her, they kept her legs and hands pressed. The medical evidence on record, however, does not affirmatively support the case of the prosecution and the prosecution can, therefore, derive no support from the medical evidence on record. (Paras 5, 6 and 17). *Devinder Singh* v. *State of H.P.*, (2003) 11 SCC 488: 2004 SCC (Cri) 185: AIR 2003 SC 3365.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 17-9-2003]

[8964] — S. 376(2) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(2)(g), in reducing the sentence to period already undergone, of nearly one year and eleven months — Matter remanded for decision afresh. State of M.P.* v. *Sheshrao*, (2005) 8 SCC 11(1): 2005 SCC (Cri) 1957 (1): AIR 2005 SC 4417.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-10-2005]

[8965] — S. 376(2) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(2)(g), in reducing the sentence to period already undergone, of nearly four years and eight months for R-1 and four years and three months for R-2 — Matter* *remanded for decision afresh. State of M.P.* v. *Veerendra Singh*, (2005) 8 SCC 11(3): 2005 SCC (Cri) 1957 (3).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 20-10-2005]

[8966] — S. 376(2) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(2)(g), in reducing the sentence to period already undergone, of nearly three years and seven months — Matter remanded for decision afresh. State of M.P.* v. *Rajesh*, (2005) 8 SCC 11(2): 2005 SCC (Cri) 1957 (2).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-10-2005]

[**Ed.**: Many similar appeals were filed in the Supreme Court by the State of M.P. involving the very same manner of reduction of sentence by Justice N.S. Azad of the M.P. High Court. All such appeals came before the present Bench of three Judges. The leading decision is reported above at (2005) 8 SCC 1.

All the remaining appeals [which are being reported below at pp. 11-14] have been disposed of identically except that in certain appeals besides S. 376 IPC the accused had been convicted of other offences as well, and the period of sentence undergone was also different. Since the text of all the judgments in the connected appeals in other respects is identical to the one reproduced below, they are not being reproduced. The slight difference in the conviction and period of sentence already undergone is detailed in each shortnote given separately below the cause title of each appeal. It is worthy of note that the trial court in each case had awarded the minimum mandatory sentence under S. 376(1) or S. 376(2), as the case may be.]

[8967] — S. 376(2)(g) — Conviction confirmed — *While victim (PW 3) was returning home along with her sister-in-law (PW 1), both appellant-accused (brothers) committed rape on victim, after forcibly taking her to nearby field — On alarm being raised, victim's husband (PW 2) came there, who was also assaulted by both appellants with pistol butt, causing injuries to him — Thereafter, both accused fled away from place of occurrence — Held, evidence of PWs 1 to 3 clearly establishes that it was appellants who committed rape/assault on victim — Said evidence inspires confidence, more so, when evidence was recorded almost after eight years from date of commission of offence, yet, there is great consistency therein — Hence, no reason to doubt truthfulness of aforesaid evidence — Again, regarding delay in lodging FIR, it cannot be said that there was inordinate or unexplained delay — Also, victim admittedly a married lady, therefore, it was not necessary that some external or internal injuries should have been found on her person — Undoubtedly, doctor who examined the victim, could not give any definite opinion regarding rape, but, it was not case of appellants that they had not committed rape but they had taken a plea of consensual sex with victim, which was not believed by courts below — Moreover, plea by appellants of false implication on ground of enmity between their two families, not sustainable, as it would not lead to such a serious consequence of lodging FIR of commission of gang rape by appellants — Hence, conviction and sentence awarded by courts below, confirmed* (Paras 7 and 11 to 15). *Sohan Singh* v. *State of Bihar*, (2010) 1 SCC 68.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 9-10-2009]

[8968] — S. 376(2)(g) — Evidentiary value of FIR — *Prosecutrix naming Accused 4 in FIR but neither identifying him in Court nor naming him in her deposition — Held, the allegations, made in FIR are not evidence — CrPC, 1973, Ss. 154 and 164 — Evidence Act, 1872, Ss. 145 and 9*

The prosecutrix, a coolie, was gang raped while on her way back from a movie at about 10.00 p.m. on 20-11-1994. Her brother, *P* who was slapped, ran for help and when he returned with other villagers, found her sister lying unconscious and naked. FIR was lodged at about 7.00 p.m. on 21-11-1994 after the victim regained her consciousness. The conviction of six accused persons under Section 376(2)(*g*) IPC was upheld by the High Court.

Allowing the appeal of Accused 4 to 6 and dismissing the appeal of Accused 1 to 3,

Held :

The allegations made in the first information report are not evidence. Naming some of the accused persons in the first information report and not naming them in the course of deposition casts a serious doubt. The prosecutrix might have named four persons, namely, Accused 1 to 4 in the FIR, but, she named only Accused 1 to 3 in her deposition. She neither named nor identified Accused 4 to 6. On what basis, therefore, their guilt is said to have been established is not known. Both, the learned trial Judge as also the High Court, in their judgments did not deal with this aspect of the matter. (Paras 16 and 18). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

Devinder Singh v. State of H.P., (2003) 11 SCC 488: 2004 SCC (Cri) 185, relied on

[8969] — S. 376(2)(g) — FIR — Gang rape by entering into victims' house at night — Victims taking shelter in another's house after the rape and lodging FIR next morning — *Delay in lodging FIR, held on facts, satisfactorily explained. Pramod Mahto* v. *State of Bihar,* 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206: AIR 1989 SC 1475: 1989 Cri LJ 1479.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 21-4-1989]

[8970] — S. 376(2)(g) — Gang rape — Absence of any injury is an important factor — *Where testimony of prosecutrix found to be self-contradictory and also inconsistent with testimony of other PWs as well as with medical evidence, held, accused cannot be convicted on the basis of her version*

Where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor. It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. If the court finds it difficult to accept the version of a prosecutrix on the face value, it may search for evidence direct or circumstantial. (Paras 12 and 11)

In this case, there was inconsistency in the statement of the prosecutrix as regards the accused who had first committed rape on her; while in her earlier statement she had named one accused, in her cross-examination she named another accused as the person who committed the rape first. She had also deposed differently as to the place of rape. (Para 14)

Further, the prosecutrix stated that she was four months' pregnant at the time of occurrence and there was miscarriage, but the doctor who examined her stated that she was actually on menstruation period. The prosecutrix stated that one of the accused had dragged her by catching her bunch of hair for a considerable distance, but the trial court noticed that if that was so there would have been injuries but she had not stated about this part in the FIR. She had spoken about scratches on her back due to dragging and other parts of the body and that blood had also oozed out. But the medical evidence is clearly to the contrary. The doctor who examined her found no injury on her body. In her cross-examination, she admitted that the accused persons harassed her and tried to kill her and that she was assaulted by her husband. Those are relatable to the injuries which were fresh at the time of second examination by the doctor. In her statement she had deposed that her husband was also dragged by two accused persons and he had also suffered several injuries, but this part also was belied by the medical evidence. The statement of one of the PWs was also contrary to the statement of the prosecutrix's husband. (Paras 15 and 16)

In view of the aforesaid factual position the trial court was justified in directing acquittal and the High Court's judgment upsetting the acquittal is clearly unsustainable. (Para 17). *Lalliram* v. *State of M.P.*, (2008) 10 SCC 69.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 15-9-2008]

Pratap Misra v. State of Orissa, (1977) 3 SCC 41: 1977 SCC (Cri) 447; Aman Kumar v. State of Haryana, (2004) 4 SCC 379: 2004 SCC (Cri) 1266, relied on

[8971] — S. 376(2)(g) — Gang rape — Appellant-accused acquitted of charge under S. 376(2)(g) IPC by granting them benefit of doubt — Same benefit extended to non-appealing accused (Para 23). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 3-12-2008]

Raja Ram v. State of M.P., (1994) 2 SCC 568: 1994 SCC (Cri) 573; Arokia Thomas v. State of T.N., (2006) 10 SCC 542: (2007) 1 SCC (Cri) 140; Suresh Chaudhary v. State of Bihar, (2003) 4 SCC 128: 2003 SCC (Cri) 801, followed

[8972] — S. 376(2)(g) — Gang rape — Appreciation of evidence — Acquittal restored — *Delay in lodging FIR after about 60 hrs of incident, not satisfactorily explained — No explanation furnished by prosecution as to why prosecutrix declined to undergo her medical examination at a place about 22 km away from place of incident but insisted on medical examination at a place 55 km away — PW 7 (doctor who examined prosecutrix) found no injury on her genitalia and deposed that there was no evidence to show that she was raped — Prosecutrix had stated that at the time of her medical examination, her vagina was stitched, however, doctor found no stitch on her person — Hence trial court's view of acquittal was a possible one* (Paras 9 to 11). *Bhaiyamiyan* v. *State of M.P.*, (2011) 6 SCC 394.

Bench Strength **2**. Coram : *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision : 3-5-2011]

[8973] — S. 376(2)(g) — Gang rape — Conviction can be founded on evidence of victims

It was contended that the case against the accused-appellants had been foisted due to communal feelings. Rejecting the contentions

Held :

Even if communal feelings had run high, it is inconceivable that an unmarried girl and two married women would go to the extent of staking their reputation and future in order to falsely set up a case of rape on them for the sake of communal interests. *Pramod Mahto* v. *State of Bihar,* 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206: AIR 1989 SC 1475: 1989 Cri LJ 1479.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 21-4-1989]

[8974] — S. 376(2)(g) — Gang rape — Corroboration of evidence of victim not essential — Uncontroverted testimony of the prosecutrix accepted by courts below — Evidence showing that the victim had protested and struggled while she was subjected to forcible sexual assault by accused persons — *Held, this evinces absence of consent on the part of the victim in sexual intercourse, apart from the legal presumption under S. 114-A of Evidence Act — Courts below rightly held that the victim was gang raped by the accused-appellants in the absence of her consent and that the defence case was not substantiated by any cogent evidence — Neither High Court in revision nor Supreme Court in appeal by special leave justified in reappraisal of the evidence in the face of the concurrent findings — Hence conviction under S. 376 and sentence of 3 years' RI upheld — CrPC, 1973, S. 401. Gagan Bihari Samal* v. *State of Orissa*, (1991) 3 SCC 562: 1991 SCC (Cri) 893: (1991) 2 GLH 30: (1991) 72 CLT 322: (1991) 28 ACC 435.

Bench Strength **2**. Coram: **B.C. Ray** and *S.C. Agrawal*, JJ. [Date of decision: 9-7-1991]

[8975] — S. 376(2)(g) — Gang rape — Identification of the accused for the first time in court — Non-holding of TI parade, on facts, was not fatal — Non-holding of TI parade — When not fatal — Rape case — *Prosecutrix (PW 1) saw the accused-appellants on three occasions almost immediately prior to the commission of offence and also when they committed sexual assault on her — On hearing cries of PW 1, her father and brother came to the spot and saw the appellants running away — Brother identifying them by their description — Appellants, when chased and caught by the father, confessed their guilt but refused to come with him — Later when arrested, appellants shown to PW 1 by IO in order to ensure that correct persons were arrested — That apart, appellants named in FIR — Held, TI parade was not necessary in the instant case — Non-holding of it, on facts, did not vitiate the trial — Evidence Act, 1872, S. 9*

Non-holding of TI parade would not by itself disprove the prosecution case. To what extent and if at all the same would adversely affect the prosecution case, would depend upon the facts and circumstances of each case. (Para 9)

In the facts of this case, holding of TI parade was wholly unnecessary. PW 1 (prosecutrix) disclosed enough materials to show that she had occasion to see the accused persons at least on three occasions almost immediately prior to the commission of offence and also when the accused-appellants forcibly committed sexual assault on her. PW 1 gave sufficient particulars of the persons committing the offence of criminal assault on her. They had been identified by their description by her brother. The appellants were chased and they were caught and allegedly they had made a confession of their guilt. (Paras 10, 5 and 14)

The appellants were arrested on 6-11-1993 (six days after the incident) and according to the investigating officer they were shown to the prosecutrix to ensure that they have arrested the correct persons and in that view of the matter it was impracticable to hold a test identification parade. (Para 7)

That apart, the names of the appellants have been mentioned in the first information report. (Para 14)

Thus, in view of the peculiar facts and circumstances of this case, it is held that non-holding of a test identification parade cannot be said to have vitiated the trial. (Para 7). *Dastagir Sab* v. *State of Karnataka*, (2004) 3 SCC 106: 2004 SCC (Cri) 678: (2004) 3 Mah LJ 694: (2004) 3 MPLJ 154.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **S.B. Sinha**, JJ. [Date of decision: 22-1-2004]

State of H.P. v. Lekh Raj, (2000) 1 SCC 247: 2000 SCC (Cri) 147; Malkhansingh v. State of M.P., (2003) 5 SCC 746: 2003 SCC (Cri) 1247; Ashfaq v. State (Govt. of NCT of Delhi), (2004) 3 SCC 116: (2003) 10 Scale 732, followed

Dana Yadav v. State of Bihar, (2002) 7 SCC 295: 2002 SCC (Cri) 1698, relied on

[8976] — S. 376(2)(g) — Gang rape — Not possible for medical examination to prove the number of persons who committed the rape — *Extent of injuries and medical report can however support the allegation that more than one person was involved*

It was contended on behalf of the appellants that as it does not transpire from the medical report as to the number of persons who had committed rape on the prosecutrix, the conviction of the appellants is illegal and should be set aside.

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

Held :

On medical examination it is not possible to say about the number of persons committing rape on a girl and, accordingly, in her report the doctor has not expressed any opinion in that regard. The evidence of the prosecutrix that all the appellants had committed rape on her is not inconsistent with the medical report. In the circumstances there is justification for the finding of the High Court that the medical examination and the evidence show the involvement of more than one person in the act of rape. *Balwant Singh* v. *State of Punjab*, (1987) 2 SCC 27: 1987 SCC (Cri) 249: AIR 1987 SC 1080: 1987 Cri LJ 971.

Bench Strength **2**. Coram: *G.L. Oza* and **M.M. Dutt**, JJ. [Date of decision: 10-2-1987]

[8977] — S. 376(2)(g) — Gang rape — Sentence warranted — *Appellants convicted under Ss. 376 & 366 and sentenced to RI for 10 years and fine of Rs 1000, and RI of 5 years and fine of Rs 1000 respectively — Considering gravity of crime, prayer for reduction of sentence rejected* (Paras 1 and 16). *Jaswant Singh* v. *State of Punjab*, (2009) 16 SCC 201: (2010) 3 SCC (Cri) 243: AIR 2010 SC 894: 2010 Cri LJ 41: (2010) 2 ECrN 305 (SC): (2010) 85 AIC 193 (SC).

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *J.M. Panchal*, JJ. [Date of decision: 5-11-2009]

[8978] — S. 376(2)(g) — Gang rape — Underwear handed over by the accused to the investigating officer were found by the chemical examiner to be stained with semen — *Underwear produced by some of the accused on the next day of occurrence, while others producing them three days later — Held, it is somewhat difficult to believe that the accused had themselves provided the evidence of having committed rape soon after the incident, and even more surprising, that some of them had done so three days after the incident — Recovery of the stained underwear is a factor which, by itself, cannot support a case of rape against the accused* (Para 21). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 3-12-2008]

Raja Ram v. State of M.P., (1994) 2 SCC 568: 1994 SCC (Cri) 573; Arokia Thomas v. State of T.N., (2006) 10 SCC 542: (2007) 1 SCC (Cri) 140; Suresh Chaudhary v. State of Bihar, (2003) 4 SCC 128: 2003 SCC (Cri) 801, followed

[8979] — S. 376(2)(g) — Gang rape of married lady — Absence of injuries, held, not consequential when gang rape otherwise established (Para 14). *Sohan Singh* v. *State of Bihar*, (2010) 1 SCC 68.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 9-10-2009]

[8980] — S. 376(2)(g) — Gang rape or rape simpliciter — *In view of acquittal of co-accused, held, the instant case was not a case of gang rape, but a case of rape simpliciter — Hence, sentence of accused reduced to prescribed minimum of seven years* (Para 2). *Rajesh* v. *State of Goa*, (2003) 11 SCC 736.

Bench Strength **3**. Coram: *B.N. Kirpal*, *C.J.* and *K.G. Balakrishnan* and *Arijit Pasayat*, JJ. [Date of decision: 12-8-2002]

[8981] — S. 376(2)(g) — Minor contradictions or inconsistencies immaterial — Confusion regarding *P* (PW 7), brother of prosecutrix getting her clothes on the directions of investigating officer — *Held, is not a matter of great significance to prejudice the accused*

There may be some inconsistency with regard to recovery of the clothes or sending the same for chemical examination, but the findings are sufficient to prove the common intention on the part of Accused 1 to 3. The very fact that they came on cycles and dashed with the cycle of *P* (PW 7), would clearly show that they had a common intention to commit the offence. They not only gathered and obstructed her from proceeding towards her residence with her brother on the bicycle but also deliberately made her and her brother to fall down from the cycle. The prosecutrix was then physically removed to a secluded place and at least three of them took part in committing the offence of rape on her one by one. The evidence of PW 6 to the aforementioned extent is cogent and convincing and has been corroborated by PW 7 who not only is a witness to the events which took place immediately prior to the actual occurrence of rape but also a witness to the scene of occurrence where he found his sister lying naked in an unconscious state. Material objects were found to have semen stains. The accused were also tested as regards proof of potency and the doctors who examined them categorically came to the conclusion that they were not incapable of committing sexual intercourse. (Paras 24 and 23). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

[8982] — S. 376(2)(g) — Requirement of TI Parade in the absence of other evidence to identify the accused — *Accused 4 to 6 had been arrested on the basis of statements by co-accused — Neither TI parade nor any other basis laid for establishing involvement of Accused 4 to 6 — Prosecutrix could identify only Accused 1 to 3 in the court although Accused 4 was named by her in FIR — However, Accused 5 and 6 were not named in FIR also — Conviction of Accused 4 to 6 (without TI parade or any identification in the court) solely on the statements made by co-accused, held, was wrong — Evidence Act, 1872, S. 9*

In the absence of any test identification parade having been held or they having been identified in court, Accused 4 to 6 cannot be held guilty of commission of the offence. Before the learned trial Judge, the victim did not identify all the accused. She identified Accused 1, 2 and 3. The names of Accused 5 and 6 were not mentioned by her at all. They had been arrested on the basis of the statements made by their co-accused. (Paras 18, 9 and 16). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

[8983] — Ss. 376(2)(g), 302, 201 and 120-B — FIR — Contents of — Eyewitness' account of incident not incorporated in complaint lodged with police — Whether fatal to prosecution — *Held, not fatal since complainant and eyewitness had not talked with each other prior to filing of FIR* (Paras 13 to 15). *State of Rajasthan* v. *Hanif Khan*, (2009) 3 SCC 549: (2009) 2 SCC (Cri) 161: AIR 2009 SC 2043: 2009 Cri LJ 1765.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 23-2-2009]

[8984] — Ss. 376(2)(g), 302 and 201 r/w S. 34 — Gang rape and murder of child aged 7-8 years — Conviction justified — Sentence to be imposed — *Appellants alleged to have lifted the little girl from the waiting room, where she was sleeping along with her parents and younger brother, committed rape and then murdered her — Appellants seen talking in a suspicious manner — No explanation offered by Appellant 2 as regards his stained undergarments/injuries on his face (and which he accepted) — Lock and key of waiting room always in possession of Appellant 1 (chowkidar) — Absence of Appellant 2 from the bus in question, his effort to sleep in another bus leaving his own bus, his absence for about 1 to 1½ hour, and change of his garments during that period, proved — Appellant 1 making voluntary judicial confession wherein the roles played by the appellants were explicitly detailed — Possibility of some other passenger committing the offence ruled out on basis of circumstantial evidence — Held, S. 30 Evidence Act, 1872, can be taken aid of to take into consideration the confessional effect of the statements made by Appellant 1 as against Appellant 2 for arriving at an opinion that by reason thereof involvement of both of them amply stood proved — Judicial confession of Appellant 1, statement of Appellant 2 in his examination under CrPC 1973, S. 313 and other circumstantial evidence, prove the guilt of the appellants beyond reasonable doubt — Death sentence reduced to rigorous life imprisonment*

Appellants were charged with and convicted for commission of offences under Sections 376(2)(*g*), 302 and 201 read with Section 34 of the Penal Code, 1860 for rape and murder of one *B* (deceased) aged 7-8 years. Deceased along with her parents and younger brother was travelling to Dimapur (State of Nagaland) in a private transport service known as Network Travels from Dharmanagar (Tripura). They reached Guwahati at around 10.30 p.m. on 12-7-2002. There was no connecting bus to Dimapur at that time. Appellant 1 was a night chowkidar of the waiting room of the said Network Travels. He represented that they could stay there for the night and therefore should not have any apprehension in regard to their safety. Their luggage was carried by Appellant 1 to the waiting room. The waiting room had two openings. It was covered by grills. Only the front gate was open, which was kept under lock and key, the key whereof was with Appellant 1. PW 23 (father of the deceased) and the two children slept. However, PW 22 (mother of the deceased) stayed awake. Appellant 1 insisted to her repeatedly that she should go to sleep stating that as the waiting room would be locked, there was nothing for her to worry about. As she had not been sleeping, Appellant 1, allegedly, scolded her to do so. At that time, a bus bearing No. AS 25C 1476 arrived at the said bus-stop. *P*, Appellant 2 was the "handyman" of the said bus. While the manager, driver and the conductor slept in the said bus, he did not. He was seen talking with Appellant 1.

PW 22 slept for a while and got up when her son cried out. She did not find *B* and raised hue and cry. They requested Appellant 1 to open the gates of the waiting room. He showed his reluctance at the first instance. He was thereafter told about the missing of the girl. On being so informed, he opined that she might be somewhere else within the room. A search was carried out in the three buses, which were at the

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

bus-stop belonging to the travel agency. Nearabout places as also the railway station were searched. The bathroom situated in the said premises was also searched.

The dead body of *B* was found in a septic tank on 14-7-2000. FIR was lodged wherein apart from Appellant 1, suspicion was raised about the involvement of driver, PW 26, conductor, PW 25 and the handyman, *P* Appellant 2 herein of the bus bearing No. AS 25C 1476. The said bus had already left for its destination at about 6.30 in the morning. Even prior thereto, PW 2 was persuaded that the said bus be permitted to leave early for Jorhat, which was declined.

During the course of investigation, Appellant 1 made a confessional statement before the Magistrate under Section 164 CrPC. He gave a vivid description as to how the offence was committed by him and Appellant 2. On basis of circumstantial evidence and judicial confession of Appellant 1, appellants were convicted and sentenced to death by the trial court. Their appeal was dismissed by the High Court. Hence, the present appeal. *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

[8985] — Ss. 376(2)(g), 302/34 and 201 — Rape and murder — Sentence — Death sentence justified — Rarest of rare cases — *Jail officer sending to his quarter a guard and a prisoner to work in the house and in the garden attached thereto, respectively — 16-year-old daughter of the said officer was at that time alone in the quarter and was preparing for her Class 10th examination — Taking advantage of her loneliness, both the guard and the prisoner committing rape on her, strangulating and then stabbing her, removing her cycle and throwing her dead body in septic tank — In such circumstances sentence of death, held, was the only proper punishment — CrPC, 1973, S. 354(3)* (Para 36). *Molai* v. *State of M.P.*, (1999) 9 SCC 581: AIR 2000 SC 177.

Bench Strength 3. Coram: **S.P. Kurdukar**, *K.T. Thomas* and *N. Santosh Hegde*, JJ. [Date of decision: 26-10-1999]

State of M.P. v. Molai, 1999 Cri LJ 2698 (MP), affirmed

[8986] — Ss. 376(2)(g) and 323 — Identification, necessity of for person unknown to prosecutrix/complainant — Necessity of Test identification parade and exception — Explained — *Where the accused (Respondent 2 herein) was neither a person already known to the prosecutrix nor was specifically named in the FIR nor was subjected to test identification, putting him on trial for offence under Ss. 376(2)(g) and 323, held, was improper — Further held, identification of the accused for the first time at the trial is a weak evidence — Evidence Act, 1872 — S. 9*

The prosecutrix, a 55-year-old widow who was the mother of two grown-up children, was while coming back to her house after attending the marriage of a relation, criminally assaulted and subjected to forcible intercourse by the respondents. The first information report was submitted by her on the next day against the respondents. She was medically examined and her torn salwar was sent for chemical analysis. On medical examination various injuries were found on her person. The doctor was of the opinion that they reflected the signs of a struggle. The trial court convicted the accused persons under Sections 376(2)(*g*) and 323 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs 5000 each under Section 376 IPC and six months' rigorous imprisonment under Section 323 with a fine of Rs 500 each. The High Court reversed that decision. It acquitted Respondent 2 on the ground that his identity could not be established by the prosecution at the trial. It further held that the case against Respondent 1 was not proved beyond doubt as the medical evidence and the finding showed that no dead or alive spermatozoa was seen. Another circumstance which weighed with the High Court was that the sealing of the salwar was not properly established. Moreover, before the Supreme Court the respondent attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. One of such discrepancies was that the prosecutrix had stated the place of occurrence to be 20 feet away from the road while in the FIR the place of occurrence was mentioned as the road. Upholding the acquittal of Respondent 2 but setting aside the acquittal of Respondent 1 and restoring his conviction by the trial court,

Held :

During the investigation of a crime the police agency is required to hold identification parade for the purposes of enabling the witness to identify the person alleged to have committed the offence particularly when such person was not previously known to the witness or the informant. The absence of test identification may not be fatal if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement. Identification parade may also not be necessary in a case where the accused persons are arrested at the spot. The evidence of identifying the accused person at the trial for the first time is, from its very nature, inherently of a weak character. (Para 3)

Admittedly Respondent 2 was not known to the prosecutrix and his name was not specifically mentioned in the FIR. Admittedly no identification parade was held and the prosecutrix saw Respondent 2 only in the court after the day of occurrence. Though the holding of identification proceedings are not substantive evidence, yet they are used for corroboration purposes for believing that the person brought before the court was the real person involved in the commission of the crime. The identification parade even if held, cannot, in all cases, be considered as safe, sole and trustworthy evidence on which the conviction of the accused could be sustained. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant. (Para 3)

The holding of identification parade in the instant case would have been irrelevant, had the name of Respondent 2 been mentioned in the FIR Exhibit P/D. The identity of Respondent 2 was, admittedly, not established during the investigation and it is not clear as to how the said respondent was put on trial along with Respondent 1. Hence, Respondent 2 could not have been put on trial and held guilty. (Para 4) . *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

[8987] — Ss. 376(2)(g) and 323 — Offence under — Appreciation of evidence — Prosecutrix, a widow aged 55 years and having two grown-up children, alleging that respondents grappled with her and made her lie down on the earth and then committed rape and that in that process she received injuries — *Allegation corroborated by medical evidence — At the time of contacting her advocate she was scared and hesitant — Lodging FIR through her advocate on the next day — Salwar of prosecutrix was found to be torn and stained — Forensic Science Laboratory report showing presence of human blood and semen on the salwar — In such circumstances, held, the trial court rightly convicted the accused under Ss. 376(2)(g) and 323* (Para 11). *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

[8988] — Ss. 376(2)(g) and 366 — Gang rape — Guilt not established — *Prosecutrix alleged to have been forcibly taken away by accused while she was going with her mother (PW 8) and gang raped — Charge under S. 366 found not established — No injury found on any part of her body — Doctor opining that prosecutrix was so habituated to sexual intercourse that it was not possible to ascertain as to when she had last been subjected to it — Prosecutrix also admitting that she had once been arrested in a hotel — Held, it is indeed surprising that though as per her allegations all 13 accused had assaulted her one after the other, the doctor did not find even a scratch on her person — Courts below had not accepted the plea raised by the accused as to the adverse character of the prosecutrix as the evidence on this score was not conclusive — But considering the said facts it is probable that the prosecutrix was indeed involved in some kind of improper activity — Further, identification of accused was extremely doubtful since there were discrepancies in the evidence against them — TI parade conducted was also farcical — Besides, where identification of accused itself was doubtful, recovery of stained underwears produced by accused themselves was meaningless — It is somewhat difficult to believe that the accused had themselves provided the evidence of having committed rape soon after the incident, and even more surprising is that some of them had done so three days after the incident — Held, it was difficult to conclusively show the involvement of each of the accused beyond reasonable doubt — Truth and falsehood are so inextricably intertwined, that it is impossible to discern where one ends and the other begins — Benefit of doubt granted to accused and they acquitted*

Prosecutrix PW 9, while going along with her mother PW 8 were alleged to have been met by four accused, who called her a prostitute and asked her to go with them to a hotel. When she refused, they put a towel on her face, slapped her several times, and made her sit on a Luna scooter. Thereafter they took her to newly constructed quarters where other accused (thirteen in all) were present and turn by turn they raped her. All the accused were charged under Ss. 366/376 IPC. Trial court acquitted them under S. 366 IPC, but convicted all of them under S. 376(2)(*g*) and sentenced them to RI for 10 years and fine of Rs 200 with default stipulation. In appeal, High Court by impugned judgment acquitted two accused finding that they had not been identified in TI parade. Conviction of other accused was however maintained with modification in sentence from 10 years' to 8 years' RI and fine from Rs 200 to Rs 5000. Hence, the present appeal.

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

Submission made by appellants that: (*i*) since charge under S. 366 was not proved, conviction under S. 376(2)(*g*) on same set of evidence was uncalled for; (*ii*) despite her claim of being raped by thirteen persons, no injuries were found on her body which falsified the prosecution story; (*iii*) she was apparently a girl of easy virtue; hence her testimony deserved careful consideration; (*iv*) since large number of persons were involved in the offence their identification beyond doubt was a sine qua non for conviction; and (*v*) TI parade was open to grave suspicion, and hence evidence of identification was also unacceptable.

Allowing the appeals,

Held :

In the instant case, though thirteen persons were accused of raping the prosecutrix, but no injuries were found on her person. Doctor also opined that the prosecutrix was so habituated to sexual intercourse that it was not possible to ascertain as to when she had last been subjected to it. PW 8 (mother of prosecutrix) stated that prosecutrix had been married while a child but her gauna had not been performed as her husband had, in the meanwhile, taken a second wife. She also stated that the police had often questioned the prosecutrix as to why she was indulging in prostitution. Prosecutrix herself admitted that she had once been arrested in a case. Though courts below did not accept the plea raised by the accused as to the adverse character of the prosecutrix as the evidence on this score was not conclusive, yet it is probable that the prosecutrix was indeed involved in some kind of improper activity. (Paras 14 and 15)

As far as identification of accused is concerned PW 8 (mother of the prosecutrix) clearly stated in her examination-in-chief that she was not in a position to identify the accused at the time of incident or even in court. Though the prosecutrix, her mother and accused were residents of same area, prosecutrix named only few of them in FIR, and in her examination-in-chief stated that she did not know names of those accused who took her away on the Luna and was not in a position to recognise them. Hence, in the light of the categorical statements of the two main prosecution witnesses, the identification of the accused is extremely doubtful. (Paras 17 to 19)

Further, TI parade held by PW 5 was also farcical. Though thirty-six persons were involved in the TI parade, nine accused were covered with black and brown-coloured blankets. Only inference that can be drawn from this is that distinctive blankets were provided to facilitate identification. Accused had been shown to prosecutrix several times while they were in police custody. Hence, TI parade was meaningless. (Para 20)

Since the identification of accused itself was doubtful, recovery of underwear at their instance becomes meaningless. It is somewhat difficult to believe that the accused had themselves provided the evidence of having committed rape soon after the incident, and even more surprising, that some of them had done so three days after the incident. Besides, recovery of the stained underwear is a factor which, by itself, cannot support a case of rape against the accused. (Para 21)

In such circumstances, involvement of each accused cannot be established beyond reasonable doubt. Truth and falsehood are so inextricably intertwined, that it is impossible to discern where one ends and the other begins. Appellants were entitled to benefit of doubt. (Para 22). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, **JJ.** [Date of decision: 3-12-2008]

[8989] — Ss. 376(2)(g), 376(2) Expln. 1 and 34 — Gang rape — Offence of, whether made out — No material on record to show common intention — *Though the aspect of common intention was elaborately dealt with by trial court while convicting only three persons and acquitting the appellants, the High Court without considering these aspects convicted the appellants — Held, the essence of the liability in terms of S. 376(2) is the existence of common intention — Therefore, conviction by High Court liable to be set aside*

In April 1996, eight accused persons forcibly took the prosecutrix to *SH*'s house. While *D* raped the prosecutrix, the rest of the accused persons were flirting with her. The accused persons, then threatened that they would kill her brothers if she revealed anything. Thereafter, all of them used to rape her in the same house when she went to school. When the parents of the prosecutrix came to know of this and sought advice from *V*, they were advised not to proceed against the accused who hailed from high families. *V* also tried to negotiate a marriage of the prosecutrix with *D* but the parents preferred to lodge an FIR (dated 6-10-1997). *V* was also implicated. The trial court convicted *D*, *SH* and *SV* and acquitted the rest including the appellants. But the High Court by the impugned order convicted the present appellants.

Allowing the appeal,

Held :

The essence of the liability in terms of Section 376(2) is the existence of common intention. In animating the accused to do the criminal act in furtherance of such intention, the principles of Section 34 IPC have clear application. In order to bring in the concept of common intention it is to be established that there was simultaneous consensus of the minds of the persons participating in the act to bring about a particular result. Common intention is not the same or similar intention. It presupposes a prior meeting and prearranged plan. In other words, there must be a prior meeting of minds. It is not necessary that preconcert in the sense of a distinct previous plan is necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons which has to be gauged on the facts and circumstances of each case. (Para 10)

In the instant case, no evidence was led to show that the appellants had a common intention of committing rape on the victim. There is also nothing on evidence to show that they shared common intention. This aspect unfortunately has been lost sight of by the High Court though the trial court has elaborately dealt with this aspect. A bare reading of the entire evidence of the prosecutrix goes to show that the appellants were not involved in the act of rape. Above being the position the conviction as recorded by the High Court could not stand and is set aside. (Paras 11, 9 and 12). *Hanuman Prasad* v. *State of Rajasthan*, (2009) 1 SCC 507: (2009) 1 SCC (Cri) 564: (2009) 73 AIC 231 (SC): (2009) 2 ECrN 48 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 18-11-2008]

[8990] — Ss. 376(2)(g), 376/34 and 342/34 — Gang rape — Sentence — Awarding sentence lesser than the prescribed minimum — Propriety — *Held, court has to record "adequate and special reasons" for exercising the discretion of — No straitjacket formula can be imposed for determining what amounts to "adequate and special" — Reason that appellant had not actually committed the rape, held, could not be a ground to warrant a lesser sentence — Not only was the appellant present, but he was also waiting for his turn — On facts, there was no just or special reason to award a lesser sentence — High Court rightly enhanced the sentence from four years to the prescribed minimum i.e. ten years*

Both, in cases of sub-sections (1) and (2) of Section 376 the court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for "adequate and special reasons". If the court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum. (Para 15)

In order to exercise the discretion of reducing the sentence the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but special. What is adequate and special would depend upon several factors and no straitjacket formula can be imposed. In the case at hand, the only reason which seems to have weighed with the trial court is that the present accused-appellant had not actually committed the rape. That cannot be a ground to warrant lesser sentence; more so, in view of Explanation 1 to sub-section (2) of Section 376. By operation of a deeming provision a member of a group of persons who have acted in furtherance of their common intention per se attracts the minimum sentence. Section 34 has been applied by both the trial court and the High Court to conclude that rape was committed in furtherance of common intention. Not only was the accused-appellant present, but he was also waiting for his turn, as is evident from the fact that he was in the process of undressing. The evidence in this regard is cogent, credible and trustworthy. Since no other just or special reason was given by the trial court nor could any such be shown as to what were the reasons to warrant a lesser sentence, the High Court was justified in awarding the minimum prescribed sentence. (Para 16). *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551: AIR 2003 SC 4684.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

[8991] — Ss. 376(2)(g), 452/34 and 323/34 — Gang rape — Appellant along with other accused persons convicted under — Sustainability — Allegations of rape — *On facts, undisputedly, unlike some others, appellant was not caught at the place of occurrence — Trial court had itself held that there was no TI parade in the eye of the law — Therefore, identification of appellant for the first time in court was really of no consequence — Added to that, the only evidence pressed into service by prosecution, so far as appellant was concerned, was that his name was similar to one of the names by which accused persons were addressing each other, as stated by prosecutrix —*

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

That, held, cannot by any stretch of imagination be an incriminating circumstance — Again, no evidence was led to show the presence of appellant at the spot of occurrence or to have participated in the crime — That being so, held, prosecution miserably failed to prove the accusations so far as appellant is concerned — He is entitled to acquittal (Paras 15 and 16). *Bal Kishan* v. *State of H.P.*, (2008) 16 SCC 11: AIR 2009 SC 812.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 22-10-2008]

[8992] — Ss. 376(2)(g), 506, 149 and 148 — Gang rape and criminal intimidation — Sentence — Quantum of — Award of maximum penalty of life sentence, in the instant case, whether warranted — *On facts, trial court convicted all six accused and sentenced A-1, A-3 and A-4 (appellant herein) under S. 376(2)(g) to RI for life with fine and default stipulation concluding that they had gang raped the victim — Other accused, however, were sentenced to imprisonment for 10 years with fine and default stipulation — All accused were also convicted under Ss. 506/149 and S. 148 and sentenced accordingly — High Court confirmed life sentence of A-1, A-3 and of the appellant while letting off other accused with sentence already undergone, as they had not indulged in sexual intercourse with the victim — Only appellant came up in appeal to Supreme Court — Conviction recorded by courts below, held, proper — Question arose only of the sentence — Only plea of poverty and appellant's old parents being deprived of his company, raised — No material placed in support of his poverty — On facts, victim was a defenceless married person who was tricked out of her house taking advantage of drunkenness of her husband and then ravished in a most dastardly manner by as many as three persons out of six, one of whom was the appellant — Under such circumstances, held, no leniency can be shown in the matter of sentence — Also, as out of three accused persons who were awarded maximum penalty of life sentence by courts below, only appellant came up in appeal, therefore, he cannot be treated differently from others who are serving their life sentence — Hence, no interference called for with judgments of courts below regarding sentence*

The courts below have awarded the maximum penalty against the three accused being the life sentence. The only plea raised herein is that the appellant comes from a poor background and that his old parents will be deprived of his company. There is no material placed before the trial and the appellate court as well as before the Supreme Court in support of his poverty. At any rate notice of the fact can be taken that the father of the appellant has been the Sarpanch for the last 20 years. Again there would be no question of taking a lenient view particularly because of the daring dastardly act on the part of the accused persons in which the appellant took active part inasmuch as out of the six accused persons, he was one of the three accused who had committed rape on the lady. (Para 11)

This fact cannot be ignored that the lady was a married person and was tricked to accompany the accused who obviously had an evil design. It cannot be forgotten that the husband of the lady was lured on the evening of the day of occurrence itself taking advantage of his addiction to alcohol and it was then that the lady was lured to come out of the house for taking back her husband who was lying in a drunken state. Here was a defenceless married person who was tricked out of her house taking the advantage of the drunkenness of her husband and then was ravished in a most dastardly manner by as many as three persons, one of whom was the appellant herein. Under such circumstances, no leniency can be shown in the matter of sentence. It cannot be forgotten that out of three accused persons only one of the accused person has come up by way of an appeal. He cannot be treated differently from others who are serving their life sentence. (Para 12). *Ramesh Kumar* v. *State of Haryana*, (2008) 5 SCC 139: (2008) 2 SCC (Cri) 541.

Bench Strength **2**. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 27-2-2008]

[8993] — Ss. 376(2)(g) and 506 Pt. II — Gang rape — Delay in lodging the FIR — Absence of Test identification parade — Identification of the accused persons by the prosecutrix in court — Conviction — Legality of — *Gang rape committed by the three appellants on a school teacher in broad daylight — Medical evidence supporting the prosecution case to some extent — Prosecutrix had abundant opportunity to notice the features of the accused persons — Further, on account of traumatic and tragic experience of the prosecutrix, the faces of the appellants must have got imprinted in her memory — Hence the chance of mistaken identity was remote — Evidence of prosecutrix found to be implicitly reliable — In such circumstances, held on facts, the identification of the appellants by the prosecutrix in court did not require further corroboration — The delay of about 10 days in lodging the FIR was fully explained and strongly supported by circumstantial evidence and, therefore, did not affect the prosecution case adversely — Hence, conviction of appellants by the courts below upheld*

The courts below have carefully considered the evidence on record and have come to the conclusion that the delay, if any, in lodging the first information report was fully explained by the prosecutrix and was strongly supported by the circumstantial evidence on record. The prosecutrix was living all alone and was an unmarried person, about 28 years of age. She did not have any family member to whom she could have narrated her story immediately after the occurrence on 4-3-1992. Moreover, the sense of shame coupled with the fear on account of threats given out by the appellants must have deterred her from immediately reporting about the occurrence to others. The prosecutrix narrated the incident to the Deputy Director of Education on 6-3-1992. Later she narrated the incident to one of her colleagues whom she found to be sympathetic towards her and thereafter when her cause was taken up by the Teachers' Association, she could muster courage to lodge a report with the Superintendent of Police. Thus in the facts and circumstances of the case, the mere delay in lodging of the first information report does not discredit the prosecution case. (Para 5)

The courts below have also examined the medical evidence on record and have observed that the medical evidence, to some extent, supported the case of the prosecution that the prosecutrix may have been subjected to forcible sexual intercourse within a week or two of her medical examination. The medical evidence also indicated that the prosecutrix was not habituated to sexual intercourse. (Para 5)

The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court. (Paras 7 and 10)

But failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The identification parades belong to the stage of investigation, and there is no provision in the CrPC which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. These parades do not constitute substantive evidence. The substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (Paras 7 and 16)

In the instant case, the crime was perpetrated in broad daylight. The prosecutrix had sufficient opportunity to observe the features of the appellants who raped her one after the other. Before the rape was committed, she was threatened and intimidated by the appellants. After the rape was committed, she was again threatened and intimidated by them. All this must have taken time. This is not a case where the identifying witness had only a fleeting glimpse of the appellants on a dark night. She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features. In fact on account of her traumatic and tragic experience the faces of the appellants must have got imprinted in her memory, and there was no chance of her making a mistake about their identity. The prosecutrix appears to be a witness on whom implicit reliance can be placed and there is no reason why she should falsely identify the appellants as the perpetrators of the crime if they had not actually committed the offence. In these circumstances if the courts below have concurrently held that the identification of the appellants by the prosecutrix in court does not require further corroboration, there is no reason to interfere with the finding recorded by the courts below after an appreciation of the evidence on record. (Para 16). *Malkhansingh* v. *State of M.P.*, (2003) 5 SCC 746: 2003 SCC (Cri) 1247: AIR 2003 SC 2669: 2003 Cri LJ 3535.

Bench Strength 3. Coram: *N. Santosh Hegde*, *Ashok Bhan* and **B.P. Singh**, JJ. [Date of decision: 8-7-2003]

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

Kanta Prashad v. Delhi Admn., AIR 1958 SC 350: 1958 Cri LJ 698; Vaikuntam Chandrappa v. State of A.P., AIR 1960 SC 1340: 1960 Cri LJ 1681; Budhsen v. State of U.P., (1970) 2 SCC 128: 1970 SCC (Cri) 343; Rameshwar Singh v. State of J&K, (1971) 2 SCC 715: 1971 SCC (Cri) 638; Jadunath Singh v. State of U.P., (1970) 3 SCC 518: 1971 SCC (Cri) 124; Parkash Chand Sogani v. State of Rajasthan, Crl. A. No. 92 of 1956 decided on 15-1-1957 (SC); Harbajan Singh v. State of J&K, (1975) 4 SCC 480: 1975 SCC (Cri) 545; Ram Nath Mahto v. State of Bihar, (1996) 8 SCC 630: 1996 SCC (Cri) 726; Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60; State of U.P. v. Boota Singh, (1979) 1 SCC 31: 1979 SCC (Cri) 115; Ramanbhai Naranbhai v. State of Gujarat, (2000) 1 SCC 358: 2000 SCC (Cri) 113, relied on

[8994] — S. 376(2)(g) Expln. 1 — Gang rape — Common intention — Version of the prosecutrix as regards presence of the accused-appellant at the time of occurrence contradictory — *In the FIR, she stating that he entered the house after rape was committed by other accused and thereafter started consuming liquor, but in her deposition before court she stating that he was present right from the moment she entered the house — Although possibility of the accused-appellant at the place of occurrence cannot be ruled out since he was apprehended from a place nearby along with other accused, held, but mere presence at such place is insufficient to show that there was a prior concert or meeting of minds or plan formed suddenly at the time of commission of offence by the accused-appellant with the other accused persons for the commission of rape on the prosecutrix — Moreover, where specific acts had been attributed to the other accused persons to show their connivance and preconcert to facilitate the offence in a pre-planned manner, no such act or conduct attributed to the accused-appellant in furtherance of the common intention to commit rape — On the other hand, prosecutrix categorically stating before court that the accused-appellant had not defiled her — Held, in such circumstances accused-appellant entitled to benefit of doubt — High Court's impugned order of conviction set aside* (Paras 13 and 14). *Pardeep Kumar* v. *Union Admn.*, (2006) 10 SCC 608: (2007) 1 SCC (Cri) 41: AIR 2006 SC 2992: 2006 Cri LJ 3894.

Bench Strength **2**. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 18-8-2006]

[8995] — S. 376(2)(g) Expln. 1 — Gang rape — Common intention — Version of victim (PW 6) and her brother *P* (PW 7) corroborated by material objects, medical evidence and depositions — *The accused persons riding on cycle and together dashing with the cycle carrying the victim and her brother, causing them to fall, removing her to a secluded place and committing rape, held, clearly shows that they had a common intention to gang rape*

The prosecutrix, a coolie, was gang raped while on her way back from a movie at about 10.00 p.m. on 20-11-1994. Her brother, *P* who was slapped, ran for help and when he returned with other villagers, found her sister lying unconscious and naked. FIR was lodged at about 7.00 p.m. on 21-11-1994 after the victim regained her consciousness. The conviction of six accused persons under Section 376(2)(*g*) IPC was upheld by the High Court.

Allowing the appeal of Accused 4 to 6 and dismissing the appeal of Accused 1 to 3,

Held :

There may be some inconsistency with regard to recovery of the clothes or sending the same for chemical examination, but the findings are sufficient to prove the common intention on the part of Accused 1 to 3. The very fact that they came on cycles and dashed with the cycle of *P* (PW 7), would clearly show that they had a common intention to commit the offence. They not only gathered and obstructed her from proceeding towards her residence with her brother on the bicycle but also deliberately made her and her brother to fall down from the cycle. The prosecutrix was then physically removed to a secluded place and at least three of them took part in committing the offence of rape on her one by one. The evidence of PW 6 to the aforementioned extent is cogent and convincing and has been corroborated by PW 7 who not only is a witness to the events which took place immediately prior to the actual occurrence of rape but also a witness to the scene of occurrence where he found his sister lying naked in an unconscious state. Material objects were found to have semen stains. The accused were also tested as regards proof of potency and the doctors who examined them categorically came to the conclusion that they were not incapable of committing sexual intercourse. (Paras 24 and 23). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

[8996] — S. 376(2)(g) Expln. 1 — Gang rape — Once it is established that the accused-appellants had acted in concert and entered the victim's house and raped even one victim then all the accused would be guilty under Explanation I irre-

spective of whether she had been raped by one or more of them — *In the circumstances it is not necessary for the prosecution to adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under S. 376 — Defence failed to explain how an unmarried girl aged about 15-16 years sustained marks and injuries of rape on her person as found by medical evidence — Held on facts, accused rightly convicted. Pramod Mahto* v. *State of Bihar,* 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206: AIR 1989 SC 1475: 1989 Cri LJ 1479.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 21-4-1989]

[8997] — S. 376(2)(g) Expln. 1 — Gang rape — Proof — *Clinching proof of a completed act of rape, held, not essential — Statutory intention behind introduction of Expln. 1, stated*

In cases of gang rape the proof of completed act of rape by each accused on the victim is not required. The statutory intention in introducing Explanation 1 in relation to Section 376(2)(*g*) appears to have been done with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under Section 376 IPC. (Para 14). *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551: AIR 2003 SC 4684.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

Pramod Mahto v. State of Bihar, 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206, relied on

[8998] — S. 376(2)(g) Expln. 1 — Gang rape — Requisites to sustain conviction for

Prosecution must prove:

(*i*) that more than one person had acted in concert with the common intention to commit rape on the victim;

(*ii*) that more that one accused had acted in concert in commission of offence of rape with prearranged plan, prior meeting of mind and with element of participation in action. Common intention would be action in concert in pre-arranged plan or a plan formed suddenly at the time of commission of offence which is reflected by the element of participation in action or by inaction when the action would be necessary. The prosecution would be required to prove pre-meeting of minds of the accused persons prior to commission of offence of rape by substantial evidence or by circumstantial evidence; and

(*iii*) that in furtherance of such common intention one or more persons of the group actually committed offence of rape on victim or victims. Prosecution is not required to prove actual commission of rape by each and every accused forming the group. (Para 10). *Pardeep Kumar* v. *Union Admn.*, (2006) 10 SCC 608: (2007) 1 SCC (Cri) 41: AIR 2006 SC 2992: 2006 Cri LJ 3894.

Bench Strength **2**. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 18-8-2006]

Ashok Kumar v. State of Haryana, (2003) 2 SCC 143: 2003 SCC (Cri) 446, relied on

[8999] — S. 376(2)(g) Expln. 1 — Gang rape — Sentence — Sentence of life imprisonment imposed by trial court and High Court on one of the accused who played the leading role in commission of the offences sustained — *But sentence of life imprisonment imposed on the remaining accused reduced to the minimum sentence of 10 years' RI as it is itself a severe punishment and also because of admission made on behalf of the State that there were no special circumstances to call for the imposition of the maximum sentence of life imprisonment on them. Pramod Mahto* v. *State of Bihar,* 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206: AIR 1989 SC 1475: 1989 Cri LJ 1479.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 21-4-1989]

[9000] — S. 376(2)(g) Expln. 1 — Proof of common intention to commit gang rape — Liability of the members — *Held, actual act of rape by even one individual forming the group, would fasten the guilt on other members, although he or they have not committed rape on the victim or victims* (Para 11). *Pardeep Kumar* v. *Union Admn.*, (2006) 10 SCC 608: (2007) 1 SCC (Cri) 41: AIR 2006 SC 2992: 2006 Cri LJ 3894.

Bench Strength **2**. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 18-8-2006]

Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551: 2004 SCC (Cri) 31; Pramod Mahto v. State of Bihar, 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206; Priya Patel v. State of M.P., (2006) 6 SCC 263, relied on

[9001] — S. 376(2)(g) Expln. 1 thereto — Gang rape — Prosecution of a woman therefor — Held, impermissible — *A woman committing rape is conceptually inconceivable — Expression "in furtherance of their common intention" in Expln. 1 to S. 376(2)(g) relates to intention to commit rape*

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

— *A woman cannot be said to have an intention to commit rape* (Paras 5 and 6). *State of Rajasthan* v. *Hemraj*, (2009) 12 SCC 403: AIR 2009 SC 2644.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 27-4-2009]

Priya Patel v. State of M.P., (2006) 6 SCC 263: (2006) 3 SCC (Cri) 96, followed

[9002] — S. 376(2)(g) r/w S. 34 and S. 114-A, Evidence Act, 1872 — Gang rape — Presumption of non-consensual intercourse — *Prosecutrix consistently stating that she had never consented to intercourse and that she was forcibly caught, threatened at knife-point and thereafter subjected to gang rape — No dispute regarding place or alleged occurrence — FIR lodged promptly and accused arrested immediately — No evidence of false implication since accused were unknown to prosecutrix — Discrepancies found in her testimony insignificant considering that she was illiterate rustic village girl — Non-resistance because of fear, held, not unnatural — Consent by prosecutrix, even if assumed she was a major, not established — Hence, conviction of appellant under Ss. 376/34 and sentence of 10 years' RI along with fine of Rs 500, held proper — Evidence Act, 1872, S. 114-A* (Paras 46, 47, 37 and 38). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; State of U.P. v. Pappu, (2005) 3 SCC 594: 2005 SCC (Cri) 780; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of Orissa v. Thakara Besra, (2002) 9 SCC 86: 2003 SCC (Cri) 1080; State of H.P. v. Raghubir Singh, (1993) 2 SCC 622: 1993 SCC (Cri) 674; Wahid Khan v. State of M.P., (2010) 2 SCC 9: (2010) 1 SCC (Cri) 1208; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547, relied on

[9003] — S. 376(2)(g) r/w Expln. 1 — Gang rape — Essential ingredients of offence of, restated — *Appellant along with one K convicted under S. 376(2)(g) for committing rape on deceased S — On facts, held, it was not possible to draw a reasonable conclusion that the appellant had raped S — Further, in the absence of any evidence of concert between K and the appellant, held, the conviction recorded by the courts below was liable to be set aside*

According to the prosecution, when PW 6 was passing in front of the *baithak* of the residence of *R*, father of the appellant, he heard the cries of his sister *S* and when he went inside the *baithak* by scaling over the wall he saw the accused *K* (who died during the pendency of appeal in the High Court) raping his sister. It was further stated that the appellant came from the adjoining room with a pistol in his hand and asked PW 6 to run away as otherwise he would shoot him. The courts below placed strong reliance upon the statements made by the brothers of *S* (PWs 4 and 6) that *S* had told them, when she came back to the house at midnight after consuming poison, that both the accused had raped her. The trial court convicted both the accused under Section 376(2)(*g*), and High Court dismissed their appeal.

Allowing the appeal,

Held :

From the sequence of events as narrated by PW 6, it is not possible to draw a reasonable conclusion that the appellant had raped the deceased person. The time gap between PW 6 noticing the victim being taken inside the *baithak* and his entry into the *baithak* was so short that it is not possible to infer that the appellant would have committed rape in the first instance. Soon after PW 6 entered the *baithak* and witnessed what was happening, the appellant withdrew from there. In the face of this version in the cross-examination, it is difficult to believe that both the accused had committed rape. When there is direct evidence of PW 6, the bald statement attributed to the deceased sister in an apparent bid to rope in the appellant in addition to the other accused cannot be given much weight. (Para 7)

The next question is whether the accused can be convicted under Section 376(2)(*g*) IPC even if he had not actually raped the victim. Now, in order to establish an offence under Section 376(2)(*g*) IPC, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. The said provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds. It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence. (Paras 7 and 8)

Apart from the factum that the appellant was present in his house at about 3.30 p.m. in hot summer month at the crucial time, nothing more is established. By that factum alone, it could not be inferred that the appellant was in concert with *K*. Further, the evidence of PWs 4 and 6 that they found *K* in a compromising position with *S* when the appellant walked in with a pistol and threatened to shoot them is not believed by the trial court. Thus, in the absence of any evidence of concert between *K* and the appellant, the conviction recorded by the trial court as affirmed by the High Court cannot be sustained. (Para 10). *Ashok Kumar* v. *State of Haryana*, (2003) 2 SCC 143: 2003 SCC (Cri) 446: AIR 2003 SC 777.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 17-12-2002]

[9004] — Ss. 376(2)(g)/34 & 366/34 — Kidnapping and gang rape — Conviction can be founded on sole testimony of victim of the rape — Corroboration of her evidence not essential when her evidence otherwise inspires confidence *— Prosecutrix having ample opportunity to see and identify the accused in broad daylight — Being a simple village girl, she cannot be expected to falsely implicate innocent persons leaving her own assailants — However, injuries on her private parts, medical evidence of doctor and FIR providing corroboration — Consent of the prosecutrix cannot be inferred from absence of multiple injuries on her private parts as in case of gang rape at the threat of her life she cannot be expected to have given continuous resistance resulting in sustaining numerous injuries — In the circumstances casual and mechanical approach, without regard to human probabilities, and consequent acquittal by High Court resulted in grave miscarriage of justice — Hence conviction and sentence of 3 years' RI recorded by trial court restored. State of Orissa* v. *Damburu Naiko*, (1992) 2 SCC 522: 1992 SCC (Cri) 400: AIR 1992 SC 1161: 1992 Cri LJ 1537: (1992) 73 CLT 715: (1992) 2 Crimes 77.

Bench Strength **2**. Coram: *Kuldip Singh* and **K. Ramaswamy**, JJ. [Date of decision: 31-3-1992]

[9005] — Ss. 376/34 and 336/34 — Conviction of appellant-accused *M* confirmed, but reversed in case of appellant-accused *A — M, A and R (absconding accused) allegedly raped PW 6 (prosecutrix) — High Court convicted M and A under aforementioned sections — Sustainability — Held, statements of PW 6 (prosecutrix), PW 5 (constable) and PW 9 (investigating officer) were categoric insofar as presence of M was concerned — In her statement recorded under S. 164 CrPC, prosecutrix clearly stated that she was kidnapped and then raped by* ***M*** *and* ***R*** *and that A joined them much later who merely held her hand while she was raped second time by* ***M*** *and* ***R*** *— Thus, prosecutrix had not attributed any rape to* ***A*** *— Likewise, she had stated that* ***A*** *was not one of those who kidnapped her — It is true that in her statement in court, she attributed rape to* ***A*** *as well, but in light of contradictions, some doubt created with regard to A's involvement — Again, PW 5 (constable) made a statement which was corroborated by PW 9 (investigating officer), that only* ***M*** *and* ***R*** *along with prosecutrix were brought to police station as* ***A*** *had run away while en route to police station — Resultantly, an inference can rightly be drawn that* ***A*** *was perhaps not in the car (in which prosecutrix was kidnapped) when* ***M***, ***R*** *and prosecutrix were apprehended by PW 5 — Therefore, involvement of* ***A***, *held, uncertain — Hence, conviction of M confirmed, however, reversed in case of A — CrPC, 1973, S. 164* (Paras 7 to 12). *Abbas Ahmad Choudhary* v. *State of Assam*, (2010) 12 SCC 115: 2010 Cri LJ 2060.

Bench Strength **2**. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 25-11-2009]

[9006] — Ss. 376/120-B — Rape and conspiracy to commit rape — Charge against two accused of taking photographs of rape victims in compromising position with a view to blackmail them *— No evidence to suggest that they had ever visited the place (farmhouse) where the victims were raped — No evidence to establish that the photographs were printed and developed in accused's photo labs — No obscene photograph recovered by investigating officer at the instance of these accused — Solitary incident of developing and printing of nude photographs of a woman (who was not one of the victims) by one of the accused to whom the films had been given by the woman for that purpose, in absence of any suggestion that with the help of those photographs accused attempted to blackmail the woman, did not prove anything against the accused — Searches carried on by police officers at their photo labs did not reveal anything — Held, there was nothing to suggest that they had conspired with the co-accused to sexually exploit the girls after photographing them in a compromising position and to facilitate their continued exploitation — Hence such accused were rightly acquitted by High Court* (Paras 34 to 38). *Moijullah* v. *State of Rajasthan*, (2004) 2 SCC 90: 2004 SCC (Cri) 512.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 19-12-2003]

4. Gang rape/Rape by multiple accused/Conspiracy *(contd.)*

[9007] — Ss. 376/120-B — Rape and conspiracy to commit rape — Charge against two accused (respondents) of having raped one *P* — Acquittal by High Court — Propriety — *Trial court placing reliance on some obscene photographs of P and the two accused convicting them — But P herself denying to have been raped by those accused and also denying the photographs — Victims of rape committed by some other persons never mentioned names of these two accused — Evidence on record not showing that these accused were ever seen in the company of those persons at the place (a farmhouse) where rape had been committed — In absence of any other evidence against these accused, held, they were rightly acquitted by High Court* (Para 23). *Moijullah* v. *State of Rajasthan*, (2004) 2 SCC 90: 2004 SCC (Cri) 512.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 19-12-2003]

5. Rape of pregnant woman

[9008] — S. 376(2)(e) — Rape of a pregnant woman — "knowing her to be pregnant" — Meaning and scope — *Held, for attracting the stringent punishment, prosecution besides establishing that the victim was pregnant must further establish that the accused knew the victim to be pregnant — In the instant case no such evidence was led — However, trial court concluding that there was "full possibility" of the accused knowing it — Held, there is a gulf of difference between possibility and certainty — Mere possibility of knowledge is not sufficient — When a case relates to one where because of the serious nature of the offence, as statutorily prescribed, more stringent sentence is provided, it must be established and not a possibility is to be inferred — Positive evidence is to be adduced about the accused "knowing her to be pregnant" — In the absence of any material brought on record to show that the accused knew the victim to be pregnant S. 376(2)(e) cannot be pressed into service — Accused convicted under S. 376(1) and sentenced to 7 years' imprisonment* (Para 17). *Om Prakash* v. *State of U.P.*, (2006) 9 SCC 787: (2006) 3 SCC (Cri) 401: AIR 2006 SC 2214: 2006 Cri LJ 2913: (2006) 4 All LJ 575.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-5-2006]

6. Rape of minor/Statutory rape

See also 'C.20.(a) Age of prosecutrix or accused', and

'C.24.(d) Death Sentence', below

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'D.35(f)(ii)20.2. Death Sentence — Rape and murder of minor', in Vol. 2

[9009] — S. 375 — Medical evidence — Rape — 10 or 12 years' old virgin girl with hymen intact having been subjected to rape — *Injuries are likely to be on the male organ of the culprit — Absence of any such injuries on the male organs of accused — Circumstance points to their innocence*

If a girl of 10 or 12 years who is a virgin and whose hymen is intact is subjected to rape by a fully developed man, there are likely to be injuries on the male organ of the man. No injury was, however, detected by the doctor on the male organs of any of the two accused. The absence of such injuries on the male organs of the accused would thus point to their innocence. *Rahim Beg* v. *State of U.P.*, (1972) 3 SCC 759: 1972 SCC (Cri) 827: AIR 1973 SC 343: 1972 Cri LJ 1260.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 20-4-1972]

[9010] — Ss. 375 and 300 — Rape and murder of a young girl aged 14 years — Testimony of eyewitnesses suffering from no infirmity — Conviction upheld — Death sentence not justified. *Kumudi Lal* v. *State of U.P.*, (1999) 4 SCC 108: 1999 SCC (Cri) 491: AIR 1999 SC 1699: 1999 All LJ 1262.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 31-3-1999]

[9011] — Ss. 375 and 376 — Death sentence — Mitigating circumstances — *Rape of a child aged 4½ years and causing her death by inflicting cut injuries on her neck — Body put in a gunny bag with hands and legs tied and left in a pit near a stream — Accused-appellant then aged 24 years and alleged to be in drunken state — Even though he had been in custody no report regarding him made by probationary officer or jail authorities — Appellant having no previous criminal record — Held, it cannot be said that he would be a menace to the society in future — In the circumstances, death sentence commuted to sentence of life imprisonment* (Paras 2 to 5). *Rahul* v. *State of Maharashtra*, (2005) 10 SCC 322: 2005 SCC (Cri) 1516.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 17-8-2004]

[9012] — Ss. 375 and 376 — Examination of accused — External marks on the body of accused — Age of victim and delay as factors — *Held, such marks need not be present when the victim was a girl of age of 5 years 6 months — Besides, nearly two days had already passed when medico-legal examination was conducted on the accused in the present case*

Examination of the accused revealed the following results:

"The general behaviour of the patient was normal. The mental condition was normal. Bath not taken for the last five days. Urine passed many times. Passing motion normally. No stains were found on the body of the patient, clothing and undergarments. No injury marks were present on genitals. No venereal disease was found. On examination of genitals, pubic hairs were present. Penis normal, prepuce retracted, frenum normal. Testicles were normal. There were following injuries present on his person: Multiple contusions, some of them were pattered on back, buttocks, posteromedial aspect of thigh. Reddish in colour."

The examining doctor also opined that there was nothing to suggest that the accused was not fit to perform sexual intercourse.

Held :

It is true that marks of external injury have not been found on the person of the accused but that by itself does not negate the prosecution case. *Modi* has opined that even in the case of a child victim being ravished by a grown-up person, it is not necessary that there should always be marks of injuries on the penis in such case. Further, it is to be noted that about two days had elapsed between the time of the incident and medical examination of the accused. Minor injuries, even if caused, might have healed up in the meantime. (Para 15). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

Modi's Medical Jurisprudence, 22nd Edn., pp. 502, 509, relied on

Gian Chand v. State of H.P., (1996) 2 Crimes 213 (HP), reversed

[9013] — Ss. 375 and 376 — Examination of victim — External marks on victim's body — Age of victim — *Held, such external marks need not be present on the body of a child who is incapable of offering any resistance*

Absence of external marks of violence on the body of the victim does not necessarily mean that rape did not take place. In case of children who are incapable of offering any resistance external marks of violence may not be found. (Para 15). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

Modi's Medical Jurisprudence, 22nd Edn., pp. 502, 509, relied on

Gian Chand v. State of H.P., (1996) 2 Crimes 213 (HP), reversed

[9014] — Ss. 375 and 376 — Rape — Corroboration of evidence of prosecutrix — Whether mandatory — Rape of minor aged 12 years — *Taking judicial note of (1) social repercussions, (2) backward looking Indian society (3) dangers of being ostracised and survival difficulties, and (4) the resultant psychology of an Indian girl or woman (especially an unmarried girl) to admit rape without rape actually having been committed, held, evidence of prosecutrix stands on equal footing with that of injured witness and if her evidence inspires confidence, corroboration is not necessary*

In a case of rape, the testimony of a prosecutrix stands on a par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible. Corroboration is not the sine qua non for conviction in a rape case. No doubt, it is true that the doctor who initially conducted the medical examination of the prosecutrix, did not appear on behalf of the prosecution to depose. But, that alone is not sufficient to discard the prosecution story. (Paras 18 and 16)

In Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked at by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracised by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward-looking as the western countries are. (Para 17)

Looking from any angle, the appeal has no merit nor substance. It is proved beyond any shadow of doubt that the appellant had committed offence of rape on the minor girl and had completely ravished her. Even without the examination of the doctor, the evidence of the prosecutrix stands fully corroborated by the evidence of PW 3 Sub-Inspector of the police station who had virtually caught the appellant red-handed during commission of rape. Thus, even if the doctor had not been examined it would not throw or completely discard the prosecution

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story. The evidence of the prosecution witnesses is fully trustworthy and there is no reason to doubt genuineness thereof. (Paras 25 and 18)

In the present case, there is consistency in the evidence of the prosecutrix, which stands corroborated by the evidence of PW 3. He had no axe to grind against the appellant. In this case, the version of the prosecutrix right from lodging of the FIR, till her examination by the doctor and till she deposed in court, had been absolutely consistent. Not only this, to corroborate further, the evidence of PW 3 is also on record who had caught the appellant red-handed which fully establishes that it was the appellant who had committed offence of rape. (Para 24)

PW 1 prosecutrix had initially not supported the prosecution case and was declared hostile. But later when confronted with her statement recorded under Section 161 CrPC, she categorically deposed that the appellant removed her underwear, laid on her, put his male organ into her private part and was moving up and down. According to her, he committed bad act with her. PW 1 also proved her FIR recorded on 14-10-1988. When PW 1 was sent for medical examination, she again narrated rape on her by the appellant before the medical officer which finds place in her medical report. (Paras 9 and 12)

Whatever little lacunae was there in the prosecution story, have been cured in his cross-examination of PW 3 (IO). PW 3 (IO) corroborating the statement of PW 1 deposed that the accused and the prosecutrix were found to be in a compromising position and were naked below the waist, that the appellant was lying on the prosecutrix and was indulging in sexual intercourse and he had seen the incident in the light of the vehicle in which he was travelling and that thereafter they put on their clothes, were brought to police station and FIR was lodged. According to PW 3, the autorickshaw of the accused in which he had kidnapped PW 1 was seized on the same day and he was apprehended on the next day. (Paras 10 to 12)

Even the slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial. It was contended on behalf of the appellant that since hymen of the prosecutrix was found to be intact, it cannot be said that an offence of rape was committed on her by the appellant. This contention cannot be accepted as the offence of rape has been defined in Section 375 IPC. The medical report recorded that the hymen of the prosecutrix was intact, that her private part admitted only the tip of little finger with difficulty and that no intercourse was done with her. (Paras 19 to 22 and 8). *Wahid Khan* v. *State of M.P.*, (2010) 2 SCC 9.

Bench Strength **2**. Coram: *J.M. Panchal* and **Deepak Verma**, JJ. [Date of decision: 1-12-2009]

Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547, relied on

Radhu v. State of M.P., (2007) 12 SCC 57: (2008) 2 SCC (Cri) 207, distinguished

Modi: Medical Jurisprudence and Toxicology, 22nd Edn., p. 495; Parikh: Textbook of Medical Jurisprudence and Toxicology, relied on

[9015] — Ss. 375 and 376 — Rape — Independent witness — Examination of — Necessity — *Submission that apart from PWs 4 and 5 (elder sister and mother of prosecutrix) no other independent witness was examined to support allegations of rape — Held, when a minor girl alleges rape and her testimony is not shaken in cross-examination, there is no reason to disbelieve her as no girl would ever lie on such a vital issue — Besides, her testimony was corroborated by PWs 4 and 5 to whom she had reported the incident immediately after occurrence — Furthermore, on facts held, there was an independent witness PW 6, who though turned hostile at one stage of her examination had admitted that PW 5 had told her that accused had raped her daughter — She also stated that on making enquiries prosecutrix had narrated entire incident to her* (Paras 15 and 16). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697: (2010) 3 SCC (Cri) 387.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

[9016] — Ss. 375 and 376 — Rape — Minor — Punishment — Statutory punishment — *Sentence of 10 years' RI and fine of Rs 10,000 awarded by High Court to appellant-accused for raping a girl aged 6 years — Prayer for reduction of sentence by appellant on ground of severity — Held, S. 376(2)(f) IPC specifically provides that where the victim is less than 12 years of age the sentence awarded shall not be less than 10 years but it may be for life and the accused shall also be liable to fine — Though proviso allows discretion to court for adequate and special reasons to be mentioned in the judgment, to impose a lesser sentence but in the instant case the victim was aged about 6 years and hence the case was fully covered by S. 376(2)(f) — No adequate and special reasons discernible for imposing lesser sentence — However, fine of Rs 10,000 found to be excessive and reduced to Rs 1000* (Paras 17 and 18). *Rajendra Datta Zarekar* v. *State of Goa*, (2007) 14 SCC 560: AIR 2008 SC 572: 2008 Cri LJ 710.

Bench Strength **2**. Coram: **G.P. Mathur** and *G.S. Singhvi*, JJ. [Date of decision: 4-12-2007]

State of Chhattisgarh v. Derha, (2004) 9 SCC 699, distinguished

[9017] — Ss. 375 and 376 — Rape of a minor — Appreciation of evidence — Preparation for commission of an offence and an attempt to commit the same — Distinction between — *Appellant removing minor's chaddi and also pulling down his trousers and sitting upon her — He fleeing away on her grandfather's arrival — Held, in such circumstances it cannot be said that the appellant had merely made preparation for committing the offence, but had made an attempt to criminally assault her — His conduct was indicative of his determination to gratify his passion* (Paras 12 to 15). *Guddu* v. *State of M.P.*, (2007) 14 SCC 654: (2006) 42 AIC 79 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision: 27-4-2006]

Koppula Venkat Rao v. State of A.P., (2004) 3 SCC 602: 2004 SCC (Cri) 840, relied on

[9018] — Ss. 375 and 376 — Rape of a minor — Appreciation of medical evidence — *No semen detected on person or clothes of prosecutrix, but hymen found absent — Injuries detected on her private parts despite passage of a long time — Inference of partial/incomplete penetration — Offence of rape if made out — Effect of discrepancies in evidence of prosecutrix — Appellant alleged to have gagged mouth of prosecutrix aged about 11 years, and sexually assaulted her — On hearing her aunt's (PW 5) voice, accused fleeing away — No semen detected on any of the exhibits sent to chemical examiner — However, hymen found absent — Prosecutrix medically examined after a long time — Despite long passage of time (about 80 hours) injuries found on her private parts — Though the doctor failing to state specifically anything as regards actual intercourse, she testifying that there had been attempt to commit rape — PW 5 had detected the accused committing the offence, and he had fled away on hearing her voice — Thus, the act was incomplete — Evidence of PW 5 was found reliable by courts below — Hence, held, conclusion of High Court that absence of hymen clearly indicated that there was penetration, or that penetration may have been partial with no emission of semen, calls for no interference — Medical evidence in such cases needs to be appreciated in context of ocular evidence and other circumstances surrounding thereto — Discrepancies in evidence of prosecutrix also inconsequential, because she was a minor — Besides, there was time gap between occurrence and examination of witnesses — Hence, lapse of some memory on part of child witness possible — Delay in lodging FIR was also a natural phenomenon in rape cases — Conviction of appellant under S. 376, sustainable — CrPC, 1973, S. 154* (Paras 10, 14, 17 to 21). *Satyapal* v. *State of Haryana*, (2009) 6 SCC 635: (2009) 3 SCC (Cri) 108: AIR 2009 SC 2190: (2009) 77 AIC 66 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-4-2009]

Satyapal v. State of Haryana, 2007 Cri LJ 2095 (P&H), affirmed

Modi's Medical Jurisprudence, 23rd Edn., at pp. 897 and 928, relied on

[9019] — Ss. 375 and 376 — Rape of a minor — Child witness — Testimony — Reliability — *Submission that both the prosecutrix and her elder sister were child witnesses and they therefore should not be believed, and that they were tutored by their parents and police — Held, evidence of a child cannot be rejected outrightly and same must be evaluated with great circumspection — In instant case, depositions of PWs 3 and 4 as regards alleged occurrence was found firm and convincing and same could not be said to be influenced by any tutoring — There was no reason as to why a child on her age would falsely implicate the accused for the offence which was indisputably committed on her* (Paras 19, 20 and 22 to 24). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

[9020] — Ss. 375 and 376 — Rape of minor — Injuries on prosecutrix — No definite medical opinion as to recent intercourse — *Hymen of the prosecutrix remaining intact but there was swelling on her private part which had become red — Doctor unable to give definite opinion as regards whether she was subjected to intercourse in the immediate past — Held, even slight penetration was sufficient to constitute offence of rape and the redness of the hymen would not have been possible but for penetration to some extent* (Paras 10, 11 and 12). *Guddu* v. *State of M.P.*, (2007) 14 SCC 654: (2006) 42 AIC 79 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision: 27-4-2006]

Koppula Venkat Rao v. State of A.P., (2004) 3 SCC 602: 2004 SCC (Cri) 840; Aman Kumar v. State of Haryana, (2004) 4 SCC 379: 2004 SCC (Cri) 1266, relied on

[9021] — Ss. 375 and 376 — Rape of minor — Proof and corroboration of — Medical evidence — Consideration of — Rape of a 5 year old girl by the accused aged 22 years — High Court acquitting the accused disbelieving her testimony as well as that of other PWs who had entered the room on hearing her cry — *High Court holding that the statement of the prosecutrix*

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was not corroborated by the evidence of the doctor who examined her as there were no external injuries, there were no bloodstains on her dress, there was no injury on her female organ, hymen was ruptured and there was no fresh bleeding from the private parts — Doctor admitting that she was not in a position to state as to how the hymen of the girl was torn but stating that the male organ would not have penetrated in a young girl's vagina and there was no sign of rape — Held, the finding of the High Court is absolutely perverse and inconsistent with the evidence on record: (i) No opinion could be given by the doctor that there was no sign of rape; (ii) Regarding non-presence of bloodstains on her vaginal part and on her wearing apparel it was the categorical testimony of PWs 1, 8 and 9 that the prosecutrix was given a bath, her vagina and wearing apparel were washed before taking her to the doctor; and (iii) The doctor having recorded that hymen of the vagina was torn was not justified in giving an opinion that the male organ would not have penetrated into the young girl's vagina — Besides, the High Court completely overlooked the testimony of the doctor who examined the accused and found a cut wound at the bottom portion of his penis — He had further opined that such cut wound was possible only when the penis is forced into the vagina — It is unfortunate that this stark testimony against the accused for which he had no explanation, escaped the notice of the High Court — Evidence of the prosecutrix remained unimpeached and was well corroborated by evidence of other PWs — There was not an iota of evidence or even a suggestion that the accused had been falsely implicated because of animosity — Moreover, ocular evidence of PWs is well corroborated by the medical evidence — High Court committed grave miscarriage of justice in recording acquittal by reversing the conviction recorded by the trial court — Impugned order set aside and conviction recorded by the trial court restored (Paras 11, 12, 13, 21 and 22). *State of T.N.* v. *Ravi*, (2006) 10 SCC 534: (2007) 1 SCC (Cri) 133: AIR 2006 SC 2568: 2006 Cri LJ 3305.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635: 1998 SCC (Cri) 1725; Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728, relied on

Modi's Medical Jurisprudence and Toxicology (21st Edn.), p. 369 and Parikh's Textbook of Medical Jurisprudence and Toxicology, relied on

[9022] — Ss. 375 & 376(2)(f) or S. 302 or S. 304 Pt. II — Death occurring due to brutal manner of rape (of 7/8-year-old child) — Death sentence if warranted — *Brutal rape of a young child aged 7/8 years by the appellant aged 31 years leading to her death due to excessive bleeding — Culpability of the appellant in the heinous crime for all practical purposes established — Death sentence imposed by the trial court, confirmed by the High Court on reference — Death of the victim occurring because of excessive bleeding and not because of any specific overt act on the part of the appellant — Thus, intention of the appellant to kill the deceased not proved — Hence held, imposition of death sentence was not proper — Manner in which the deceased was raped may be brutal but it could have been a momentary lapse on the part of the appellant, seeing a lonely girl at a secluded place — No premeditation for commission of the offence proved — Offence, though, may look heinous, but under no circumstances, can it be said to be the rarest of rare cases — However, considering the brutality with which the offence was committed maximum sentence of RI for life imposed* (Paras 21, 22 and 10). *Amrit Singh* v. *State of Punjab*, (2006) 12 SCC 79: (2007) 2 SCC (Cri) 397: AIR 2007 SC 132: 2007 Cri LJ 298.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-11-2006]

[9023] — S. 375 Thirdly & Sixthly — Rape — Consent — Consent for having sexual intercourse obtained by accused from the victim girls by deceitful means in some cases and under threat of dire consequences in some other cases and therefore, held, their acts fell under cl. thirdly, while some of the victims being aged below 16 years, their consent was immaterial in view of cl. Sixthly — *Moreover, accused had dominion or control over the victims — Held, charge of rape against the accused made out*

It is in the evidence of the prosecutrix that consent of many of the prosecutrix had been obtained by deceitful means that if they had sex with A-1 they would be cured of asthma or that if they had sex with A-1 it is service to God or some of the girls have been raped under threat of dire consequences. A-1 had dominion/control over the Ashram girls and most of them are orphans and no alternative place to go. Therefore the case clearly falls within the thirdly clause of Section 375 IPC. Furthermore, if the consent is obtained by deceitful means or under threat of death or hurt, it is no consent at all and it is without her consent. Therefore, the charge of rape levelled against A-1 falls within the definition of Section 375 IPC. This apart, under the sixthly clause the consent is immaterial when the prosecutrix is under 16 years of age. Some of the prosecutrix were below 16 years of age when they were raped by A-1. In view of the facts and circumstances of the case, A-1 was rightly charged and convicted under Section 376(2)(*c*) IPC. (Para 40). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

[9024] — S. 375 Sixthly — Rape — Consent of girl under 16 years of age at the time of incident — Effect, if any — *Held, in light of fact that prosecutrix was 13-15 years of age at the time of incident, consent, if any, which can be inferred from circumstances, would be meaningless* (Para 8). *Abbas Ahmad Choudhary* v. *State of Assam*, (2010) 12 SCC 115: 2010 Cri LJ 2060.

Bench Strength **2**. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 25-11-2009]

[9025] — S. 375 Sixthly — Sexual intercourse with minor girl — *Whether the girl was a consenting party or not, she being a minor, the act of intercourse amounted to rape within the meaning of S. 375 Sixthly. Yeshwant Rao* v. *State of M.P.*, 1993 Supp (1) SCC 520: 1993 SCC (Cri) 283: AIR 1992 SC 1683.

Bench Strength **2**. Coram: *Kuldip Singh* and **Yogeshwar Dayal**, JJ. [Date of decision: 4-5-1992]

[9026] — S. 375 Expln. — Rape — Penetration — How much necessary to constitute rape — Rape of minor girl (8 years) — *Held, even slightest penetration of penis into vagina without rupturing the hymen would constitute rape — Medical officer on examination of the victim after 5 days finding an abrasion on the medial side of labia majora and redness around labia minora with white discharge but hymen intact admitting tip of a little finger — In view of absence of signs of full penetration, medical officer opining that there was an attempt to rape — Held, on the basis of the medical findings alone, it can be safely concluded that there was partial penetration within the labia majora or vulva or pudenda which in the legal sense is sufficient to constitute rape — Besides, extra-judicial confessions of the accused, corroborated by the reliable testimony of the prosecutrix herself as well as of other PWs, also showing commission of rape by the accused — Hence the opinion of attempt to rape given by an inexperienced medical officer (then aged 28 years) not acceptable — Conclusion of High Court that the offence made out was only under S. 354 not reasonable and justifiable having regard to the totality of the evidence — Accused-respondent must be must be convicted under S. 376. Madan Gopal Kakkad* v. *Naval Dubey*, (1992) 3 SCC 204: 1992 SCC (Cri) 598.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 29-4-1992]

Natha v. Emperor, AIR 1923 Lah 536: (1925) 26 Cri LJ 1185: 88 IC 705; Abdul Majid v. Emperor, AIR 1927 Lah 735(2): 28 Cri LJ 241: 100 IC 113; Jantan v. Emperor, AIR 1934 Lah 797: (1934) 36 Punj LR 35; Ghanshyam Misra v. State, AIR 1957 Ori 78: 1957 Cri LJ 469; Das Bernard v. State, 1974 Cri LJ 1098; Anthony, In re, AIR 1960 Mad 308: 1960 Cri LJ 927, approved

[9027] — S. 376 — Child rape — Appreciation of evidence — Delay of 26 hours in lodging FIR fully explained by prosecution — *When testimony of the prosecutrix and her relatives and the doctor, who had examined her, found to be trustworthy, convincing and reliable, non-examination of other witnesses cannot be a ground to reject the prosecution case — It cannot be expected from the mother of the victim to have shouted on seeing the accused committing the rape so as to collect others, nor can it be expected that after the occurrence in the village others would have visited her house who would stand as prosecution witnesses — Courts should adopt a sensitive approach in dealing with cases of child rape — On facts held, trial court by a well-considered and well-analysed judgment was justified in convicting the respondent under S. 376 and High Court erred in reversing the same and acquitting the respondent on benefit of doubt*

According to the testimony of PW 2, her daughter, then aged 8 years, had gone to the house of one *S* to take therefrom buttermilk. When her daughter did not return for a long time, she went to that house and when she pressed open the door which was closed, she found the respondent, son of *S* then aged 18 years, committing rape on her daughter, who was totally unconscious. On seeing her the respondent, who was then alone in the house, ran away. She lifted her daughter and brought her back home. At that time her husband and brother-in-law had gone to another village. Next day a report was lodged with the police. Besides the mother (PW 2), the father of the prosecutrix (PW 1) and wife of the brother of PW 1 also deposed supporting the version of PW 2. Prosecutrix, PW 5, being a child witness, the Additional District and Sessions Judge before administering her oath asked general questions so as to satisfy that she was competent to answer the questions and take oath. Her statement in court was recorded about four years after the date of the incident. Her deposition also was that the

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respondent had committed rape on her under the same circumstances as narrated by PW 2. The testimony of the doctor, PW 11, who had examined the prosecutrix was that externally there was no injury on her body but on the inner parts of both thighs and at the outer part of the left foot there were signs of blood. For internal examination she was referred to Family Incharge Hospital. The injury report was in his handwriting wherein the reports of a lady doctor and another doctor had been incorporated. PW 11 stated that: "In my opinion, the intercourse was done with the girl i.e. the possibility of doing the intercourse cannot be ruled out." The tip of the finger in the whole of her uterus was passing easily. PW 11 deposed that: "According to the opinion of the lady doctor, the opinion of the pathologist and my opinion of the examination, something was penetrated in her vagina." The only cross-examination of the witness was that the main examination report by the lady and the other doctors was not before him, that the seminal stains were not present on the clothes and that after the sexual contact the vagina remained intact. The Additional District and Sessions Judge found the respondent guilty for offence under Section 376 of the Indian Penal Code and imposed rigorous imprisonment for seven years and fine of Rs 1000 and in default of payment of fine to further undergo six months' rigorous imprisonment. The High Court gave benefit of doubt to the respondent and acquitted him. The main reasons which prevailed with the High Court in reversing the conviction were two. First, the non-examination of other independent witnesses and second, the rejection of medical evidence i.e. testimony of the doctor, PW 11. As regards non-examination of other witnesses, the High Court noticed that the incident had taken place in the environment of the village where there were other residential houses; the house of the prosecutrix from where the incident took place was 2-3 houses away and in the house of the accused his other brothers and sisters-in-law were also living. The High Court held that it was unnatural that PW 2 and PW 5 would not have shouted and others might not have gathered at the place of incidence and that, except the family members no other witness had come forward to support the case of the prosecution. The High Court also described as unnatural the statement of the mother that except her husband's brother's wife, PW 4, not a single person of the village had come to her house. As regards the second reason the High Court held that in absence of the evidence of the lady doctor, there was no support from any medical evidence. The prosecution case was also questioned on the ground of delay of nearly 26 hours in lodging the FIR. The offence was alleged to have taken place at about 9 a.m. The FIR was registered at about 11.30 a.m. on the next day. It was contended that this delay had assumed importance and was fatal particularly when the brother of the prosecutrix, was admittedly at the house. The delay, according to the defence counsel, resulted in embellishments.

Allowing the State's appeal,

Held :

As regards the contention regarding the delay in lodging the FIR, the real question is about the explanation for the delay. It is not at all unnatural for the family members to await the arrival of the elders in the family when an offence of this nature is committed before taking a decision to lodge a report with the police. The reputation and prestige of the family and the career and life of a young child is involved in such cases. Therefore, the presence of the brother of the prosecutrix at home is not of much consequence. It has been established that the father of the girl along with his brother came back to their house at 7 o'clock in the evening. The girl was unconscious during the day. PW 2 told her husband as to what had happened to their daughter. The police station was at a distance of 15 km. According to the testimony of PW 1 no mode of conveyance was available. The police was reported to the next day morning and FIR was recorded at 11.30 a.m. The delay in reporting the matter to the police has thus been fully explained. (Para 9)

The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim. However, after carefully scanning and scrutinising the evidence of the parents of the prosecutrix, her brother, the prosecutrix herself and the doctor (PW 11), the same is found to be trustworthy, convincing and reliable. At the time of the incident the accused was alone at home. When such an act is done, the natural tendency is not to talk about it to others but, to an extent possible, hide it. There was nothing unnatural in other villagers not visiting the house of PWs 1 and 2. Being a child witness, the testimony of the prosecutrix and that of her mother had been examined by the trial court with utmost care and caution. The High Court has clearly committed a serious illegality in assuming that in the natural course of events if rape had been committed, the young girl child and her mother would have shouted so as to collect others and they would have visited her house. The prosecutrix was unconscious. There was no question of the prosecutrix shouting as assumed by the High Court. Too much was made by the High Court on account of non-examination of persons other than the family members. The aspect of non-examination was given undue importance without having regard to the contextual facts. Cases involving sexual molestation and assault require a different approach — a sensitive approach and not an approach which a court may adopt in dealing with a normal offence under penal laws. (Para 15)

The evidence of the doctor, PW 11 is clear and specific. He was the author of the report. Though ideally the lady doctor could have been examined or her absence explained but that does not destroy the prosecution case, which otherwise stands proved. The High Court was clearly in error in coming to the conclusion that in the absence of evidence of the lady doctor there was no support from any medical evidence. She had reported to PW 11, who categorically stated that in his opinion, on examination, something had been penetrated in the vagina of the prosecutrix and that intercourse was done with the girl i.e. the possibility of doing intercourse cannot be ruled out. For no valid reason the High Court discarded the evidence of the doctor. (Para 16)

The evidence of a child witness is required to be evaluated carefully as the child may be swayed by what others may tell him or her as the child is an easy prey to tutoring. Wisdom requires that the evidence of a child witness must find adequate corroboration before it is relied on. In this case the evidence of the child (PW 5) and the other evidence had been examined carefully and it had been found that the reasons given by the High Court for rejecting the said evidence were wholly unconvincing. It is unfortunate that what to talk of considering, the High Court has not even noticed the testimony of the prosecutrix in the judgment under appeal. (Para 17)

There is no force in the contention that if there was any forcible sexual intercourse, it would have resulted in some injuries upon the prosecutrix. Presence of injuries are not always a sine qua non to prove a charge of rape. It has to be kept in mind that the case under consideration is one of rape on a girl child aged eight years and not on a grown-up woman. (Para 18)

Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. It is a crime against humanity. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. It is necessary for the courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in the Constitution of India in Article 39.

The overturning of a well-considered and well-analysed judgment of the trial court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt, was not called for. The minor contradiction of recovery of one or two underwears was wholly insignificant. (Paras 19 and 1)

Lastly, it is not possible to accept the contention on behalf of the respondent that the incident took place about 13 years back and by now the accused has matured and would be around 31 years of age and having already undergone nearly three years of sentence, the same may be treated by the Supreme Court as sufficient punishment to him and, therefore, taking a sympathetic view, the sentence already undergone be imposed. The trial court imposed on the respondent a sentence of seven years' rigorous imprisonment besides fine. Having played with the life of a child, the respondent does not deserve any leniency and for him sympathy on the ground sought for will be wholly uncalled for. The respondent deserves to undergo the remaining part of the sentence awarded by the trial court. (Para 20). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of H.P. v. Gian Chand, (2001) 6 SCC 71: 2001 SCC (Cri) 980; State of U.P. v. Ashok Dixit, (2000) 3 SCC 70: 2000 SCC (Cri) 579, relied on

Joseph v. State of Kerala, (2000) 5 SCC 197: 2000 SCC (Cri) 926, distinguished

[9028] — S. 376 — Child rape — Appreciation of evidence — Medical evidence — *Doctor PW 11 after examining the prosecutrix externally referring her to Family Incharge Hospital where she was examined internally by a lady doctor — In the injury report, prepared in the handwriting of PW 11, reports of the lady doctor and the pathologist*

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incorporated and PW 11 opining that possibility of doing intercourse cannot be ruled out — Held, though ideally the lady doctor could have been examined or her absence explained but that would not destroy the prosecution case, which otherwise stood proved

The evidence of the doctor, PW 11 is clear and specific. He was the author of the report. Though ideally the lady doctor could have been examined or her absence explained but that does not destroy the prosecution case, which otherwise stands proved. The High Court was clearly in error in coming to the conclusion that in the absence of evidence of the lady doctor there was no support from any medical evidence. She had reported to PW 11, who categorically stated that in his opinion, on examination, something had been penetrated in the vagina of the prosecutrix and that intercourse was done with the girl i.e. the possibility of doing intercourse cannot be ruled out. For no valid reason the High Court discarded the evidence of the doctor. (Para 16). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

[9029] — S. 376 — Child rape — Rape of 10 year-old-girl — Sentence — Occurrence happened in 1976 when there was no legislative compulsion on court to impose any minimum punishment for rape — *Trial court sentencing the respondent to 6 years' RI and fine of Rs 500 — High Court acquitting the respondent — But Supreme Court setting aside the High Court's order of acquittal and restoring conviction passed by trial court — A quarter of a century had elapsed since the occurrence and respondent was in jail for a long period — In the circumstances held, respondent sentenced to 2 years' RI — On completion of the sentence the jail authorities shall release him from jail as he continues to be in jail. State of U.P.* v. *Munnoo Lal*, (2001) 10 SCC 79.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 18-1-2001]

[9030] — S. 376 — Child rape — Rape of a 10-year-old girl at night — Accused-respondent's case was that he was misidentified for the rapist — *Respondent was known to the victim as he was residing in the vicinity of victim's house — Victim had identified the respondent to PW 3, a neighbour who had rushed to the scene hearing a commotion as well as to her mother when she returned home next day — PW 3 deposed that he had seen the respondent running away from the victim's house — Held, merely because the victim had said in cross-examination that she could recognise the voice of respondent when he had uttered some words to her does not mean that she had identified the accused only by his voice at night — Further, merely because PW 3 had not caught hold of the respondent while respondent was running away, his testimony cannot be disbelieved — Furthermore, investigating officer's failure to subject the respondent to medical examination would not be fatal to the prosecution case — Hence trial court was justified in convicting the respondent under S. 376*

In the facts and circumstances of the case there is no scope for doubt that the victim had identified the respondent as the rapist. The mere fact that she had said in cross-examination that the rapist had uttered some words to her and she could realise that it was the voice of the rapist himself, is not enough for the Court to ignore the other broad aspects regarding the evidence of identity of the rapist. Moreover, PW 3 had said in court that when he rushed to the house after hearing the commotion he saw the respondent running away from the house. There can be no possibility of doubt that PW 3 would have correctly identified the person who ran away. Even the defence did not dispute the competence of PW 3 to identify the accused if the version of PW 3 can be accepted as correct. (Paras 5 and 6)

The High Court did not place any reliance on the testimony of PW 3 on the fragile reasoning that PW 3 did not venture to catch the rapist. If PW 3 would have caught hold of the rapist, it was well and good. But if he had not done so, that cannot be regarded as a reason to doubt the truth of the testimony of PW 3. At the time when PW 3 saw the accused running away he had no reason to think that the said person had ravished the little girl inside the house and was in the process of escaping. Perhaps, PW 3 did not think why the respondent was running at that stage. Even that apart, PW 3 had to take a decision on the spur of the moment as to the wisdom of catching hold of such a person. If he had failed to take a right decision in a split second it is not a good ground for a court of law to jettison the testimony of such a witness. (Para 7)

Though the investigating officer did not subject the respondent to medical examination, but the worst against the prosecution and the best for the respondent in such a situation is that the respondent did not have any injury on his person. However, the counsel for the respondent was not able to satisfy the court that a person of the respondent's age and health would necessarily have sustained some injury if he had committed rape on a girl like PW 1. Therefore, it is not necessary to go into the question of absence of injury on the person of the respondent. (Para 10)

Thus the High Court has seriously erred in interfering with a well-merited conviction passed by the trial court on the respondent. (Para 11). *State of U.P.* v. *Munnoo Lal*, (2001) 10 SCC 79.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 18-1-2001]

[9031] — S. 376 — Child rape — Rape on child of 8 years — Proof of — *Injuries on the prosecutrix not always essential to prove the charge of rape*

There is no force in the contention that if there was any forcible sexual intercourse, it would have resulted in some injuries upon the prosecutrix. Presence of injuries are not always a sine qua non to prove a charge of rape. It has to be kept in mind that the case under consideration is one of rape on a girl child aged eight years and not on a grown-up woman. (Para 18). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

Joseph v. State of Kerala, (2000) 5 SCC 197: 2000 SCC (Cri) 926, distinguished

[9032] — S. 376 — Child rape — Sensitive approach of court needed — *Onerous responsibility lies on court to provide proper legal protection to the victims — Constitution of India, Art. 39*

Cases involving sexual molestation and assault require a different approach — a sensitive approach and not an approach which a court may adopt in dealing with a normal offence under penal laws. (Para 15)

Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. It is a crime against humanity. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. It is necessary for the courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in the Constitution of India in Article 39. *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

[9033] — S. 376 — Child rape — Sentence — Mitigating factors if applicable — *Rape on child aged 8 years by accused-respondent then aged 18 years — Sentence of 7 years' RI imposed by trial court — High Court erroneously acquitting the accused — 13 years elapsed and accused already undergone 3 years' sentence — On the basis of these facts, plea taken on behalf of the accused that the Court should take a sympathetic view — Held, plea cannot be accepted — Accused should undergo remaining part of the sentence*

It is not possible to accept the contention on behalf of the respondent that the incident took place about 13 years back and by now the accused has matured and would be around 31 years of age and having already undergone nearly three years of sentence, the same may be treated by the Supreme Court as sufficient punishment to him and, therefore, taking a sympathetic view, the sentence already undergone be imposed. The trial court imposed on the respondent a sentence of seven years' rigorous imprisonment besides fine. Having played with the life of a child, the respondent does not deserve any leniency and for him sympathy on the ground sought for will be wholly uncalled for. The respondent deserves to undergo the remaining part of the sentence awarded by the trial court. (Para 20). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

[9034] — S. 376 — Prosecutrix 8 years old, held, competent to give evidence — Rule of corroboration explained — *Statement made to mother admissible for corroboration*

The tender years of the child, coupled with other circumstances appearing in the case, such for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in

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every case, be corroboration before a conviction can be allowed to stand. *Rameshwar* v. *State of Rajasthan*, AIR 1952 SC 54: 1952 SCR 377: 1952 Cri LJ 547, 549, 55.

Bench Strength **2**. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 20-12-1951]

[9035] — S. 376 — Rape — Evidence — Medical evidence inconsistent with evidence of prosecutrix — Effect — *Prosecutrix aged 8 years at the time of the alleged occurrence — According to evidence of the doctor who examined the prosecutrix immediately after the occurrence, there was no sign of rape — Thus evidence of prosecutrix belied by medical evidence — Held, accused-appellant entitled to acquittal. Yerumalla Latchaiah* v. *State of A.P.*, (2006) 9 SCC 713: (2006) 3 SCC (Cri) 373.

Bench Strength **3**. Coram: *B.N. Agrawal, A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 21-2-2006]

[9036] — S. 376 — Rape — Medical evidence — Rape on minor girl aged 14 years — Statement of the doctor that hymen of the prosecutrix was ruptured and admitted two fingers — *Held, this cannot be viewed as if the prosecutrix was habitual to sexual intercourse*

According to the doctor hymen of the prosecutrix was ruptured, admitted two fingers, bled on touch, was reddish in colour, and was painful and tender. On this basis, the doctor opined that these were signs of rape. The ability of admission of two fingers and the hymen being ruptured was viewed by the High Court as if the prosecutrix was habitual to sexual intercourse. When the doctor had opined that the hymen was ruptured, she did not qualify her statement that it stood ruptured as of old or carried an old tear. With clear objective in view, the doctor must be presumed to have noticed the hymen as freshly ruptured, as otherwise, the doctor would not have described it in that fashion to be bleeding, tender and painful. The factum of admission of two fingers could not be held adverse to the prosecutrix for it would depend upon the size of the fingers inserted. When medical experts try to opine about the medical condition of a woman used to sexual intercourse, it is described as admission of two fingers *easily*, but here the doctor qualified her statement by saying that it was painful and bleeding on touch. These conditions obviously related to the hymen. The doctor was thus clear in her opinion that rape had been committed on the prosecutrix. *Narayanamma* v. *State of Karnataka*, (1994) 5 SCC 728: 1994 SCC (Cri) 1573.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-8-1994]

[9037] — S. 376 — Rape — Sentence — Rape of a young girl of 13 years by holding out threats — *Marriage of the accused and long lapse of time — Held, accused deserves no leniency in the matter of sentence. State of Haryana* v. *Jang Bahadur*, 1998 SCC (Cri) 693.

Bench Strength **2**. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 23-7-1997]

[9038] — S. 376 — Rape of a minor girl — Two pin-head abrasions found on the genitals of accused — *Doctor opining that though as a result of forcible sexual intercourse such abrasion could be possible but there was no sign of the accused having sexual intercourse within one hour of his medical examination — That the accused aged 57 years was not used to sexual intercourse or that he had not an intercourse on the day of occurrence with someone else not established — Presence of blood in nail clippings and on the underpants explained by accused — Held, circumstance of abrasions on the genital, though raises suspicion but not conclusive of guilt of the accused when main circumstances of last seen together and recovery of the dead body at the instance of the accused could not be established. Jaharlal Das* v. *State of Orissa*, (1991) 3 SCC 27: 1991 SCC (Cri) 527: AIR 1991 SC 1388: (1991) 2 Crimes 268: (1991) 72 CLT 298.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 12-4-1991]

[9039] — S. 376 — Rape of a minor student by the teacher, twice — *Prosecutrix divulging about it only when her mother came to know that she was pregnant i.e. after more than 3 months of occurrence — Held, her not informing anyone about the incident in the circumstances cannot detract from her reliability — Moreover, defence put forth by the appellant was too vague to be acceptable — Conviction upheld* (Paras 3, 6 and 7). *Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

[9040] — S. 376 — Rape of fourteen-year-old, taking advantage of her being alone at home — *High Court reducing sentence of 10 years' RI imposed by trial court to period already undergone, about 5 years and 4 months, on grounds that accused was an illiterate labourer and was only twenty at the time of commission of the rape — Held, said grounds are wholly irrelevant for reducing the sentence, having regard to nature of offence and manner of its commission — Sessions Judge rightly came to the conclusion that accused* *deserved no leniency — Approach of High Court lacked sensitivity towards the minor victim — Sentence restored to 10 years' RI* (Paras 6 and 7). *State of M.P.* v. *Bane Singh*, (2005) 12 SCC 367.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 25-2-2005]

State of M.P. v. Balu, (2005) 1 SCC 108: 2005 SCC (Cri) 270, followed and clarified

[**Ed.**: See also *Urmila (Minor)* v. *Raju*, (2005) 12 SCC 366 and the holding in (2005) 8 SCC 1 and 8]

[9041] — S. 376 — Rape of minor — Conviction justified — *Appellant-accused aged about 20 years alleged to have pulled the victim aged about 6 years into his room, bolted it from inside, and after removing his and her clothes raped her — Her cries attracting PW 1 (her mother) who knocked on the door, which was opened by accused after some time — In spite of fairly lengthy cross-examination nothing could come out in statements of PW 1 and the victim which would throw even a slightest doubt on the prosecution version of the incident — No enmity of any kind existing between PW 1 and accused which would impel her to falsely implicate the accused — Suggestion regarding taking of some money by PW 1 from accused and further that she wanted to have some kind of relationship with him was made but the same had not at all been made probable, much established by any evidence — Medical report of victim showing evidence of recent penetration, while accused was a young man found capable of sexual intercourse — Held, rape leaves a permanent scar and has a serious psychological impact on the victim and also her family members and, therefore, no one would normally concoct a story of rape just to falsely implicate a person — In the present case there was not even an iota of evidence to show that PW 1 or her husband had any reason whatsoever to falsely implicate the accused — Evidence led by prosecution clearly establishing guilt of accused beyond reasonable doubt* (Paras 2 and 14). *Rajendra Datta Zarekar* v. *State of Goa*, (2007) 14 SCC 560: AIR 2008 SC 572: 2008 Cri LJ 710.

Bench Strength **2**. Coram: **G.P. Mathur** and *G.S. Singhvi*, JJ. [Date of decision: 4-12-2007]

Santosh Kumar v. State of M.P., (2006) 10 SCC 595: (2007) 1 SCC (Cri) 28, considered and relied on

Modi's Medical Jurisprudence and Toxicology, 21st Edn., at p. 369; Parikh's Textbook of Medical Jurisprudence and Toxicology, cited

[9042] — S. 376 — Rape of minor girl aged 7/8 years — Testimony of prosecutrix alone, if reliable, whether sufficient to convict the accused without seeking further corroboration — Injury on male organ of accused if necessary — *On facts, convincing and trustworthy testimony of the prosecutrix corroborated by medical evidence and testimony of other PWs existing — Doctor who examined the prosecutrix finding her hymen ruptured, slight bleeding coming out of the vaginal edges, presence of blood clots and external genitals tender and red and vagina admitting one finger with difficulty which got smeared with blood — Shawl on which, according to the prosecution, she was made to lie while committing the rape, found by the doctor to be having some mud and blood stains — Doctor opining that prosecutrix had been subjected to sexual intercourse — Doctor who examined accused-respondent finding him potent and capable of sexual intercourse — Father of the prosecutrix and other PWs deposing to have seen the respondent running from the place of occurrence carrying with him his underwear — Held, trial court rightly convicted the respondent under S. 376 and High Court erred in acquitting him on the basis of conjectures and surmises — Circumstances such as absence of spermatozoa on the vaginal slide and absence of injuries on the male organ not always fatal to the prosecution case — These circumstances should be considered in the light of the peculiar factual set-up of the case*

There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record. The medical evidence provided sufficient corroboration.

No inference can be drawn against the prosecution from the fact that only two blood stains had been found on the shawl by the Chemical Examiner. The doctor had found the presence of blood stains and mud on the shawl and had opined that the bleeding from the edges of the vagina was slight and that some amount of clotted blood was also present. The prosecutrix was a girl of tender age and on account of the rape committed on her, there was bleeding from her vagina but in the circumstances it cannot be expected that the shawl should have got "drenched with blood" as if the large blood arteries had been cut.

6. Rape of minor/Statutory rape *(contd.)*

The absence of spermatozoa cannot be a circumstance against the prosecution case. The prosecution case itself was that on being surprised while the respondent was in the act of committing sexual intercourse on the prosecutrix, he ran away carrying his underwear. The absence of spermatozoa under the circumstances could not be said to be a circumstance in favour of the respondent at all.

There is no inflexible axiom of law which lays down that the absence of injuries on the male organ of the accused would always be fatal to the prosecution case and would discredit the evidence of the prosecutrix, otherwise found to be reliable. The presence of injuries on the male organ may lend support to the prosecution case, but their absence is not always fatal. Every case has to be approached with realistic diversity based on peculiar facts and circumstances of that case. The doctor who had examined the respondent had found him to be capable of sexual intercourse and according to his opinion the absence of injury on his male organ was not suggestive of the fact that he had not indulged in sexual intercourse with the prosecutrix, then of tender years of age. His evidence was not at all challenged on this aspect by the defence.

The judgment of the High Court was based more on surmises and conjectures than on proper appreciation of evidence. Court must be sensitive to the serious crime committed against human dignity. Courts must be wary, circumspect and slow to interfere with reasonable and proper findings based on appreciation of evidence as recorded by the lower courts, before upsetting the same and acquitting an accused involved in the commission of heinous offence of rape of hapless girl child. *State of H.P.* v. *Raghubir Singh*, (1993) 2 SCC 622: 1993 SCC (Cri) 674: 1993 (2) ALT (Cri) 286: (1993) 2 Crimes 887.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 18-2-1993]

Rahim Beg v. State of U.P., (1972) 3 SCC 759: 1972 SCC (Cri) 827, distinguished and limited

[9043] — S. 376 — Rape of teenaged girl — Sentence — On facts, reduced from 7 years' RI to the period of little less than 2 years of imprisonment already undergone by accused-respondent

The accused was taken into custody by the police on 3-11-1993. He was not allowed bail. During the trial as also during the hearing of the appeal by the High Court he remained in jail. It is only on 11-10-1995 when the High Court acquitted him of the charge that he was released from jail. Thus he had remained in jail for a little less than two years. Taking into consideration the period of remission for which he would have been entitled and the time which has elapsed from the date of commission of the offence, the accused-respondent need not now be sent to jail. It would meet the ends of justice if he is sentenced to undergo imprisonment for the period already undergone by him and to a fine of Rs 2000 with further simple imprisonment of one year and nine months in default of payment of fine as passed by the trial court. The accused-respondent is allowed time till 1-5-2000 for payment of fine. (Para 21). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

[9044] — S. 376 — Rape on a minor girl aged 14 years — Prosecutrix being below the age of consent, the accused persons cannot escape liability merely because no marks on their person suggesting resistance could be found. *Narayanamma* v. *State of Karnataka*, (1994) 5 SCC 728: 1994 SCC (Cri) 1573.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-8-1994]

[9045] — S. 376 — Rape on child — *Unmerited acquittals, particularly in crimes against child encourage the criminals — Court must be sensitive while dealing with such cases. State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[9046] — S. 376 — Rape on minor girl — Conviction can be based solely on the evidence of prosecutrix if her evidence is reliable and truthful — *Prosecutrix giving vivid account of how she was subjected to sexual harassment and intercourse on several occasions even in presence of accused's wife — Her testimony corroborated by medical evidence indicating that hymen of the victim was ruptured and she was ravished — Having regard to the testimony of the prosecutrix, and of the neighbour to whom the prosecutrix had narrated the incident whereafter the matter was reported to the police and of the doctor who had examined the prosecutrix and of another doctor who had examined the accused, held, the prosecutrix had truthfully narrated the entire episode and there was no reason why it can be said that she tried to foist a false case on the accused — In the circumstances, the view that it is not possible for a man to commit rape in presence of his wife cannot be accepted —*

High Court erred in acquitting accused of charge under S. 376 (Para 2). *State of Sikkim* v. *Padam Lall Pradhan*, (2000) 10 SCC 112.

Bench Strength 2. Coram: *G.B. Pattanaik* and *M.B. Shah*, JJ. [Date of decision: 17-11-1999]

[9047] — S. 376 — Rape on minor girl aged 14 years — *FIR lodged by her at the earliest possible opportunity and her medical examination done within 6 hours of the occurrence — Evidence of the prosecutrix corroborated not only by the medical evidence but also by the other witnesses who came by and who met her immediately after the occurrence — Order of acquittal passed by the High Court reversed and trial court's order restored — Sentence of 3 years' R.I. passed by the trial court, though inadequate, the Supreme Court did not enhance the same. Narayanamma* v. *State of Karnataka*, (1994) 5 SCC 728: 1994 SCC (Cri) 1573.

Bench Strength 2. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-8-1994]

[9048] — S. 376 — Rape on six-year-old girl by accused aged sixty-five — *Offence concurrently made out in all the stages below — Supreme Court finding no reason to interfere — Conviction upheld*

In the present case there is the evidence of the victim and her mother. The FIR was prompt. The story is corroborated by the playmate of the victim and blood was found on the genitals of the accused and on his clothing. The guilt was thus conclusively made out. *Ram Kishan Aggarwala* v. *State of Orissa*, (1976) 2 SCC 177: 1976 SCC (Cri) 244: AIR 1976 SC 1774: 1976 Cri LJ 1376.

Bench Strength 2. Coram: *Y.V. Chandrachud* and **V.R. Krishna Iyer**, JJ. [Date of decision: 4-3-1976]

[9049] — S. 376 — Sentence — Rape by accused, 65 years of age on a girl six years' old — *Trial Judge awarding three years' rigorous imprisonment and Rs 5000 as fine — Sessions Judge reducing imprisonment to six months and fine to Rs 500 — Held, regarding the beastliness of the crime the short term of imprisonment, in spite of his advanced age, was not improper. Ram Kishan Aggarwala* v. *State of Orissa*, (1976) 2 SCC 177: 1976 SCC (Cri) 244: AIR 1976 SC 1774: 1976 Cri LJ 1376.

Bench Strength 2. Coram: *Y.V. Chandrachud* and **V.R. Krishna Iyer**, JJ. [Date of decision: 4-3-1976]

[9050] — S. 376 — Sentence — Rape of minor girl — Occurrence prior to December 1982 amendment — *Sentence of 5 years' RI imposed by trial court — Enhancement of sentence not sought by State — High Court acquitting the accused — In the circumstances, while reversing the acquittal order, sentence imposed by trial court maintained by Supreme Court in appeal*

Though for such an offence a more severe sentence would have been desirable but the ends of justice would be met if the sentence to be imposed on the respondent is confined to five years RI as was awarded by the Sessions Judge for cogent reasons recorded by him. This is for the reason that the State did not seek any enhancement of the sentence by filing an appropriate petition in the High Court or in the Supreme Court and for over a period of seven years, while the case has remained pending here, no notice had been issued to the acquitted respondent to show cause as to why in the event of his acquittal being set aside, a more deterrent sentence, than the one imposed by the Sessions Judge, be not imposed upon him and without putting him on such a notice, the Court cannot enhance the sentence. If the notice were to issue now, it would further delay the disposal of the case and that would not be a proper course to be adopted. The more stringent minimum sentence prescribed for an offence under S. 376 IPC was also incorporated in the Code by an amendment only with effect from December 1982 after the offence in the present case had been committed. *State of H.P.* v. *Raghubir Singh*, (1993) 2 SCC 622: 1993 SCC (Cri) 674: 1993 (2) ALT (Cri) 286: (1993) 2 Crimes 887.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 18-2-1993]

[9051] — S. 376 — Village girl below 16 years as prosecutrix — *Due allowance should be made for exaggeration of threats. Gurcharan Singh* v. *State of Haryana*, (1972) 2 SCC 749: 1972 SCC (Cri) 793: AIR 1972 SC 2661: (1973) 2 SCR 197: 1973 Cri LJ 179.

Bench Strength 2. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 13-9-1972]

[9052] — Ss. 376 and 302 — Child witness — Examination of — Must be nearabout the date and time of the incident — Rape and murder of a girl aged 5 years — *Solitary testimony of a child aged 4 years that while returning home along with the deceased after purchasing a balloon, accused took the deceased inside his house saying that her feet were mudstained — Not clear from her statement whether that happened before the date and time of the incident or on the date on which dead body of deceased was found — How and in what manner investigating officer came to know about this child witness so as to record her statement during investigation also remaining a mystery — Child witness examined by trial court about one year after*

6. Rape of minor/Statutory rape *(contd.)*

the incident — On asking a few questions by way of preliminary examination, trial Judge finding that the witness could "answer some of the questions" — Even taking her testimony at its face value, no incriminating inference could be drawn against the accused on that basis so as to connect him with the crime — Evidence Act, 1872, Ss. 8 and 3. Subhash Chand v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

[9053] — Ss. 376 & 302 — Conviction — Rape and murder of a 6 year old girl — *Sessions Court and High Court concurrently finding the appellant guilty — On reappreciation of evidence, conviction under Ss. 302 and 376 confirmed*

According to the prosecution the accused-appellant had taken the deceased girl aged 6 years to a cinema show. When the girl did not return home a report was lodged at the police station and next day her dead body was found lying in the bushes standing across the railway line. It was noticed that the underwear of the deceased was lying near the dead body and that there were bloodstains and tooth-mark on her cheek. The doctor who carried out post-mortem examination noticed that the deceased was in a school uniform and she stated that three doctors who had examined the dead body arrived at the conclusion that rape had been committed and the murder of the deceased was committed by pressing her nose and mouth and obstructing breath of the deceased. It was also noticed that there was a thin mark of a scratch on the upper portion of penis of the accused. According to the witnesses, the deceased was last seen in the company of the appellant. On appreciation of evidence the trial court convicted the appellant under Sections 302 and 376 IPC and sentenced him to death. The High Court confirmed the judgment and order passed by the trial court. The accused preferred the present appeal before the Supreme Court against the conviction and sentence. As regards the sentence it was submitted that the accused on the relevant day was less than 22 years and that even though the act is heinous, considering the fact that no injuries were found on the deceased, it is probable that death might have occurred because of gagging her mouth and nostrils by the accused at the time of incident so that she may not raise a hue and cry. The death, it was submitted, was accidental and an unintentional one. Allowing the appeal partly,

Held :

After going through the entire evidence it cannot be held that the High Court or the Sessions Court committed any error in appreciating the evidence led by the prosecution. Hence, the conviction of the appellant for the offence punishable under Sections 302 and 376 IPC is confirmed. (Para 7). *Bantu* v. *State of M.P.*, (2001) 9 SCC 615: AIR 2002 SC 70.

Bench Strength **2**. Coram: **M.B. Shah** and *Doraiswamy Raju*, JJ. [Date of decision: 17-10-2001]

[9054] — Ss. 376 & 302 — Conviction — Rape and murder of girl aged 11 years — Circumstantial evidence — *Accused seen enticing deceased by offering toffee, thereafter both last seen together going out in the evening, they having not returned to house PWs searched for them whole night and in the morning dead body of deceased found — Immediately thereafter FIR lodged — Extrajudicial confession made by accused to PW 3 that he committed rape of the deceased and killed her by causing injury on her head by brick when she stated that she would report at the house about the rape — Bloodstained earth, bloodstained brick with hair stuck to it, shawl, chappals taken into possession by police — Bloodstains found on trousers and shirt and blood and semen stains found on underwear for which no explanation given by accused — At the stage of statement under S. 313 CrPC accused abjured his guilt and denied all the allegations made against him — Held, High Court rightly confirmed the conviction order passed by Sessions Court. Raju* v. *State of Haryana*, (2001) 9 SCC 50: AIR 2001 SC 2043: 2001 Cri LJ 2580.

Bench Strength **2**. Coram: **M.B. Shah** and *Brijesh Kumar*, JJ. [Date of decision: 2-5-2001]

[9055] — Ss. 376 and 302 — Death sentence — When not warranted — No rigid standards and norms can be laid down — *Rape of child aged 1½ years by appellant aged 30 years — In the process of committing rape, injuries inflicted on liver, apart from other injuries which resulting in death of the child — Held, case does not fall within the rarest of the rare category — Hence death sentence not justified — CrPC, 1973, S. 354(3)*

Regarding the question of laying down standards and norms restricting the area of imposition of death penalty, if by "laying down standards", it is meant that "murder" should be categorised beforehand according to the degrees of its culpability and all the aggravating and mitigating circumstances should be exhaustively and rigidly enumerated so as to exclude all free play of discretion, the argument merits rejection. Such standardisation is well-nigh impossible. Firstly, degree of culpability cannot be measured in each case; secondly, criminal cases cannot be categorised, there being infinite, unpredictable and unforeseeable variations; thirdly, on such categorisation, the sentencing process will cease to be judicial; and fourthly, such standardisation or sentencing discretion is a policy-matter belonging to the legislature beyond the court's function. Only broad guidelines consistent with the policy indicated by the legislature in Section 354(3) can be laid down. (Paras 10 and 12)

In the present case the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible. It reveals a dirty and perverted mind of a human being who has no control over his carnal desires. But treating the case on the touchstone of the guidelines laid down in *Bachan Singh*, *Machhi Singh* and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, the case cannot be appropriately called one of the rarest of the rare cases. The appellant cannot be said to be such a dangerous person that to spare his life will endanger the community. It cannot be held that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. The case is one in which a humanist approach should be taken in the matter of awarding punishment. Accordingly, the capital sentence imposed against the appellant by the courts below is set aside. Instead the appellant shall suffer rigorous imprisonment for life. (Paras 25 and 26). *Mohd. Chaman* v. *State (NCT of Delhi)*, (2001) 2 SCC 28: 2001 SCC (Cri) 278: 2001 Cri LJ 725.

Bench Strength 2. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 11-12-2000]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Nirmal Singh v. State of Haryana, (1999) 3 SCC 670: 1999 SCC (Cri) 472; Anshad v. State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204, relied on

[9056] — Ss. 376 and 302 — Rape and murder — Circumstantial evidence — Last seen together — Accused A and victim V (girl aged 11-12 years) last seen together by PWs 1 and 11 — *Evidence of said PWs trustworthy and reliable — Close proximity of place and time between the event of A having been last seen with V and factum of death — In such circumstances, held, burden was on A to explain how and in what circumstances V suffered the death — No explanation offered in statement made by A under S. 313 CrPC — Evidence Act, 1872, S. 106*

The evidence of PWs 1 and 11 is trustworthy and reliable. It has a ring of truth. It stands fully established that they had seen the deceased *V* and the appellant on 28-3-2001 in the forest. When on the next day PW 1 again came to the same area for grazing buffaloes, he found the dead body of *V*. At that time too, PW 11 was with PW 1. (Paras 8 and 2)

In *Mohibur Rahman case*, (2002) 6 SCC 715, it has been observed that there may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. Here it has been established that the death took place on 28th March between 3 and 4 p.m. It is just about that much time that the appellant and the deceased were last seen by PW 1 and PW 11. No explanation has been offered in the statement by the appellant recorded under Section 313 CrPC. His defence is of complete denial. Thus, the conviction for offence under Sections 302 and 376 has been rightly recorded by the Court of Session and affirmed by the High Court. (Para 9). *Amit* v. *State of Maharashtra*, (2003) 8 SCC 93: 2003 SCC (Cri) 1959: AIR 2003 SC 3131: 2003 Cri LJ 3873.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *Brijesh Kumar*, JJ. [Date of decision: 6-8-2003]

Mohibur Rahman v. State of Assam, (2002) 6 SCC 715: 2002 SCC (Cri) 1496, applied

[9057] — Ss. 376 and 302 — Rape and murder of a four-year-old girl — Prosecution case based on circumstantial evidence — *Circumstances of last seen together, recovery of dead body from the place pointed out by the accused, evidence of test identification parade, injuries found in the male organ of the accused and detection of stains of human blood and semen on underclothes of the accused at the time of his arrest — Held, on facts, circumstances sufficient to convict the accused respondent with the offence of rape and murder of the minor girl. State of Maharashtra* v. *Suresh*, (2000) 1 SCC 471: 2000 SCC (Cri) 263.

Bench Strength 2. Coram: *G.T. Nanavati* and **K.T. Thomas**, JJ. [Date of decision: 10-12-1999]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, relied on

6. Rape of minor/Statutory rape *(contd.)*

[9058] — Ss. 376 & 302 — Rape and murder of a girl aged 7-8 years — Conviction — Punishment — Conviction of appellants on basis of circumstantial evidence — Sustainability of death sentence — *Death sentence imposed by the Sessions Judge confirmed by the High Court — Held, if guilt is proved by circumstantial evidence, ordinarily, death penalty would not be awarded — Moreover, Appellant 1 showed his remorse and repentance and accepted his guilt even in his statement under S. 313 CrPC — Hence, instead of extreme death penalty, punishment of RI for life imposed — CrPC, 1973, Ss. 235(2) and 354(3)* (Paras 57 to 65). *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

State of Rajasthan v. Kheraj Ram, (2003) 8 SCC 224: 2003 SCC (Cri) 1979; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559; Sahdeo v. State of U.P., (2004) 10 SCC 682: 2004 SCC (Cri) 1873; Raju v. State of Haryana, (2001) 9 SCC 50: 2002 SCC (Cri) 408; Amrit Singh v. State of Punjab, (2006) 12 SCC 79: (2006) 2 SCC (Cri) 397; Sk. Ishaque v. State of Bihar, (1995) 3 SCC 392: 1995 SCC (Cri) 534; Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

[9059] — Ss. 376 and 302 — Rape and murder of a girl of five years — *Vital link in the chain of circumstances snapped — Held on facts, offence under Ss. 376 and 302 not established*

The crucial link in the chain of circumstances in the present case is the presence of the accused-appellant in his house at the time when the dead body of the deceased was discovered. Once that link snaps, the entire case would have to rest on slender titbits here and there.

The discovery of a blood-stain of the deceased's group ('B' Group) measuring 0.5 cms in diameter on the accused-appellant's pant could be a circumstance against the accused only if it is shown that that was not his blood group. Presence of a dried stain of semen on the underpant of accused, aged 30, is also a circumstance too feeble to establish the guilt. Absence of smegma around the accused's corona glandis cannot by itself prove that he had sexual intercourse. The presence of smegma may perhaps exclude the possibility of recent sexual intercourse but its absence will not necessarily establish that the person has had a recent intercourse. A small abrasion over the base of the glans-penis and its bluish discoloration are also inconclusive circumstances. Nor indeed can the bruises on the appellant thigh establish his involvement in the crime.

The circumstances that the total ignorance of the incident pleaded by the accused was false, cannot be said to have itself furnished a link in the chain of causation. Falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused. Moreover, from the facts and circumstances of the case it is clear that the accused was not present in the house at the time when the deceased's dead body was discovered from the accused's house. That makes it impossible that the accused's plea was false. *Shankarlal Gyarasilal Dixit* v. *State of Maharashtra*, (1981) 2 SCC 35: 1981 SCC (Cri) 315: AIR 1981 SC 765: 1981 Cri LJ 325: 1981 MLJ (Cri) 320.

Bench Strength **3**. Coram: **Y.V. Chandrachud, C.J.** and *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 17-12-1980]

[9060] — Ss. 376 and 302 — Rape and murder of a minor girl — Recovery of dead body at the instance of the accused — Circumstance not mentioned in inquest report — *No panchnama prepared for the recovery made under S. 27, Evidence Act — No evidence showing that accused was present near the place where dead body was found — Though father of the victim and the investigating officer deposing about the circumstance of the recovery, their testimony contradictory and unacceptable — Held on facts, the circumstance not established. Jaharlal Das* v. *State of Orissa*, (1991) 3 SCC 27: 1991 SCC (Cri) 527: AIR 1991 SC 1388: (1991) 2 Crimes 268: (1991) 72 CLT 298.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 12-4-1991]

[9061] — Ss. 376 & 302 — Rape and murder of a minor girl aged 4 years — *Three PWs seeing a little girl crying in the company of a man on the day of the incident — Both accused and victim were strangers to the PWs — Reason for the PWs remembering them was that next day when they heard about the murder of a little girl, they recollected seeing the man along with the little girl the previous day — PWs later identifying the accused in test identification parade — Held, recollection about the victim in the company of the accused was natural — Contention that there was inherent incredibility in the evidence of the PWs as normally accused would have taken precaution not to be seen by any other person on the way cannot be accepted*

If a criminal court is to view the testimony of the three witnesses as unnatural it would be easy to brush it aside with the stereotyped reasoning that those persons had no cause to remember having seen the man with the girl accompanying him. Such a reasoning overlooks the broad aspect that a human mind, on hearing about any shocking incident, would have the tendency to recollect any previous event which could have had a connection with that incident. If as a matter of fact those witnesses had occasion to see a crying girl of that age on the very day of the gruesome episode as happened in this case, there is nothing improbable in those witnesses remembering the person who was seen in the company of that girl. If they had immediately informed the police that they noticed a similarly-aged girl crying in the company of an utter stranger of that locality that cannot be brushed aside as a doubtful conduct. Either the three witnesses concocted the story falsely or what they said must be true. No reason was suggested for those three witnesses to bother themselves to concoct such a canard. (Para 17)

It is not possible to accept that there is "an inherent incredibility in the evidence" on the premise that a culprit kidnapping a minor girl with a sinister design would normally take the precaution not to be seen by any other person on the way, but in this case the culprit along with the girl had moved from place to place in the town. Such a reasoning as a proposition of human conduct cannot be accepted. The victim would certainly have been abducted by somebody (even assuming that it was not this respondent) and that person had taken the abducted girl from her house up to the place of occurrence (farm). Unless it is suggested that there was another alternative and a safer route for the culprit to take the girl unnoticed by any shopkeeper or even a pedestrian, there is no rationale in the reasoning that there is "inherent incredibility" in the version that the respondent would have taken the girl through this route. (Para 19). *State of Maharashtra* v. *Suresh*, (2000) 1 SCC 471: 2000 SCC (Cri) 263.

Bench Strength **2**. Coram: *G.T. Nanavati* and **K.T. Thomas**, JJ. [Date of decision: 10-12-1999]

[9062] — Ss. 376 & 302 — Sentence — Rape and murder of 6 year old girl — *On facts held, not a "rarest of the rare" case — Hence sentence of death commuted to that of life imprisonment*

However, in the present case, there is nothing on record to indicate that the appellant was having any criminal record nor can it be said that he will be a grave danger to the society at large. It is true that his act is heinous and requires to be condemned but at the same time it cannot be said that it is the rarest of the rare case where the accused requires to be eliminated from the society. Hence, there is no justifiable reason to impose the death sentence. Therefore, the sentence is modified by commuting the sentence of death to an imprisonment for life. For the offence punishable under Section 376 IPC, he is sentenced to undergo rigorous imprisonment for 10 years. Both the sentences to run concurrently. (Paras 8 and 9). *Bantu* v. *State of M.P.*, (2001) 9 SCC 615: AIR 2002 SC 70.

Bench Strength **2**. Coram: **M.B. Shah** and *Doraiswamy Raju*, JJ. [Date of decision: 17-10-2001]

[9063] — Ss. 376 & 302 — Sentence — Rape and murder of girl aged 11 years — Accused had no intention to commit murder of the deceased — *When deceased said that she would disclose about the commission of rape to her house, accused on the spur of the moment without any premeditation caused injury on her head by hurling brick which resulted in her death — Accused having no criminal record nor can he be said to be a grave danger to the society at large — Held, it was not a rarest of the rare cases and hence imposition of death sentence not justified — Instead life imprisonment proper.* *Raju* v. *State of Haryana*, (2001) 9 SCC 50: AIR 2001 SC 2043: 2001 Cri LJ 2580.

Bench Strength **2**. Coram: **M.B. Shah** and *Brijesh Kumar*, JJ. [Date of decision: 2-5-2001]

State of Haryana v. Raju, 2000 Cri LJ 2726 (P&H), partly affirmed

[9064] — Ss. 376 and 302 — When can an accused be convicted solely on the basis of circumstantial evidence — Principles reiterated — *Rape and murder of a girl aged 5 years — Circumstances relied on by prosecution not found to be incriminating circumstantial evidence against accused — Held, courts below erred in convicting the accused on that basis — Evidence Act, 1872, S. 3*

The Court has to proceed to examine each of the pieces of incriminating circumstantial evidence so as to find out if each one of the circumstantial evidence is proved individually and whether collectively it forges such a chain of incriminating circumstances as would fasten the guilt on the accused beyond any shadow of reasonable doubt. None of the pieces of evidence relied on as incriminating, by the trial court and the High Court, can be treated as incriminating pieces of circumstantial evidence against the accused. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any

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other reasonable hypothesis excepting the guilt of the accused. "Human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions". Between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict. (Paras 6 and 24). *Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487; Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315, relied on

[9065] — Ss. 376, 302 and 201 — Rape and murder — Victim, a girl aged about 10 years — Eyewitness claiming having seen the accused throttling the victim — *Evidence as to last seen together — Acquittal by the High Court — Propriety — Victim seen chewing sugarcane at "**kolhu**" of accused **D** — Later on seen going with **D** towards his sugarcane field — Not returning to her home — Complainant **B** (father of victim) going to the sugarcane field of **D** for searching the victim there — **D** not permitting him to do so — Thereafter, **B** taking "**Pardhan**" of the village and other persons with him making search there — Dead body of victim found buried in the said field — On such facts, held, conviction by trial court was proper — High Court erred in setting aside the same — CrPC, 1973, Ss. 386 and 374(2)* (Paras 7 to 9). *State of U.P.* v. *Devendra Singh*, (2004) 10 SCC 616: AIR 2004 SC 3690: 2004 Cri LJ 3118.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-4-2004]

[9066] — Ss. 376, 302, 363 & 201 — Child rape — Sentence — *Rape and murder of a 3 year old girl — Trial court imposing death sentence but High Court acquitting the accused-respondent — Held, though this case is perilously near the region of "rarest of the rare cases", but as the accused was once acquitted by High Court the extreme penalty need not be imposed, the lesser option being not unquestionably foreclosed — Hence death sentence altered to that of life imprisonment* (Para 23). *State of Maharashtra* v. *Bharat Fakira Dhiwar*, (2002) 1 SCC 622: 2002 SCC (Cri) 217: AIR 2002 SC 16: 2002 Cri LJ 218: (2002) 1 CHN (Supp) 7.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 2-11-2001]

[9067] — Ss. 376, 302, 363 and 366 — Rape and murder of child by watchman — Death sentence, held, not warranted in this case — *Appellant-accused aged about 27 years was watchman of building where deceased was residing — Death sentence imposed by trial court affirmed by High Court — Difference of opinion amongst Judges of Division Bench of Supreme Court as regards award of capital punishment in* Rameshbhai (1) case, *(2009) 5 SCC 740 — Possibility of rehabilitation and reformation of young offender — Uncertainty due to nature of circumstantial evidence — Hence held, death sentence cannot be maintained — Considering gravity of offence, behaviour of appellant, and fear and concern such incident generate in ordered society, death sentence commuted to life imprisonment directing that life sentence would extend to full life of appellant subject to any remission/commutation at instance of Government for good and sufficient reasons — CrPC, 1973, Ss. 366, 368, 415, 432 and 433 — Constitution of India, Arts. 72 and 161* (Paras 9 to 12). *Rameshbhai Chandubhai Rathod (2)* v. *State of Gujarat*, (2011) 2 SCC 764.

Bench Strength **3**. Coram: **H.S. Bedi**, *P. Sathasivam* and *C.K. Prasad*, JJ. [Date of decision: 24-1-2011]

Ramraj v. State of Chhattisgarh, (2010) 1 SCC 573: (2010) 1 SCC (Cri) 842; Mulla v. State of U.P., (2010) 3 SCC 508: (2010) 2 SCC (Cri) 1150; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358, distinguished on facts

Opinion of A.K. Ganguly, J. in Rameshbhai Chandubhai Rathod (1) v. State of Gujarat, (2009) 5 SCC 740: (2009) 2 SCC (Cri) 881, affirmed

[9068] — Ss. 376 and 342 — Rape of a minor — Appreciation of evidence — Conviction restored — Non-reliance on medical report since time of occurrence not determined — *Doctor who examined prosecutrix finding signs of recent sexual act but also accepting suggestion of accused that intercourse could have taken one week prior to her examination — Prosecutrix telling the doctor that accused had also sexually molested her one year prior to the alleged occurrence — Doctor finding hymen absent but categorically stating that prosecutrix was not habitual to sexual intercourse because her vagina admitted one finger only — Medical report, thus, corroborated by prosecutrix that she was earlier also raped by same accused — High Court acquitting the accused holding that when the doctor herself was unclear about the actual date of alleged rape, medical report could not be relied upon — While doing so, High Court ignoring the fact that doctor had also stated that* *there was possibility of recent intercourse i.e. within a week of her examination — Held, High Court appreciated the evidence erroneously by ignoring cogent and credible evidence of PWs 3, 4 and 5, which was further corroborated by medical evidence — Hence, impugned judgment acquitting accused set aside, and that of trial court convicting him under Ss. 376 & 342 restored*

Facts:

On 15-3-2000, when parents of the prosecutrix had gone to visit her maternal uncle, her elder sister PW 4 had gone to the jungle to fetch leaves for goats, the accused is alleged to have taken the prosecutrix (minor) to his home, bolted the door of the room from inside, switched on the TV, gagged, and raped her. Thereafter he gave her Rs 5 and some "shakkar". Prosecutrix narrated the incident to PW 4. Her parents were informed about the occurrence on 16-3-2000 on their return. PW 4 also handed over to PW 5 (mother) currency note of Rs 5 given to her by the prosecutrix.

The trial court convicted the accused under Ss. 376 and 342 and sentenced him to RI for 7 years and fine of Rs 2000, and RI for 1 year respectively. The High Court acquitted the accused in appeal filed thereagainst. Hence, the present appeal.

Allowing the appeal, the Supreme Court held as above.

Held :

It was clearly proved and established that prosecutrix was a minor on the date of occurrence. Prosecutrix was examined on 17-3-2000 and she told the doctor that she had been sexually molested by accused about a year back. On examining her the doctor found signs of recent sexual act, as there was small reddened area over the left upper margin of hymen. In the cross-examination, the doctor has categorically stated that the prosecutrix was not habitual to sexual intercourse because her vagina admitted only one finger. The doctor, however, admitted that absence of hymen proves that she had been used to sexual intercourse earlier. (Paras 10 and 11)

The aforesaid medical report of the doctor is corroborated by the statement made by the prosecutrix that she was earlier also raped by the same accused. As against the suggestion of the accused that the sexual intercourse as alleged would have taken place more than one week prior to 17-3-2000, the doctor while accepting the same also stated that there can be a possibility of recent sexual intercourse i.e. within a week from 17-3-2000, which cannot be ruled out because of the redness on the margin of hymen. (Para 12)

The High Court mainly relied upon the opinion of the doctor holding that the doctor herself was unclear about the actual date of the alleged rape, and therefore, the said medical report could not be relied upon. While doing so, the High Court ignored the fact that the doctor had also stated that there can be a possibility of recent sexual intercourse i.e. within a week from 17-3-2000. The alleged rape was in fact committed within a week from 17-3-2000 i.e. on 15-3-2000. The fact that the prosecutrix was subjected to rape on 15-3-2000 is proved and established from the statement of the prosecutrix, medical report and the statement of the doctor (PW 8), who had examined the prosecutrix. The doctor had also stated that hymenal appearance cannot rule out recent coitus. Therefore, it is also proved and established beyond doubt that the prosecutrix was subjected to rape on 15-3-2000. (Para 13)

Further, prosecutrix had categorically stated that it was the accused who had raped her, and her statement was corroborated by PWs 4 and 5. (Para 14)

Submission that there is no other independent witness to support the aforesaid allegation is also baseless. In case of this nature when the prosecutrix, who was a minor girl on the date of incident, has come forward and stated that she was raped by the accused and her testimony could not be shaken in the cross-examination, we have no reason to disbelieve her for no girl would ever lie on a vital issue of this nature. Even her sister and mother also stated as to what was reported by the prosecutrix herself immediately after the alleged occurrence. Besides, there was PW 6 who though turned hostile at one stage of her examination, admitted that PW 5 had come to her house along with her daughter and narrated the incident to her. (Paras 15 and 16)

Submission by the respondent-accused that the prosecutrix was habitual to sexual intercourse since her hymen was absent also liable to be rejected because the prosecutrix has stated that the accused himself had earlier raped her about a year back. It is also disclosed from the medical report that the prosecutrix was not habitual to sexual intercourse as the doctor herself stated that the prosecutrix was not used to sexual intercourse because her vagina admitted only one finger. She has explained that there was redness over the margin of hymen and on the basis of this redness, the possibility of recent sexual intercourse could not be ruled out. As the testimony of the prosecutrix, her sister and mother has not been shaken in the cross-examination, the

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statement of the doctor appears to be a plausible and convincing version. (Para 17)

Further submission of accused that evidence of PWs 3 and 4 should not be relied upon because they were child witnesses and tutored by their parents and police, is unacceptable. Testimonies of PWs 3 and 4 as regards the alleged occurrence was firm and convincing. There was no reason as to why a child of her age would falsely implicate the accused. Besides, it is settled position in law that conviction under Section 376 on sole testimony of a rape victim can be maintained if her evidence is found credible and convincing. (Paras 18 and 19)

Evidence of PWs 3 and 4 was found cogent, credible and uninfluenced by any tutoring. The High Court erroneously appreciated the evidence by ignoring credible evidence of two child witnesses statement of their mother, which was further corroborated by medical evidence. Hence, judgment of the High Court set aside and that of the trial court restored. (Paras 22 to 24). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210; Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, followed

Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, applied

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210, considered and relied on

[9069] — Ss. 376 and 354 — Sexual assault or indecent assault — *Victim aged about 5 years — Doctor finding the hymen completely torn, laceration on all sides of vagina and fresh bleeding — Evidence of lady doctor showing that a finger could be easily inserted inside the private part — Held, the victim was subjected to sexual assault and not merely indecent assault — Merely because the injuries found on the private part of the victim could also be caused by an instrument like a piece of glass cannot lead to the conclusion that she was not raped unless there is material to support such a conclusion*

The victim girl was brought to the hospital in a semi-conscious state and her general condition was poor. On external examination of the girl the doctor found that the hymen was completely torn and there was laceration on all sides of vagina. The doctor noticed that there was fresh bleeding in her private part. On internal examination the doctor found that a finger could easily be inserted in her private part and bloodstained discharge was coming out. Thus from the medical evidence it is clear that the girl was not only subjected to an indecent assault but there was sexual activity and the girl was subjected to sexual assault, otherwise the doctor would not have found the hymen completely torn, laceration on all sides of the vagina and fresh bleeding. According to the evidence of lady doctor a finger could be easily inserted inside the private part of the victim which otherwise was not possible in the case of a child aged 5 years because according to the *Medical Jurisprudence* by Modi, 21st Edn., p. 376, in a girl under 14 years of age the vaginal orifice is usually so small that it will hardly allow the passage of the little finger through her hymen. In the present case if the girl aged 5 years was not subjected to sexual intercourse the finger could not have been easily inserted in her private part as observed by the lady doctor.

Simply because the injuries found on the private part of the girl could also be caused in several other ways than the sexual assault on the victim cannot lead to the conclusion that the injuries on her private part were not sustained by commission of the rape but by some other instrument in the absence of any material to support such a conclusion. In the present case though the doctor deposed that the injuries could also be caused by instrument like piece of glass but there were neither circumstances nor any material to conclude or even to suggest that the victim had sustained the injuries by any piece of glass. No piece of glass was found at or near the place of occurrence. On the contrary there is positive and convincing evidence showing that there was sexual assault on the girl and the finding that she was subjected to indecent assault is absolutely incorrect. *State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[9070] — Ss. 376, 363 and 302 — Rape and murder of victim — If a "rarest of rare case" — Award of death penalty by trial court — *Held, case not "rarest of the rare" — In facts and circumstances of case, death penalty not justified — Commuted to sentence of life imprisonment* (Para 8). *State of Maharashtra* v. *Mansingh*, (2005) 3 SCC 131: 2005 SCC (Cri) 657.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 19-8-2004]

[9071] — Ss. 376, 363, 366 and 368 — Age of victim — Prosecutrix abducted and forcibly subjected to sexual intercourse by the accused persons without her consent and against her will

— Question of age of the victim not relevant — *However, on facts, evidence of father and mother of the victim that she was below 16 years of age on the date of incident is fully corroborated by medical evidence and school leaving certificate. State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

[9072] — Ss. 376, 363 and 366-A — Rape, kidnapping and procuration of minor girl — Age of minor — Benefit of doubt — When available — Prosecution failing to prove age of prosecutrix — *Prosecutrix found as being habitual to sex and her secondary sexual characteristics well developed (as per clinical report of PW 1) — Appellant-accused frequently visiting prosecutrix's house — Prosecutrix in love with appellant, never resisting being repeatedly deflowered by him — Allegation that prosecutrix under threat accompanied appellant on a bicycle to another village where she was raped by appellant and then brought back home — Non-performance of tests for proving age of prosecutrix prescribed by the doctor, held, is a serious flaw in prosecution version — In such circumstances, held, a close and careful examination of age of prosecutrix is imperative, which if not proved, accused is entitled to benefit of doubt, as in present case*

The appellant was convicted by the trial court under Sections 363, 366-A and 376 IPC. The appellant belonged to the same caste and gotra of the prosecutrix and he was visiting the house of the prosecutrix frequently. The finding of the High Court is that the prosecutrix fell in love with the appellant. The High Court also found that she did not ever resist her being repeatedly deflowered by the appellant.

The appellant submitted before the court that he was falsely implicated. No defence evidence was adduced on behalf of the appellant. Admittedly, no test identification parade was conducted in this case. The trial court on the basis of evidence on record came to the conclusion that the appellant kidnapped a minor girl and induced her to go to Village Kalka Madlya and committed rape on her and convicted the appellant. The High Court also found that the offences under Sections 363, 366-A and 376 IPC are proved against the appellant. The appellant aggrieved by the impugned judgment preferred this appeal on various grounds.

Allowing the appeal of the accused,

Held :

The short question in this appeal was as to whether the prosecutrix was a minor. It is clearly borne out from the evidence on record that the appellant belonged to the same caste and gotra of the prosecutrix and was a frequent visitor to the house of the prosecutrix. There was a love affair between them and the court also observed that she did not ever resist her being repeatedly deflowered by the appellant. (Paras 24 and 23)

PW 1, who had clinically examined the prosecutrix, found that her secondary sex characters were well developed. PW 1, after clinical examination of the prosecutrix, categorically observed that possibility cannot be ruled out that the prosecutrix was habitual to sex. In her report, PW 1 also stated that keeping in view the clinical examination, the possibility of rape cannot be ruled out. PW 2 made medico-legal examination of the appellant and found that he had the ability to perform sexual intercourse. In this background, close and careful determination of the age of the prosecutrix is imperative. (Paras 24, 7 and 23)

In a criminal case, the conviction of the appellant cannot be based on an approximate date which is not supported by any record. It would be quite unsafe to base conviction on an approximate date. PW 8, the father of the prosecutrix also could not give the correct date of birth of the prosecutrix. PW 8 stated that he was giving an approximate date without any basis or record. (Para 26)

The failure of getting the prosecutrix examined from the dental surgeon or the radiologist despite the fact that she was referred to them by PW 1 is a serious flaw in the prosecution version. It is not a rule that all these tests must be performed in all cases, but in the instant case, in the absence of primary evidence, reports of the dental surgeon and the radiologist would have helped in arriving at the conclusion regarding the age of the prosecutrix. (Para 24)

The prosecution also failed to produce any admission form of the school which would have been primary evidence regarding the age of the prosecutrix. The school leaving certificate produced by the prosecution was also procured six days after the incident and three days after the arrest of the appellant. As per that certificate also, she joined the school in the middle of the session and left the school in the middle of the session. The attendance in the school of 100 days is also not reliable. The prosecutrix was admitted in the school by *A*, her brother. *A* was not examined. The alleged school leaving certificate on the basis of which the age was entered in the school was not produced. (Para 25)

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On consideration of the totality of the facts and circumstances of this case, it would be unsafe to convict the appellant when there are so many infirmities, holes and lacunae in the prosecution version. The appellant is clearly entitled to the benefit of doubt and consequently the appeal filed by the appellant deserves to be allowed. The appellant is directed to be released forthwith, if not required in any case. (Para 27). *Sunil* v. *State of Haryana*, (2010) 1 SCC 742.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 4-12-2009]

Modi's Medical Jurisprudence, referred to

[9073] — Ss. 376, 364 and 302 — Circumstantial evidence — Conviction on the basis of — Sustainability — *Appellant-accused alleged to have raped and murdered deceased, aged five years — Accused caught red-handed in completely naked state thrusting a stem/stick of dhanicha in vagina of deceased — Held, for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission — Offence can be proved by circumstantial evidence also — Principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts — Circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed — In the instant case accused wanted to camouflage the serious crime of rape and so in a planned manner, after committing rape, he mercilessly inserted stem/stick deep inside the fragile vagina of the girl to the extent of 33 cm to cause her death, with a view to masquerade the crime as an accident — It was just by providence that due to timely reach of the witnesses (PWs 2, 3 and others) who were frantically searching the girl that he could be caught in naked condition while inserting a stick into the vagina of the lifeless body of the victim — Hence, conviction of appellant for offences punishable under Ss. 364, 376 & 302 IPC imposed by trial court and as affirmed by High Court, held, sustainable* (Paras 3, 17, 18 and 19). *Bantu* v. *State of U.P.*, (2008) 11 SCC 113.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 23-7-2008]

Wills' Circumstantial Evidence' (Chapter VI), cited

[9074] — Ss. 376 and 366 — Abduction and rape of a minor girl aged about 10/11 years — *Prosecutrix being below the age of consent finding of the High Court that she was of a loose moral character and might have gone with the accused herself demolishing the case of abduction, held, not sustainable — Conviction restored — However, sentence reduced to the period already undergone which was about 5 years' RI. State of U.P.* v. *Om*, 1998 SCC (Cri) 1343.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Venkataswami*, JJ. [Date of decision: 21-7-1997]

[9075] — Ss. 376 and 366 — Rape — Quantum of fine — Financial constraints of the appellant-accused — Relief — Rape of a girl less than twelve years — *For offence under S. 376, punishment of RI for ten years and fine of Rs 50,000 imposed, while for conviction under S. 366 RI for five years and fine of Rs 5000 imposed — Supreme Court considering the financial status of the appellant and his inability to pay the imposed fine, reducing the same to Rs 5000 for offence under S. 376 and to Rs 500 for offence under S. 366, with default stipulation — Further, suo motu, State Govt. directed to pay Rs 20,000 as ex gratia amount to the mother of the victim (since married), and not to the victim herself, in her own interest, considering the facts as disclosed in the affidavit filed by the Additional Superintendent of Police* (Paras 2, 4 and 5). *Shyama* v. *State of Rajasthan*, (2004) 13 SCC 544.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 17-12-2004]

[9076] — Ss. 376 and 366 — Rape of minor — Sentence — Moulding of punishment — *Respondent-accused found guilty under Ss. 366 and 376 IPC and sentenced to three years' and seven years' RI respectively, and fine of Rs 500 with default stipulation for each offence imposed by trial court — High Court though confirming the conviction, reducing the sentence to period already undergone — Appellant aged about 19 years while victim was less than 16 years — Evidence showing that accused and victim were in love with each other and victim admitted that she had sexual intercourse with accused because of that — Father of the victim filing an affidavit before High Court stating that since the victim was settled in life a liberal view may be taken — Held, her admission was irrelevant because she was less than 16 years of age — But considering the facts sentence fixed at three years' RI and fine of Rs 10,000 with default stipulation imposed — Out of the deposited amount of Rs 8000* *directed to be paid to victim — Parameters relating to imposition of lesser sentence for offence relatable to S. 376 discussed through case law* (Paras 2 and 5 to 7). *State of Punjab* v. *Rakesh Kumar*, (2008) 12 SCC 33.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 29-8-2008]

Iqbal v. State of Kerala, (2007) 12 SCC 724, followed

[9077] — Ss. 376 and 366 — Sentence — Minimum statutory sentence — Deviation from — When impermissible — Rape of minor — *Respondent-accused alleged to have taken away the prosecutrix who was a minor but married from the lawful custody of her father, without his consent with the intention of forcing her to have sexual intercourse with him, and committed the offence against her will and without her consent — Trial court convicting him under Ss. 366/376 and sentencing him to 7 years' RI and fine of Rs 500 for each offence with default stipulation — High Court in appeal filed thereagainst reducing the sentence to period already undergone which was 4 years and 2 months observing that "she was a sensible girl having age of 15 years, she did not complain to anybody and lived for several days with the respondent at Chhatarpur" — Fact that she was a minor and subjected to rape and furthermore, according to her testimony she was compelled to live for several days with the respondent at Chhatarpur as he would not listen to her plea of taking her to her father lost sight of by High Court — Medical examination assessing her age to be between 11 to 13 years and rendering an opinion that rape was committed on her and she was not habituated to sexual intercourse — Affidavit affirmed by her stating her age to be 18 years found to have been obtained without her knowing the contents thereof and at the instance of respondent — Held, very fact that she was made to state that her age was 18 years and she was living with the respondent as a wife clearly goes to show the mental trauma which she was undergoing — Contents of the said affidavit were wrongly used for imposing a sentence less than the minimum prescribed sentence considering the same to be mitigating factor — Age of the prosecutrix was assessed between 11 and 13 years, but by way of abundant precaution, the Sessions Judge held her age to be less than 13, but did not award any punishment in terms of S. 376(2)(f) — Minimum statutory sentence was imposed by trial court which should have met the approval of the High Court — It was also not a case where the proviso to S. 376 could be invoked — Hence, judgment of High Court set aside so far as it relates to the quantum of sentence and sentence awarded by trial court restored* (Paras 11, 12, 14 and 19 to 22). *State of M.P.* v. *Bablu Natt*, (2009) 2 SCC 272: (2009) 1 SCC (Cri) 713: AIR 2009 SC 1810: (2009) 1 KLJ 686 (SC): (2009) 2 ECrN 504 (SC): 2009 Cri LJ 1722.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-12-2008]

State of M.P. v. Bala, (2005) 8 SCC 1: 2005 SCC (Cri) 1947; State of Karnataka v. Raju, (2007) 11 SCC 490: (2008) 1 SCC (Cri) 787; State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230: 1995 SCC (Cri) 1097, considered and relied on

[9078] — Ss. 376 and 366 — Sentence — Rape of a minor girl aged 15 years by a young boy of 17 years of age — *Prosecutrix a consenting party — In view of the fact that it was a one-time act and also the young age of the appellant sentence of imprisonment reduced to the period already undergone with a fine of Rs 12,000 to be paid to the prosecutrix as compensation. Jarnail Singh* v. *State of Punjab*, (1998) 8 SCC 629: 1998 SCC (Cri) 1617.

Bench Strength **2**. Coram: *M.M. Punchhi* and *Sujata V. Manohar*, JJ. [Date of decision: 18-3-1996]

[9079] — Ss. 376, 366 and 506 — Rape of a minor girl aged 13 years by holding out threats — *Underwear of the accused, salwar of the prosecutrix and chaddar alleged to have been spread by the accused at the time of committing rape found to contain same group of semen — Vaginal swab also indicating presence of semen — Injuries found on the person of the accused also tallying with the time when the commission of rape was alleged — Prosecutrix found weeping by her neighbour immediately after the incident and the accused also found leaving the place at that time — Prosecutrix also complaining to the said neighbour about the rape committed on her — Held, in the circumstances of the case guilt of the accused is made out. State of Haryana* v. *Jang Bahadur*, 1998 SCC (Cri) 693.

Bench Strength **2**. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 23-7-1997]

[9080] — Ss. 376 and 375 — Rape — Ingredients — Hymen of victim remaining intact, hence submission that charge of rape under S. 376 as defined in S. 375 not made out — *Held on facts, victim was a very young girl of six years of age and it is quite likely that full penetration did not take place as the accused was a grown-up person of over 20 years of age — However, injuries clearly indicate that rape, as defined in S. 375, did take place* (Paras 15, 16 and 11). *Rajendra Datta Zarekar* v. *State of Goa*, (2007) 14 SCC 560: AIR 2008 SC 572: 2008 Cri LJ 710.

Bench Strength **2**. Coram: **G.P. Mathur** and *G.S. Singhvi*, JJ. [Date of decision: 4-12-2007]

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Santosh Kumar v. State of M.P., (2006) 10 SCC 595: (2007) 1 SCC (Cri) 28, considered and relied on

Modi's Medical Jurisprudence and Toxicology, 21st Edn., at p. 369; Parikh's Textbook of Medical Jurisprudence and Toxicology, cited

[9081] — Ss. 376 and 375 — Rape on minor girl (aged 11 to 12 years) — Absence of spermatozoa — Girl profusely bleeding — *Leaves on which blood was wiped and swab, found from place of occurrence, along with blood-stained salwar sent to Chemical Analyzer and Serologist — According to report no spermatozoa found on the materials sent for examination — Held, mere absence of spermatozoa cannot cast a doubt on correctness of prosecution case. Prithi Chand* v. *State of H.P.*, (1989) 1 SCC 432: 1989 SCC (Cri) 206: AIR 1989 SC 702: (1989) 1 SCR 123: 1989 Cri LJ 841.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 17-1-1989]

[9082] — Ss. 376 and 375 — Rape on minor girl (aged 11 or 12 years) — Penetration — Proof of

It was argued that having regard to the girl's age and the fact that her vagina admitted one finger with difficulty, it is not possible to believe that there was penetration.

Held :

In the absence of penetration there would not be absence of hymen with the edges torn and profuse bleeding from the vagina staining the salwar. Merely because the doctor found that the vagina admitted one finger with difficulty, it cannot be inferred that there was no penetration as the muscles must have contracted by then. The accused-appellant, a robust man must have penetrated the vagina. *Prithi Chand* v. *State of H.P.*, (1989) 1 SCC 432: 1989 SCC (Cri) 206: AIR 1989 SC 702: (1989) 1 SCR 123: 1989 Cri LJ 841.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 17-1-1989]

[9083] — Ss. 376 & 375 and 366 — Rape of minor — Benefit of doubt — When available — *Doubtful facts and circumstances being: (1) though fact of abduction of PW 2 (victim girl) on 31-7-1993 was immediately brought to notice of PW 1 (father of victim), PW 1 lodging FIR on 2-8-1993, (2) false implication by father not being ruled out because victim girl could have run away to avoid an arranged marriage, (3) there being no evidence of previous involvement of A-1 with victim, (4) important witnesses of abduction and forced marriage not having been examined, (5) there being no evidence of victim being forcibly taken in car, (6) close relations of girl witnessing alleged forced marriage in temple not lodging a complaint with police or rescuing girl, (7) victim not even raising a cry in temple when she was being married forcibly, (8) there being contradiction in evidence of victim's father and victim, (9) evidence of victim being wholly unreliable and contrary to evidence, and (10) it not being conclusively established that girl was minor — Appellants, held, are entitled to benefit of doubt — Hence, acquitted — Prosecution story of A-1 abducting and forcefully marrying PW 2 and then raping her have not been proved beyond reasonable doubt* (Paras 31 to 35). *Alamelu* v. *State*, (2011) 2 SCC 385.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 18-1-2011]

[9084] — Ss. 376 and 375 Fifthly — Prosecutrix below or about 16 years of age — *Held, consent immaterial — Absence of violent or stiff resistance and the absence of marks of violence on private parts or elsewhere, held, of no consequence*

Where a person on whom rape is committed is under 16 years of age, even consent is immaterial (vide Fifthly of S. 375) and penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape (vide explanation to S. 375). The suggestion that, there being no marks of violence on the private parts or elsewhere on the person of the prosecutrix, there could be no offence of rape on her, is wholly misconceived. *Gurcharan Singh* v. *State of Haryana*, (1972) 2 SCC 749: 1972 SCC (Cri) 793: AIR 1972 SC 2661: (1973) 2 SCR 197: 1973 Cri LJ 179.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 13-9-1972]

[9085] — Ss. 376, 375 Fifthly (old), 366 and 342 — Abduction, rape and wrongful confinement — *Prosecutrix, a village girl, abducted at knife point and wrongfully confined for one month at different places — Accused 1 committing rape on her — Her evidence found to be truthful and required no corroboration — However, her evidence was corroborated by medical evidence and circumstantial evidence, viz., underwear of the accused and petticoat of the prosecutrix — Prosecutrix being a minor (aged between 15-17 years) question of consent does not arise — Therefore, plea that she was a consenting party is not tenable — Conviction of accused persons upheld — But the High Court committed grave error of law in reducing the sentence to the period already undergone i.e. 1½ months — Consequently sentence enhanced to 5 years' RI with fine. State of Rajasthan* v. *Ram Narain*, (1996) 8 SCC 64: AIR 1996 SC 2987.

Bench Strength **3**. Coram: *K. Ramaswamy*, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 23-1-1996]

[**Ed.**: Under Section 376 IPC age of consent is 16 years. In this case the doctor had opined that the prosecutrix was aged between 15 and 17 years. It has been held in *Jaya Mala* v. *Home Secy., Govt. of J&K*, (1982) 2 SCC 538: 1982 SCC (Cri) 502 that the margin of error in age ascertained by the radiological examination is 2 years. It is not clear as to how the court on the basis of the medical evidence alone came to a definite conclusion that the prosecutrix was a minor i.e. below 16 years of age.

Further the court has not considered the question of delay of one month in lodging the FIR for which the first informant had offered no explanation. Also conduct of the accused in bringing the girl to her native village is unnatural.

See also (1991) 2 SCC 379: 1991 SCC (Cri) 438; (1970) 3 SCC 21: 1970 SCC (Cri) 371; (1981) 1 SCC 560: 1981 SCC (Cri) 208]

[9086] — Ss. 376 & 375 Sixthly — Rape — Consent — Age of victim about 14 years at the time of offence — *Held, question of consent was of no consequence in the instant case* (Para 14). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[9087] — Ss. 376 and 375 Expln. — Rape on minor girl (aged 11 or 12 years) — Defence case that accused was falsely involved due to long standing enmity between accused's father and prosecutrix's father — *Held on facts, it is unbelievable that prosecutrix and her parents would allow the real culprit to escape and falsely involve an innocent person for commission of the crime. Prithi Chand* v. *State of H.P.*, (1989) 1 SCC 432: 1989 SCC (Cri) 206: AIR 1989 SC 702: (1989) 1 SCR 123: 1989 Cri LJ 841.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 17-1-1989]

[9088] — Ss. 376, 366 and 363/109 — Age — Determination of — Birth certificate issued by Municipality — Absence of name of child in — Reason for, given — Effect, if any — *Held, it is a matter of common knowledge that birth certificate issued by Municipality generally does not contain name of child, for the reason, that it is recorded on basis of information furnished either by hospital or parents just after birth of child and by that time the child is not named — Herein, defence contention, that courts below erred in placing reliance upon such birth certificate of PW 4 (rape victim), for determining her age, because it did not contain her name, set aside on aforementioned ground* (Paras 11 and 22). *Murugan* v. *State of T.N.*, (2011) 6 SCC 111.

Bench Strength **2**. Coram : *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision : 6-5-2011]

Umesh Chandra v. State of Rajasthan, (1982) 2 SCC 202: 1982 SCC (L&S) 200: 1982 SCC (Cri) 396; State of Bihar v. Radha Krishna Singh, (1983) 3 SCC 118, relied on

[9089] — Ss. 376, 366 and 363/109 — Kidnapping, forced marriage and rape — Minor victim — Alleged consent or volition of victim — Relevance — If once victim found to be a minor, then if issue of consent of any relevance — Victim, if was minor on date of incident (14 yrs old) — Determination of — *Reliance upon birth certificate given by Municipality and victim's school and evidence of her mother, for ascertaining her age — Concurrent finding of victim being a minor on date of incident, on basis of, upheld — Conviction confirmed — A-1, after kidnapping victim, forcibly married and raped her — A-2 and A-3 helped A-1 in the act — A-1 convicted under Ss. 376 & 366 and A-2 & A-3 under Ss. 363/109 — Sustainability — Prosecution submission that if finding recorded by courts below on minority of victim remains undisturbed, no other issue is required to be examined — Tenability — Held, birth certificate of victim issued by Municipality, shows date of birth, date of registration and registration number — Names of victim's parents and their address have also been correctly mentioned — Thus, there is no reason to doubt veracity of said certificate — More so, school certificate has been issued by Headmaster on basis of entry made in school register, which corroborates contents of birth certificate issued by Municipality — Both these entries in school register as well as in Municipality, came much before criminal prosecution started — Those entries stand fully supported and corroborated by evidence of PW 15 (mother of victim) — She had been cross-examined at length, but nothing could be elicited to doubt her testimony — Suggestion put to her by defence, that she was talking about age of her younger daughter and not victim, was flatly denied — Her deposition remained unshaken and is fully reliable — In facts and circumstances, there is no reason to hold that victim was major on date of incident — Defence submission that PW 4 (victim) went voluntarily with A-1, as she was in love with him and wanted to marry him, hence of no use — In view thereof, no other issue is required to be considered — Therefore, conviction of appellants confirmed — Evidence Act, 1872, S. 35* (Paras 23, 26 and 27). *Murugan* v. *State of T.N.*, (2011) 6 SCC 111.

Bench Strength **2**. Coram : *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision : 6-5-2011]

Mohd. Ikram Hussain v. State of U.P., AIR 1964 SC 1625: (1964) 2 Cri LJ 590, relied on

6. Rape of minor/Statutory rape *(contd.)*

[9090] — Ss. 376 and 376(2)(f) — Rape on a girl of eight years — *Absence of injury on private parts of accused — Held, will not be of much help to accused as he was medically examined four days after the incident in question*

The accused-respondent herein alleged to have committed rape on a girl of eight years. The father of the victim was out of station on the date of occurrence i.e. 6-3-1990. When he came back to home on 7-3-1990, he was told about the incident in question. The father decided that the accused should be first traced and taken to the police station and thereafter they should lodge a complaint. On finding the accused on 10-3-1990 the parents of the victim went to the police station and lodged a complaint in respect of the said incident. The trial court found the accused guilty of the offence charged and sentenced him to undergo RI for 10 years. In appeal, the High Court set aside the said conviction and sentence. The High Court found that the delay in lodging the complaint was fatal to the prosecution case. It held that it was not safe to rely on the evidence of the victim (PW 2) to base a conviction because there was some discrepancy as to the act of penetration while committing rape in the evidence of the victim and the evidence of the doctor. Relying on a reply given by the doctor to a suggestion made by the defence that the injury suffered by a PW 2 could also be suffered by a hard and blunt object, the High Court inferred that the injury on the victim could have been suffered by her by falling on some such hard and blunt object. Since there was no injury on the private parts of the accused, the High Court inferred that the accused could not have committed rape on the minor without hurting himself on his private parts. In regard to the evidence of PW 2, the High Court was of the opinion that she being a child witness, it was possible that she could have been tutored.

Restoring the conviction recorded by the trial court but reducing the sentence,

Held :

It is now well established that if the court is satisfied from the evidence of the victim a conviction can be solely based on such evidence without looking for further corroboration. Same can be done because the prosecutrix is no more treated as an accomplice in the crime. (Para 6)

The doctor stated that the injuries suffered by PW 2 could not have been self-inflicted. There was blood on her private parts, the hymen was torn and medial side of the labia minora was inflamed. This was even after 4 days of the incident. The mere fact that the doctor replied to a suggestion made in the cross-examination that such injuries could be suffered by the victim by falling on a hard and blunt substance, by itself, would not suffice to reject the evidence of PW 2 who had no enmity whatsoever to implicate the respondent. The suggestion which has come in the form of Section 313 CrPC statement merely says that there was some enmity between the parents of the accused and those of the victim. Neither the nature of enmity nor gravity of the same has been stated, therefore, that explanation would be of no assistance to the accused to establish the fact that he has been falsely implicated. The factum of injury suffered by PW 2 and the opinion of the doctor that such injury could have been caused by sexual intercourse and the victim having not been habituated to earlier sexual intercourse itself goes to show that the injury suffered by the victim was one that could have been caused only by an act of rape as alleged by the prosecution. Even in identification of the accused by the victim there is no doubt because he was known to the victim. (Para 6)

Though there has been some delay in filing the complaint, the same has been explained by the mother of the victim. The fact that the father was out of station on the date of occurrence is not disputed. In such circumstances since it is a minor who was violated, the possibility of there being hesitation on the part of the mother to lodge a complaint cannot be overruled. Even otherwise, the mere factum of delay in filing complaint in regard to an offence of this nature by itself would not be fatal so as to vitiate the prosecution case. (Para 7). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

[9091] — Ss. 376 and 506 — Rape — False implication — Plea of — Sustainability — Accused was teacher of victim — *Stand of accused that he was falsely implicated because the brother of the victim was not successful in the examination and therefore his family had grudge against him, held, unacceptable — The incident involving the accused and mother and brother of the victim took place about a decade back — Not even a remote possibility of the same being the foundation for false implication — That apart, no girl of a tender age and her parents would like to jeopardise her entire future by falsely implicating a person alleging forcible sexual intercourse — Hence contention regarding false implication rejected* (Para 22). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[9092] — Ss. 376 and 506 Pt. II — Rape — Consent — Meaning and inference of — Consent and submission — Distinction between — Victim, a girl whose mental faculties were undeveloped cannot legally give consent — *Where such a girl was ravished by accused several times, held, such a victim could not be said to have suffered sexual intercourses with consent — For constituting consent there must be exercise of intelligence based on the knowledge of the significance and the moral effect of the act — Consent is different from submission as every consent involves a submission but the converse does not follow — In law, an act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance or passive giving-in when the faculty is either clouded by fear or vitiated by duress or impaired due to mental retardation or deficiency, held, cannot be considered to be consent — It has to be a conscious and voluntary act — Evidence Act, 1872, S. 114-A* (Para 6). *Tulshidas Kanolkar* v. *State of Goa*, (2003) 8 SCC 590.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-10-2003]

[9093] — Ss. 376 Sixthly and 375 — Rape of a girl below sixteen years — Delay of ten days in filing FIR — Explanation that delay caused due to deliberations in the family whether to take the matter involving family honour to the court, held, reasonable — *Testimony of prosecutrix consistent save a few minor contradictions and corroborated by her father and brother to whom she had related the details of the occurrence without delay after she was rescued — Conviction under S. 376 and four years' RI upheld. Harpal Singh* v. *State of H.P.*, (1981) 1 SCC 560: 1981 SCC (Cri) 208: AIR 1981 SC 361: 1981 Cri LJ 1.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 14-11-1980]

[9094] — S. 376(1) — Rape of prosecutrix aged below 16 years — Appreciation of evidence — *Evidence of prosecutrix (a school girl) not only corroborated by prosecution witnesses but also by medical evidence — Chemical examiner's report about presence of seminal stains on the lehnga worn by the prosecutrix also supporting the prosecution case — Lack of semen stains on the clothes of the accused was natural as he was examined more than 23 days after the incident — Narration of the incident to several independent witnesses without any discrepancy correctly admitted by trial court under S. 157 of Evidence Act as corroborative of prosecutrix's testimony — Statement of prosecutrix's father that his daughter was aged 15 years at the time of the incident not challenged — X-ray report to the effect that prosecutrix was aged about 16 years given by the doctor who admitted that she was not a specialist in radiology and therefore was not competent to determine the age — On facts held, there was no reason to disbelieve the evidence of the prosecutrix as regards the rape by the accused-respondent — Enmity alleged by the accused for falsely implicating him rightly rejected by trial court on the ground that given the present social ethos in this country, it was improbable that either the girl or her parents would set up such a case — Reasoning given by High Court in disbelieving the prosecutrix's testimony was entirely unacceptable — Evidence Act, 1872, S. 157. State of Karnataka* v. *Manjanna*, (2000) 6 SCC 188: 2000 SCC (Cri) 1031: AIR 2000 SC 2231: 2000 Cri LJ 3471.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *D.P. Wadhwa* and *Ruma Pal*, JJ. [Date of decision: 4-5-2000]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9095] — S. 376(1) (as amended by Act 43 of 1983) — Sentence — Rape on a helpless 13/14 year old girl — Absence of mitigating circumstances on record — *Accused deserves deterrent punishment — High Court not justified in reducing the sentence to less than the prescribed minimum without assigning any special and adequate reasons — Merely because the accused would have completed the sentence of imprisonment about 5 years ago is no ground to take a lenient view ignoring the mandate of law — Sentence of 4 years' RI enhanced to 7 years' RI — Accused to be taken in custody to undergo the remaining period of the enhanced sentence*

Keeping in view the nature of the offence and the helpless condition in which the prosecutrix a young girl of 13/14 years was placed, the High Court was clearly in error in reducing the sentence imposed upon the respondent and that too without assigning any reasons, much less special and adequate reasons. The High Court appears to have overlooked the mandate of the Legislature as reflected in Section 376(1) IPC. (Para 7)

There are no adequate and special reasons available on the record justifying reduction of sentence. To show mercy in the case of such a heinous crime would be travesty of justice and the plea for leniency is wholly misplaced. (Para 8). *State of A.P.* v. *Bodem Sundara Rao*, (1995) 6 SCC 230: 1995 SCC (Cri) 1097: AIR 1996 SC 530.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *K.S. Paripoornan*, JJ. [Date of decision: 22-9-1995]

6. Rape of minor/Statutory rape *(contd.)*

[9096] — Ss. 376(2) and 302 — Rape and murder of minor aged less than six years — If a "rarest of rare case" — *Held, rape is one of the most depraved acts — Such iniquitous, flagitious act becomes abominable when the victim is a child — The diabolic act reaches the lowest level of humanity when the rape is followed by brutal murder — Hence, Supreme Court has no hesitation in holding that present case falls in the rarest of rare category and death sentence awarded by trial court was appropriate — Guidelines and tests for imposition of death sentence laid down in —* Bachan Singh, *(1980) 2 SCC 684 and* Machhi Singh, *(1983) 3 SCC 470, pp. 471-72 and p. 489, para 38 [set out in para 26 in SCC], applied — Death sentence awarded by trial court restored*

The victim, who was not six years old lost her life on account of bestial acts of the respondent who allegedly raped her and thereafter murdered her. The victim had gone to school and did not return at the usual time. On the next morning her dead body was found in a sugarcane field around 6.00 a.m. She was found lying in a dead condition and blood was oozing from her private parts and there were marks of pressing on her neck. PW 7, the doctor conducted the post-mortem around 2.00 p.m. on the same day and opined that death had occurred within the preceding 24 hours.

Three persons claimed to have seen the accused nearby the place of occurrence between 1.00 p.m. to 2.00 p.m. on the date of occurrence. Two of them, namely, PW 3 and PW 5 claimed to have seen the deceased being carried on a bicycle by the accused who was taking the bicycle with the deceased sitting on the handle-bar thereof. PW 2 stated that he had seen the accused in perplexed state around 2.00 p.m. near the place from where the dead body of the deceased was found. Investigation was undertaken. During such investigation, there was recovery of the accused's underwear as also the undergarment the deceased was wearing.

Allowing the appeals and restoring the death sentence awarded by the trial court,

Held :

Rape is one of the most depraved acts. The iniquitous, flagitious act becomes abominable when the victim is a child. The diabolic act reaches the lowest level of humanity when the rape is followed by brutal murder. The Supreme Court has no hesitation in holding that the case at hand falls in the rarest of rare category and death sentence awarded by the trial court was appropriate. The acquittal of the respondent-accused is clearly unsustainable and is set aside. Guidelines and tests for imposition of death sentence laid down in *Bachan Singh*, (1980) 2 SCC 684 and *Machhi Singh*, (1983) 3 SCC 470, pp. 471-72 and p. 489, para 38 [set out in para 26 in SCC], applied. (Paras 2, 24, 26 and 31). *State of U.P.* v. *Satish*, (2005) 3 SCC 114: 2005 SCC (Cri) 642: AIR 2005 SC 1000: 2005 Cri LJ 1428.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 8-2-2005]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, applied

(2004) 1 All Cri R 760 (All), reversed

[**Ed.**: But in a similar situation (or worse, of abduction as well) other Benches of the Supreme Court in *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127 and *State of Maharashtra* v. *Mansingh*, (2005) 3 SCC 131, have felt defferently and awarded life imprisonment instead. On the other hand, earlier decisions of the Supreme Court in *Laxman Naik* v. *State of Orissa*, (1994) 3 SCC 381: 1994 SCC (Cri) 656; *Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220: 1994 SCC (Cri) 358; *Kamta Tiwari* v. *State of M.P.*, (1999) 9 SCC 581 have held death sentence appropriate where rape and murder of a minor girl was involved. Besides deterrence, retribution still survives as an object of punishment [*Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220: 1994 SCC (Cri) 358 and *Jacabo George (Dr.)* v. *State of Kerala*, (1994) 3 SCC 430: 1994 SCC (Cri) 774] and one may consider looking at the situation intimately from the perspective of John Grisham: A Time to Kill.]

[9097] — S. 376(2) and 302 — Sentence — Commutation of death sentence — Accused raping and murdering minor after abducting her in middle of the night, while asleep, from her home (after having had an altercation with her mother, brother and uncle, the mother having refused him sexual favours) and throwing body into a pond — *Appellant aged 36 years at time of occurrence, impecunious, a migrant labourer and there being no evidence that he had been involved in any other criminal case previously — Held, it could not be said that he would be a menace to society in future, and no materials had been placed on record to draw such a conclusion — This is not a "rarest of rare" case — Death penalty was not warranted — Hence death sentence commuted to life imprisonment*

This is not a "rarest of rare case" in which death penalty should be imposed on the appellant. The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had been involved in any other criminal case previously and the appellant was a migrant labourer from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to society in future and no materials have been placed on record to draw such a conclusion. The death penalty was not warranted in this case. The conviction of the appellant is confirmed on all the counts, but the sentence of death penalty imposed on him for the offence under Section 302 IPC is commuted to life imprisonment. (Para 13). *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127: 2005 SCC (Cri) 653: AIR 2004 SC 4862: 2004 Cri LJ 4642.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 16-9-2004]

[**Ed.**: It is noted in para 9 that the "previous conduct ... would prove that the appellant was prone to do such crime". In this regard see *State of U.P.* v. *Satish*, (2005) 3 SCC 114, above.]

[9098] — Ss. 376(2) proviso & 376(2)(f) — Applicability of proviso to S. 376(2) — Rape on child below 12 years of age — Imposition of sentence below the prescribed minimum of 10 years — Impermissibility — *Held, normal sentence in such case is not less than 10 years — Courts are obliged to respect the legislative mandate in this regard — Recourse to the aforesaid proviso can be had only for "special and adequate reasons" and not in a casual manner — Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case — No hard-and-fast rule of universal application can be laid down in this respect*

The legislative mandate to impose a sentence, for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but which may extend to life and also to fine reflects the intent of stringency in sentence. The proviso to Section 376(2) IPC, of course, lays down that the court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. Thus, the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' RI, though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' RI can also be awarded. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf of universal application. (Para 13). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[**Ed.**: See also *State of M.P.* v. *Bala*, (2005) 8 SCC 1, *State of M.P.* v. *Makhmal Khan*, (2005) 8 SCC 8, *State of M.P.* v. *Sheshrao*, (2005) 8 SCC 11(1); *State of M.P.* v. *Rajesh*, (2005) 8 SCC 11(2); *State of M.P.* v. *Veerendra Singh*, (2005) 8 SCC 11(3); *State of M.P.* v. *Dayanand Dohar*, (2005) 8 SCC 12(1); *State of M.P.* v. *Gauri Shankar*, (2005) 8 SCC 12(2); *State of M.P.* v. *Govind*, (2005) 8 SCC 12(3); *State of M.P.* v. *Parasram*, (2005) 8 SCC 13(1); *State of M.P.* v. *Mahesh Bhoomia*, (2005) 8 SCC 13(2); *State of M.P.* v. *Mulli*, (2005) 8 SCC 13(3); *State of M.P.* v. *Rakesh*, (2005) 8 SCC 13(4); *State of M.P.* v. *Killu*, (2005) 8 SCC 14(1); *State of M.P.* v. *Vilru*, (2005) 8 SCC 14(2).]

[9099] — Ss. 376(2)(b) and 363 — Rape of a child — Circumstantial evidence — Conviction on the basis of — Propriety — *Victim, a 3½ years' child at the time of offence (i.e. on 21-1-1989), left in the custody of PW 1 by her parents (i.e. PWs 3 and 9) — Rape alleged to have been committed by respondent when PW 1 left the child in her own house and went to the house of PW 9 to watch a TV programme — Prosecution stating that after the incident, victim narrated the incident to PWs 1, 4 and 9 — But in court, victim unable to recollect what actually transpired at the time of the incident — Evidence indicating that PW 1 trying to protect her brother who could also have been a suspect — Plea of alibi supported by evidence of defence witnesses, not taken into consideration by trial court — Enmity between victim's father and respondent, also not taken into account — On facts, held, High Court rightly concluded that the prosecution failed to establish beyond all reasonable doubt that it was respondent who committed the rape — CrPC, 1973, Ss. 386 and 374* (Paras 6, 3 and 2). *State (Andaman & Nicobar Admn.)* v. *Shyam Raj*, (2003) 11 SCC 207: 2004 SCC (Cri) 79.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 4-11-2003]

[9100] — Ss. 376(2)(c) & 376/106 — Rape of 13 girls of an Ashram by its founder, A-1, systematically abetted by co-accused of the Ashram — *Victims being orphans, entirely dependent upon A-1 for their survival, A-1 had dominion/control over them physically, mentally and spiritually — Held, conviction of A-1 under S. 376(2)(c) and sentence of life imprisonment with fine of Rs 5,10,000*

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on each count justified — Conviction of co-accused under Ss. 376/106 and sentence of life imprisonment (except in case of A-3 who had been awarded RI for the period already undergone with fine of Rs 10,000) justified

In the present case, most of the victim girls were orphans brought from Sri Lanka. A-1 provided them food, clothing and shelter. They were entirely dependent on A-1 for their survival. Once they were thrown out by A-1 they had no alternative place to stay. A-1 had dominion/control over the prosecutrix physically, mentally and spiritually. In fact, many of them believed that A-1 was God to them. It is in these circumstances there is no reason why the prosecutrix should depose falsely against A-1 who was the source of their survival physically, mentally and spiritually, by providing shelter, food and clothes to them. The testimony of the prosecutrix inspires confidence, on the basis of which alone conviction can be safely sustained. Moreover, in the instant case the statements of the prosecutrix are well corroborated by medical and other contemporaneous documents. It is also well-established principle of law that minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. (Paras 33 and 34). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9101] — S. 376(2)(f) — False implication alleged in a rape case on the ground of enmity — *Neither nature of enmity nor gravity of the same stated — Fact of false implication, held, not established — CrPC, 1973, S. 313* (Para 7). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

[9102] — S. 376(2)(f) — Rape — Committed on a girl of eight years — Acquittal by High Court — *Propriety — Blood present on private parts of victim, hymen torn and medial side of labia minora inflamed — Victim not habituated to sexual intercourse — Delay in lodging the complaint, explained — Nothing to establish false implication — No doubt regarding identification of accused by victim — Held, High Court erred in reversing the conviction by trial court* (Para 7). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

[9103] — S. 376(2)(f) — Rape — Sentence — Leniency in — Rape of minor girl aged 10 years — Conviction by trial court to 10 years' imprisonment (the statutory minimum) — Interference with — When permissible — *Accused already in custody for 6 years — In appeal High Court reducing sentence to 7 years on the basis that the accused was a young person who was the only breadearner of his family and his children need his supervision — Permissibility — Held, in view of the settled position in law the judgment of the High Court reducing the sentence to 7 years is clearly unsustainable — Sentence of 10 years as imposed by the trial court restored*

In view of the settled position in law the judgment of the High Court reducing the sentence to 7 years is clearly unsustainable and is set aside. The sentence of 10 years as imposed by the trial court is restored. (Para 8). *State of Rajasthan* v. *Madan Singh*, (2008) 5 SCC 147: (2008) 2 SCC (Cri) 550: AIR 2008 SC 1292: 2008 Cri LJ 1939.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 1-2-2008]

[9104] — S. 376(2)(f) — Rape — Sentence — Reduction of — Sustainability — *In the present case, High Court reducing custodial sentence of respondent to 3½ years instead of 7 years as was imposed by trial court — Admittedly, the victim was 10 years of age at the time of commission of offence — Hence, present case was covered by S. 376(2)(f) IPC — Minimum punishment under S. 376(2)(f) is 10 years, provided that for "adequate and special reasons" mentioned in the judgment a sentence of less then 10 years can be imposed — Held, on facts, in the absence of any reason which could have been treated as "special and adequate reason", reduction of sentence by High Court, unsustainable — Trial court should have imposed sentence of 10 years in terms of S. 376(2)(f) — But, as the State had also not questioned the inadequacy of sentence on that ground, the sentence of 7 years as imposed by the trial court is restored — High Court's order reducing the sentence, set aside*

It is to be noted that in sub-section (2) of Section 376 IPC more stringent punishment can be awarded taking into account the special features indicated in the said sub-section. The present case is covered by Section 376(2)(*f*) IPC i.e. when rape is committed on a woman when she is under 12 years of age. Admittedly, in the case at hand the victim was 10 years of age at the time of commission of offence. Unfortunately this aspect appears to have been lost sight of by both the trial court and the High Court and the State has also not questioned the inadequacy of sentence on that ground. (Paras 7 and 5)

The minimum punishment under Section 376(2) IPC is 10 years but the proviso provides that for "adequate and special reasons" mentioned in the judgment a sentence of less then 10 years can be imposed. But, considering the legal position and in the absence of any reason which could have been treated as "special and adequate reason" reduction of sentence as done by the High Court is clearly unsustainable. The trial court should have imposed sentence of 10 years in terms of Section 376(2)(*f*) IPC. But the State has not questioned the sentence as imposed; the sentence as imposed by the trial court is restored. The High Court's order reducing the sentence is set aside. (Paras 5 and 10). *State of Karnataka* v. *Raju*, (2007) 11 SCC 490: AIR 2007 SC 3225: (2007) 58 AIC 39 (SC): 2007 Cri LJ 4700.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 14-9-2007]

Dinesh v. State of Rajasthan, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1; Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499, relied on

[9105] — S. 376(2)(f) — Rape of child aged 1½ years — Sentence of 10 years' RI — Enhancement of, when not called for — *Ten years' RI and fine of Rs 1000 awarded by trial court upheld by High Court — Appeal preferred before Supreme Court by the accused from jail — Having regard to the facts of the case, especially the age of the victim, notice issued to appellant to show cause why the sentence of 10 years' RI should not be enhanced to life imprisonment — Mitigating circumstances stated on behalf of the appellant viz. appellant being the sole breadwinner, his family suffering, incident occurred 9 years back and appellant is in custody since the date of the incident; appellant and his family suffered great humiliation in the society; appellant has two daughters aged 16 and 10 years and prospects of their marriage have been marred to a great extent due to his conviction and sentence; and sentence of 10 years' imprisonment would be over within a year and if the Court enhances the sentence at this stage, then his family, particularly his two daughters and their future would be ruined for no fault of theirs — Having regard to the extenuating circumstances, specially the fact that appellant's two daughters have come of age and are to be married, held, the present period of incarceration of the appellant in jail is enough and he should not be made to further suffer the consequences of his bestiality* (Paras 9 and 20). *T.K. Gopal* v. *State of Karnataka*, (2000) 6 SCC 168: 2000 SCC (Cri) 1037: AIR 2000 SC 1669: 2000 Cri LJ 2286.

Bench Strength **2**. Coram: **S. Saghir Ahmad** and *Doraiswamy Raju*, JJ. [Date of decision: 5-5-2000]

[9106] — S. 376(2)(f) — Rape of seven-year-old — Appropriate sentence for — "Adequate and special reasons" — What are — *Trial court imposing sentence of three years' RI and fine of Rs 1000 — High Court reducing sentence of imprisonment to six months and directing compensation of Rs 25,000 to be paid to victim, on grounds that offence was 12 years old and victim had already been married — Held, improper — Sentence awarded by trial court restored. Urmila* v. *Raju*, (2005) 12 SCC 366.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-1-2005]

[Ed.: *See* the emphatic holding in (2005) 8 SCC 1 and 8]

[9107] — S. 376(2)(f) — Rape on a girl of eight years — Sentence — Reduction — *Accused hardly eighteen years of age at the time of incident — Already served about 6½ years' imprisonment — Was married and had a family — In such circumstances, sentence of ten years' RI imposed by trial court reduced to seven years' RI* (Para 8). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

Distinguished in Rajendra Datta Zarekar v. State of Goa, (2007) 14 SCC 560

[9108] — S. 376(2)(f) — Sentence — Rape of minor girl of 8 years by a medical graduate without rupturing her hymen — *Victim now 19 years old still unmarried and suffering the agony of the traumatic experience and shame and under an impression that her future chances for getting married and settling down in a respectable family completely lost — High Court while observing that "the respondent's activities were menace to the neighbours" erroneously convicting the accused under S. 354 showing misplaced sympathy to the accused by imposing a grossly inadequate sentence of only fine of Rs 3000 on the ground that accused was gainfully employed and there was nothing to show that he was indulging in his nefarious activities — Having regard to the seriousness and gravity of the repugnant offence committed by the accused*

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under S. 376, held, justice demands award of sentence of 7 years' RI and fine of Rs 25,000 (in default 1½ years' RI) if realised to be paid to the victim girl. Madan Gopal Kakkad v. *Naval Dubey*, (1992) 3 SCC 204: 1992 SCC (Cri) 598.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 29-4-1992]

[9109] — S. 376(2)(f) — Sentence — Rape on child below 12 years of age — Life sentence — Plea as to imposition of — *Held, for said offence the statutorily provided minimum sentence is 10 years and life imprisonment can be awarded in a given case considering the attendant circumstances — In the present case, neither trial court nor High Court indicated any such circumstance/factor — Hence, sentence reduced from life imprisonment to 10 years*

Sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity-it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished fundamental right, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. (Para 6). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[9110] — Ss. 376(2)(f) and 511 — Applicability — Evidence of child witness (victim of rape herein), in absence of any corroboration — Admissibility — Consideration of — *On facts, appellant allegedly raping victim, aged about 6 years — Trial court and High Court relying on evidence of victim and her mother held appellant guilty of offence punishable under Ss. 376/511 IPC and sentenced him to 10 years' RI and fine with default stipulation — Sustainability — Challenge before Supreme Court that evidence of child witness (victim) should not be accepted particularly in absence of any corroboration and that sentence was harsh — State contending that testimony of child witness, particularly in case of this nature, does not require corroboration, if testimony of victim is credible — Also, that victim had immediately after occurrence told her mother about the incident and, therefore, her evidence was of considerable importance — Held, trial court and High Court found evidence of child witness cogent, credible and having grain of truth — High Court found evidence of victim free from any influence — Therefore, trial court and High Court rightly relied upon evidence of victim — Again, relying on* Rameshwar case, *AIR 1952 SC 54, reiterated that previous statement of accomplice or complainant is to be treated as corroborative — Hence, High Court rightly held appellant guilty — Since age of victim was 6 years at the time of incident, appropriate conviction would have been under S. 376(2)(f) IPC under which permissible sentence is life sentence with minimum of 10 years — Herein, 5 years' custodial sentence with fine imposed by trial court and maintained by High Court would meet the ends of justice — Evidence Act, 1872, Ss. 118 and 157* (Paras 1 to 5, 8 and 9). *Mohd. Kalam* v. *State of Bihar*, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27: 2008 Cri LJ 3194.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-6-2008]

Panchhi v. State of U.P., (1998) 7 SCC 177: 1998 SCC (Cri) 1561; Rameshwar v. State of Rajasthan, AIR 1952 SC 54, relied on

[9111] — S. 376(2)(f), proviso — Rape — Sentence — "Adequate and special reasons" must be disclosed by sentencing court for reducing the sentence from the statutory minimum of 10 years' RI — *Sentencing court must award the sentence commensurate with the gravity of the offence, having regard to all the relevant facts and circumstances including the demand of the society for justice in case of such heinous crime of rape of innocent helpless children — Trial court convicting the respondent under S. 376 for rape of a minor girl aged 5 years and after taking into account the report of District Probation Officer relating to character, conduct and antecedents of the respondent, it awarding a sentence of 10 years' RI — In appeal, High Court while confirming the convic-*

tion, merely stating "having regard to the circumstances of the case, the sentence of 10 years' RI imposed by the Court below is reduced to a period of 5 years' RI" — Held, this amounted to reducing the sentence without assigning any reasons, in a mechanical manner without proper application of mind — High Court was not justified in doing so and was expected to show sensitivity in dealing with such a case — In absence of any extenuating or mitigating circumstances mere long lapse of time and possibility that meanwhile the prosecutrix as also the accused might have got married and settled are not relevant for the Court to reduce the sentence

Normal sentence under Section 376(2) IPC in a case where rape is committed on a child below 12 years of age, is "not less than 10 years' RI", an expression which is pre-emptory in nature. The courts are obliged to respect this legislative mandate when the case falls under Section 376(2). The proviso to Section 376(2) would come into play *only* when there are "adequate and special reasons" available in a case. Those reasons need to be disclosed in the order/judgment itself so that the appellate forum is in a position to know as to what weighed with the court in awarding a sentence less than the minimum prescribed under the Act. (Para 8)

It is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence. The sentencing court must hear the loud cry for justice by the society and more particularly, in cases of heinous crime of rape of innocent helpless children, as in this case, of the victim of crime and respond by imposing a proper sentence. (Para 9)

In the present case the order of the High Court in reducing the sentence from the statutory minimum of 10 years' RI contains no reasons, much less "special or adequate reasons". The sentence has been reduced in a rather mechanical manner without proper application of mind. It appears that the provisions of Section 376(2) IPC were not at all present to the mind of the Court. The Supreme Court has time and again drawn attention of the subordinate courts to the sensitivity which is required of the court to deal with all cases and more particularly in cases involving crime against women. (Para 11)

It is not possible to accept the contention that it being an old case the order of the High Court need not be interfered with. There are no extenuating or mitigating circumstances available on the record which may justify imposition of sentence less than the prescribed minimum on the respondent. To show mercy in a case like this, would be travesty of justice. There are no reasons, much less sufficient and adequate reasons available on the record to impose a lesser sentence than the prescribed minimum. (Para 14)

It is also not possible to accept the contention that because of the long time which has elapsed subsequent to the date of offence and the possibility that the prosecutrix, as also the respondent, may have got married and settled in life during the pendency of these proceedings, fine instead of sentence be imposed. These factors may be relevant for consideration by the executive or constitutional authorities, if they choose to remit the sentence on being so approached. (Para 16). *State of A.P.* v. *Polamala Raju*, (2000) 7 SCC 75: 2000 SCC (Cri) 1284: AIR 2000 SC 2854.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and *K.G. Balakrishnan*, JJ. [Date of decision: 9-8-2000]

State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230: 1995 SCC (Cri) 1097; State of Karnataka v. Krishnappa, (2000) 4 SCC 75: 2000 SCC (Cri) 755; Kamal Kishore v. State of H.P. (2000) 4 SCC 502: 2000 SCC (Cri) 833, relied on

[9112] — Ss. 376(2)(g), 302 and 201 r/w S. 34 — Gang rape and murder of child aged 7-8 years — Conviction justified — Sentence to be imposed *— Appellants alleged to have lifted the little girl from the waiting room, where she was sleeping along with her parents and younger brother, committed rape and then murdered her — Appellants seen talking in a suspicious manner — No explanation offered by Appellant 2 as regards his stained undergarments/injuries on his face (and which he accepted) — Lock and key of waiting room always in possession of Appellant 1 (chowkidar) — Absence of Appellant 2 from the bus in question, his effort to sleep in another bus leaving his own bus, his absence for about 1 to 1½ hour, and change of his garments during that period, proved — Appellant 1 making voluntary judicial confession wherein the roles played by the appellants were explicitly detailed — Possibility of some other passenger committing the offence ruled out on basis of circumstantial evidence — Held, S. 30 Evidence Act, 1872, can be taken aid of to take into consideration the confessional effect of the statements made by Appellant 1 as against Appellant 2 for arriving at an opinion that by reason thereof involvement of both of them amply stood proved — Judicial confession of Appellant 1, statement of Appellant 2 in his examination under CrPC 1973, S. 313 and other circumstantial evidence, prove the guilt of the appellants beyond reasonable doubt — Death sentence reduced to rigorous life imprisonment*

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Appellants were charged with and convicted for commission of offences under Sections 376(2)(*g*), 302 and 201 read with Section 34 of the Penal Code, 1860 for rape and murder of one *B* (deceased) aged 7-8 years. Deceased along with her parents and younger brother was travelling to Dimapur (State of Nagaland) in a private transport service known as Network Travels from Dharmanagar (Tripura). They reached Guwahati at around 10.30 p.m. on 12-7-2002. There was no connecting bus to Dimapur at that time. Appellant 1 was a night chowkidar of the waiting room of the said Network Travels. He represented that they could stay there for the night and therefore should not have any apprehension in regard to their safety. Their luggage was carried by Appellant 1 to the waiting room. The waiting room had two openings. It was covered by grills. Only the front gate was open, which was kept under lock and key, the key whereof was with Appellant 1. PW 23 (father of the deceased) and the two children slept. However, PW 22 (mother of the deceased) stayed awake. Appellant 1 insisted to her repeatedly that she should go to sleep stating that as the waiting room would be locked, there was nothing for her to worry about. As she had not been sleeping, Appellant 1, allegedly, scolded her to do so. At that time, a bus bearing No. AS 25C 1476 arrived at the said bus-stop. *P*, Appellant 2 was the "handyman" of the said bus. While the manager, driver and the conductor slept in the said bus, he did not. He was seen talking with Appellant 1.

PW 22 slept for a while and got up when her son cried out. She did not find *B* and raised hue and cry. They requested Appellant 1 to open the gates of the waiting room. He showed his reluctance at the first instance. He was thereafter told about the missing of the girl. On being so informed, he opined that she might be somewhere else within the room. A search was carried out in the three buses, which were at the bus-stop belonging to the travel agency. Nearabout places as also the railway station were searched. The bathroom situated in the said premises was also searched.

The dead body of *B* was found in a septic tank on 14-7-2000. FIR was lodged wherein apart from Appellant 1, suspicion was raised about the involvement of driver, PW 26, conductor, PW 25 and the handyman, *P* Appellant 2 herein of the bus bearing No. AS 25C 1476. The said bus had already left for its destination at about 6.30 in the morning. Even prior thereto, PW 2 was persuaded that the said bus be permitted to leave early for Jorhat, which was declined.

During the course of investigation, Appellant 1 made a confessional statement before the Magistrate under Section 164 CrPC. He gave a vivid description as to how the offence was committed by him and Appellant 2. On basis of circumstantial evidence and judicial confession of Appellant 1, appellants were convicted and sentenced to death by the trial court. Their appeal was dismissed by the High Court. Hence, the present appeal. *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

[9113] — Ss. 376(2)(g), 302/34 and 201 — Rape and murder — Sentence — Death sentence justified — Rarest of rare cases — *Jail officer sending to his quarter a guard and a prisoner to work in the house and in the garden attached thereto, respectively — 16-year-old daughter of the said officer was at that time alone in the quarter and was preparing for her Class 10th examination — Taking advantage of her loneliness, both the guard and the prisoner committing rape on her, strangulating and then stabbing her, removing her cycle and throwing her dead body in septic tank — In such circumstances sentence of death, held, was the only proper punishment — CrPC, 1973, S. 354(3)* (Para 36). *Molai* v. *State of M.P.*, (1999) 9 SCC 581: AIR 2000 SC 177.

Bench Strength **3**. Coram: **S.P. Kurdukar**, *K.T. Thomas* and *N. Santosh Hegde*, JJ. [Date of decision: 26-10-1999]

State of M.P. v. Molai, 1999 Cri LJ 2698 (MP), affirmed

[9114] — Ss. 376/34 and 304 Pt. II/34 — Committing rape and causing death of a female child aged 4 years by two respondents — Prosecution case based on circumstantial evidence — *Circumstances found established on the basis of evidence of PWs — Post-mortem examination report showing that the child was violently and bestially ravished, molested, raped and sodomised — Child died due to "intracranial damage consequent upon surface force impact to the head" — Trial court convicting the accused under Ss. 364, 376, 377 and 302 r/w S. 34 on the basis of established circumstances and sentencing the first respondent to life imprisonment and the second respondent to death for murder and awarding lesser sentences for the remaining counts — But High Court acquitting both the respondents — Held on facts, though accused-respondents cannot be convicted on charge of murder but they had knowledge that the* *acts done by them on the child of tender age were likely to cause her death — Hence both of them are liable to be convicted under Ss. 376 and 377 r/w S. 34 and S. 304 Pt. II r/w S. 34 and sentenced to life imprisonment*

On the day of occurrence, mother (PW 10) of the victim, a female child aged 4 years, went to factory for work leaving the child in the custody of PW 8 who was residing close by. Accused-Respondent 1 (A-1), who was known to PWs 10 and 8, took the child and her clothes and utensils by about noon during the short time when PW 8 had gone out to fetch milk. When PW 10 came home in the night, she learnt from PW 8 that her daughter had been taken by A-1. So she went to A-1's house at about 9 p.m. There she found her child lying completely nude next to accused-Respondent 2 (A-2) on the second floor of the house, who was then deep in his sleep. Then A-1 who was found in an inebriated condition, hurled a remark that he had despatched the deceased to heaven. It was then she realised that her child was not breathing. PW 10 Sharda then took the child to the hospital. The doctor who initially examined her noted only "multiple bruises all over the body" in the Medico-Legal Certificate (MLC) and pronounced her dead. But the doctor (PW 1) who conducted autopsy on her body gave full details in his post-mortem report about the features noticed by him on the dead body. The corpse was full of abrasions and contusions. The prominent among them were counted by the doctor as 25 in number and he described the situs and dimensions of all of them. Among them, oval fashioned multiple abrasions on the left cheek appeared to him as marks of biting. Both the upper and lower lips of the child were bruised violently. Marks of violent handling of both the thighs, lower abdomen and pubic region were also described by the doctor. The doctor noted that the vaginal orifice was so badly mutilated that one middle finger could be easily admitted into it. Even the tongue was not spared in that violence. The doctor also examined the head injury and opined that the child died "due to intracranial damage consequent upon surface force impact to the head". The Sessions Court accepted this medical report as reliable. It found that the prosecution had established the following circumstances: (1) A-1 had taken the child from the house of PW 8 by about noon on the fateful day; (2) the child was recovered from the house of A-1 and she was then found breathless; (3) the child was lying naked by the side of A-2 who was in deep sleep when PW 10 lifted her up; (4) A-1 who was then in an inebriated condition, blurted out that the child was sent to heaven; (5) the bloodstained knickers of the victim were later recovered from the house of A-2 on the basis of the statement given to the police. The trial court concluded on the strength of those circumstances that both the respondents are liable to be convicted for murder, rape and unnatural offence, while A-1 was additionally liable for kidnapping the child for murder. Accordingly the trial court convicted both the respondents under Sections 364, 376, 377 and 302 r/w Section 34 IPC and sentenced A-2 to death and A-1 to life imprisonment on the charge of murder and awarded lesser sentences for the remaining counts. However, the High Court doubted the correctness of the medical report of PW 1 in view of the entry made in the MLC by the doctor who had first examined her. The High Court also found discrepancy in the evidence of PWs 8, 10 and 12 (a neighbour). The High Court also declined to place any weight on the circumstances relating to recovery of bloodstained knickers of the victim on the ground that the seizure memo was not attested by any independent witness. Thus the High Court declined to believe the police version as true and consequently it acquitted the two accused-respondents. Disposing of the State's appeal,

Thus on consideration of the entire evidence in this case, there is no doubt that the trial court had come to the correct conclusion that the two respondents were the rapists who subjected the child to such savage ravishment. The Division Bench of the High Court has grossly erred in interfering with such a correct conclusion made by the trial court as the reasons adopted by the High Court for such interference are very tenuous. Nonetheless, it is difficult to enter upon a finding that the respondents are equally guilty of murder of the child. The opinion of PW 1 that the child died due to "intracranial damage consequent upon surface force impact to the head" was made with reference to the subdural haematoma which resulted in subarachnoid haemorrhage. Such a consequence happened during the course of the violent ravishment committed by either both or by one of the rapists without possibly having any intention or even knowledge that their action would produce any such injury. Even so, the rapists cannot disclaim knowledge that the acts done by them on a little infant of such a tender age were likely to cause its death. Hence they cannot escape conviction from the offence of culpable homicide not amounting to murder. In the result the impugned judgment of the High Court is set aside and the conviction passed by the trial court under Sections 376 and 377 read with Section 34 IPC is

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restored. The trial court awarded the maximum sentence to the respondents under the said counts i.e. imprisonment for life. The fact-situation in this case does not justify any reduction of that sentence. The respondents are also liable to be convicted under Section 304 Part II, read with Section 34 IPC though it is unnecessary to award any sentence thereunder, in view of the sentence of imprisonment for life awarded to the respondents under the other two counts. (Paras 23 and 24). *State, Govt. of NCT of Delhi* v. *Sunil*, (2001) 1 SCC 652: 2001 SCC (Cri) 248: 2001 Cri LJ 504.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 29-11-2000]

State v. Ramesh, 1998 Cri LJ 4233 (Del), reversed

[9115] — Ss. 376 (as amended in 1983)/511 or 354 — Applicable provision — After finding the accused guilty under Ss. 376/511, even in absence of a charge under S. 376 read with S. 511, held, High Court should have convicted him under Ss. 376/511 by invoking S. 222, CrPC and not under S. 354 — Quantum of punishment — Determination of — *Keeping in view the objects of 1983 amendment to S. 376, held, no person committing or attempting to commit rape should be allowed to escape punishment — Having found the accused guilty, the quantum of punishment must be decided in accordance with law without being influenced by the press, electronic media or public agitation, as a trial by such agencies is the very antithesis of rule of law — While imposing fine and apportioning the whole or part thereof to the victim, the damage caused to her and even to her family should be taken into consideration — Father of eight-year-old daughter found guilty of attempting rape on a girl aged below twelve years and also found guilty under S. 57 of Bombay Children Act — High Court, however, setting aside the conviction under Ss. 376/511 and instead convicting him under S. 354 IPC and sentencing him to rigorous imprisonment for the period already undergone (only 33 days) and to a fine of Rs 40,000 of which Rs 25,000 was to be apportioned to the complainant (father of the prosecutrix in this case) — High Court upholding the respondent's conviction under S. 57 of the Bombay Act but restricting the sentence thereunder to the period of imprisonment already undergone — Matter coming up before the Supreme Court 11 long years after the incident and by then the fine imposed by the High Court having already been paid by the accused and the complainant having withdrawn his share of the fine — In such circumstances while converting the conviction of the accused from one under S. 354 IPC to that under Ss. 376/511 IPC, held, a sentence of five years' RI and a fine of Rs 40,000 would meet the ends of justice — Conviction and sentence under S. 57 of Bombay Children Act, however, affirmed — CrPC, 1973, S. 222 — Bombay Children Act, 1948 (71 of 1948), S. 57 — Law Commission Reports 42nd, 69th and 84th — Criminal Law (Amendment) Act, 1983*

The accused-respondent was convicted by the trial court for offences under Section 376 of IPC and Section 57 of the Bombay Children Act, 1948 for having committed rape on a girl of eight years of age on 24-9-1986 and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs 5000 and for offence under Section 57 of the Bombay Children Act he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs 500. The substantive sentences were ordered to run concurrently. The Bombay High Court upset the conviction under Section 376 IPC and instead convicted him for an offence under Section 354 IPC and sentenced him to suffer rigorous imprisonment which he had already undergone (which was 33 days in all) and to pay fine of Rs 40,000 out of which Rs 25,000 was directed to be paid to the complainant who was the father of the girl. The conviction for the offence under Section 57 of the Bombay Children Act was upheld but the sentence was reduced to the imprisonment already undergone. Cross appeals were filed against the High Court's decision. While the State of Maharashtra filed appeal against the conviction and sentence of the accused by the High Court praying for his conviction under Section 376 IPC and for enhancement of his sentence to a minimum of 10 years, the accused filed appeal against his very conviction and sentence under Section 354 IPC and Section 57 of the Bombay Children Act. On the question of sentence under Sections 376/511, IPC, the accused-respondent contended that when the offence was committed the accused had also a daughter of 8 years of age and that a long time had elapsed since the offence was committed and that in terms of the judgment of the High Court the accused had already deposited Rs 40,000 out of which Rs 25,000 had already been withdrawn by the father of the prosecutrix. It was submitted that if the Court came to the conclusion that the sentence had to be enhanced then only the amount of fine could be raised. Dismissing the respondent's appeal and partly allowing the State's appeal

Held :

The circumstances of the case show that the accused intended to commit rape on the girl. In the commission of that crime, he laid the girl on the seat in the Maruti car and then laid himself over her. He pulled down her knickers and also opened the zip of his pants and took out his male organ. He pressed his male organ on the private parts of the girl. But since he discharged, he could not penetrate and was unable to complete the offence of rape. However, it is clear that he did attempt to commit rape.

The High Court after having come to the conclusion that the accused was guilty of an offence under Sections 376/511 of the IPC could not have convicted the accused for an offence under Section 354 IPC. Section 511 IPC provides punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. In the instant case since the girl was under 12 years of age and the Sessions Judge having found that offence of rape had been committed could not have awarded sentence of 7 years when the law prescribes minimum sentence of rigorous imprisonment for a term not less than 10 years, unless exceptional circumstances existed. However, the State of the complainant did not come up in appeal in the High Court for enhancement of the sentence. Though there was no charge under Section 376 read with Section 511 IPC, under Section 222 CrPC when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

The respondent's plea that in case the court took a decision to enhance the sentence the amount of fine could be raised, cannot be accepted. A heinous crime has been committed and the accused must suffer for the consequences. A rapist not only violates the victim's personal integrity but leaves indelible marks on the very soul of the helpless female. The girl of 8 years must have undergone a traumatic experience. Despite the 11 year long lapse of time after the offence, keeping the objects of the 1983 amendment to Section 376 of IPC in view, the law as it exists now and the decisions of the Supreme Court on the question of sentence, the message is loud and clear that no person who commits or attempts to commit rape shall escape punishment.

Considering the whole aspect of the matter, it has to be held that a sentence of five years' rigorous imprisonment and fine of Rs 40,000 will meet the ends of justice. The fine has already been paid, out of that Rs 25,000 has been withdrawn by the father of the girl as per direction of the High Court which is upheld. The conviction of the accused-respondent is converted from one under Section 354 IPC to that under Sections 376/511 IPC and he is sentenced as aforesaid. The conviction and sentence of the accused under Section 57 of the Bombay Children Act as ordered by the High Court shall, however, stand. The sentences shall run concurrently. *State of Maharashtra* v. *Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386: AIR 1997 SC 3986.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 11-9-1997]

7. Abduction/Kidnapping/Trafficking and rape

[9116] — Ss. 375, 376 and 366 — Rape — Appreciation of evidence — Conviction justified — *On facts, held, undoubtedly, victim was taken away from lawful custody of her parents and was subjected to rape by appellant-accused and coerced to indulge in prostitution — Thus, case certainly bordered on trafficking of women — As she had remained under constant threat and coercion, she could not share her agony with any person who could help her — There is nothing on record to show that prosecution could not prove the case against appellant beyond reasonable doubt under Ss. 366/376 — Hence, conviction proper* (Paras 16 and 17). *Fateh Chand* v. *State of Haryana*, (2009) 15 SCC 543: AIR 2009 SC 2729: (2009) 81 AIC 216 (SC): 2009 Cri LJ 3942.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 29-5-2009]

[9117] — Ss. 375, 376 and 366 — Rape — Delay in lodging/Filing FIR — Case of taking away victim fraudulently and subjecting her to rape by appellant-accused and forcing her to indulge in prostitution by coercion — *Delay was bound to occur as FIR was filed only after return of victim from her captivity after one-and-a-half years — Reasons for which she could not come back or inform her parents, held, stood well explained by victim that she was given threat by appellant that dead body of some other girl had been identified by her parents to be of the victim and thus if she went back, her parents would be in difficulty — She had been living under a constant threat and could not muster courage to inform any person — CrPC, 1973, Section 154* (Paras 14 and 13). *Fateh Chand* v. *State of Haryana*, (2009) 15 SCC 543: AIR 2009 SC 2729: (2009) 81 AIC 216 (SC): 2009 Cri LJ 3942.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 29-5-2009]

7. Abduction/Kidnapping/Trafficking and rape *(contd.)*

[9118] — Ss. 376, 147, 323/149, 342, 458 and 366 — Abduction and rape — Conviction justified — Marriage alleged by rapist not proved — *Appellants convicted under Ss. 147, 323/149, 342, 458 and 366, while Appellant 1, also additionally convicted under S. 376 — Five accused armed with iron rod and lathis alleged to have abducted the prosecutrix (PW 5) and assaulted PW 2 during the occurrence — It was further alleged that they dressed her in new ornaments and clothes and Appellant 1 raped her on two consecutive nights — Defence of Appellant 1 that since victim was married to him there was no rape as contended, rejected by courts below — No evidence of marriage as claimed brought on record — DW 2 in his cross-examination admitting that Kazi wrote their nikah — But no signature or thumb impression was obtained and Kazi Y who was claimed to have solemnised the nikah was not examined — DW 1 who is claimed to have settled the marriage accepted that same is the procedure for proving the marriage — Thus, factum of marriage not proved — Held, that being so the conviction of Appellant 1 as recorded by trial court and maintained by High Court cannot be faulted — So far as the role played by Appellant 2 is concerned, the same was clearly established by the evidence of injured witnesses PW 2 and PW 4, apart from the evidence of PW 5 (prosecutrix) — Hence, his conviction also sustained — But so far as other appellants were concerned there was no evidence to link them with crime — Hence, their conviction set aside* (Paras 8 and 9). *Neku Khan* v. *State of Rajasthan*, (2009) 11 SCC 86: (2009) 3 SCC (Cri) 1245: AIR 2009 SC 1954: (2009) 1 ECrN 859 (SC): (2009) 75 AIC 132 (SC): (2009) 1 APLJ 41 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-1-2009]

[9119] — Ss. 376, 363, 366 and 368 — Abduction and rape — Appreciation of evidence — Principles — Course of normal human conduct of an Indian woman in such a situation to be kept in mind — *Prosecutrix abducted by three young men in a car when she was coming out of examination centre and after committing rape leaving her at the same place next morning — Ignorance of the prosecutrix about the make, etc. of car in which she was abducted or failure to give colour of the car, though given in the FIR, does not affect reliability of her testimony — Prosecutrix abducted under threat of death — Hence she cannot be discredited for not raising an alarm when being abducted — Negligence of the police officer in not tracing out the driver or car cannot be a ground to reject her testimony — Conduct of the prosecutrix in not complaining to the teachers or other girl students not unnatural — Held, in the circumstances of the case testimony of the prosecutrix suffers from no infirmity and can be acted upon without looking for corroboration*

The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook.

The prosecutrix was a village girl. She was a student of Xth class. It was wholly irrelevant and immaterial whether she was ignorant of the difference between a Fiat, an Ambassador or a Master car. Again, the statement of the prosecutrix at the trial that she did not remember the colour of the car, though she had given the colour of the car in the FIR was of no material effect on the reliability of her testimony.

The prosecutrix in her statement categorically asserted that as soon as she was pushed inside the car she was threatened by the accused to keep quiet and not to raise any alarm, otherwise she would be killed. Under these circumstances to discredit the prosecutrix for not raising an alarm while the car was passing through the bus adda is a travesty of justice. The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. The trial court fell in error for discrediting the testimony of the prosecutrix on that account.

A girl, in a tradition-bound non-permissive society in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down upon by the society. Her not informing the teachers or her friends at the examination centre under the circumstances cannot detract from her reliability. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to anyone, lest the family name and honour is brought into controversy. Therefore her informing her mother only on return to the parental house and no one else at the examination centre prior thereto is in accord with the natural human conduct of a female. *State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

[9120] — Ss. 376, 363, 366 and 368 — Abduction and rape — Sentence — Mitigating factors — The three respondent accused acquitted by the trial court more than a decade ago and since then not involved in any other offence — *They aged between 21-24 years at the time of occurrence and by now all of them and the prosecutrix got married and settled down in life — Held, sentence of 5 years' RI and a fine of Rs 5000 each is appropriate for offence under S. 376 — But, in the circumstances of the case, it is not desirable to award any compensation particularly as no scheme as suggested in Delhi Domestic Working Women's Forum case has been drawn up*. *State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

***Distinguished in** State of M.P. v. Bablu Natt, (2009) 2 SCC 272*

But Dr. A.S. Anand, C.J. in a later case of *State of Karnataka* v. *Krishnappa*, (2000) 4 SCC 75 refused reliance on the above decision by the accused and restored the sentence of 10 years fixed by the trial court for offence under S. 376 IPC *See* discussion on this aspect in *Kamal Kishore* v. *State of H.P.*, (2000) 4 SCC 502 at 508

[9121] — Ss. 376, 363, 366 and 368 — "Against her will" and "without her consent" — Case of kidnapping and rape — Absence of any alarm being raised by prosecutrix at public places, while being taken to other places — *She being under constant threat — Inference of willingness to accompany accused — Not made out — Doubt about truthfulness of her evidence — Not created — Held, submission of respondent-accused (A-1), that no alarm was raised by prosecutrix at bus-stand or other places, where she was taken, created serious doubt about truthfulness of her evidence, rejected, as it overlooks situation in which prosecutrix was placed in — She had been kidnapped by two adult males, one of them (A-1) wielded a firearm and threatened her and she was taken away from her village — In such circumstances, she made sensible decision not to raise an alarm — Any alarm at unknown place might have endangered her life — Absence of alarm by her at public place, cannot lead to an inference that she had willingly accompanied A-1 and A-2 (another accused) — Circumstances made her a submissive victim and that does not mean that she was inclined and willing to have intercourse with A-1 — She had no free act of mind during her stay with A-1, as she was under constant fear* (Para 30). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Prakash Singh v. Union of India, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417, relied on.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

[9122] — Ss. 376, 363, 366 and 368 — Case of kidnapping and rape — Minor contradictions and omissions in testimony of prosecutrix — *Prosecutrix being illiterate and rustic young woman — Evidence consistent in material aspects — Held, prosecutrix being illiterate and rustic young woman, some contradictions and omissions were natural, as her recollection, observance, memory and narration of chain of events may not be precise — Conviction restored* (Para 29). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

Prakash Singh v. Union of India, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417, relied on

[9123] — Ss. 376, 363, 366 and 368 — Kidnapping and rape — Appreciation of evidence — Guilt established — Conviction restored — *Prosecutrix kidnapped from lawful custody of her brother, by A-1 (respondent-accused) and A-2 — She was taken to another place under threat and kept in a rented room for many days, where A-1 committed forcible sexual intercourse upon her — Whenever she asked A-1 for return to her village, she was threatened and her mouth was gagged — Held, evidence of prosecutrix was reliable and rightly acted upon by trial court — Except bald*

7. Abduction/Kidnapping/Trafficking and rape *(contd.)*

statement of A-1 under S. 313 CrPC, that he was falsely implicated due to enmity, nothing brought on record that may probabilise that prosecutrix had motive to falsely implicate him — Delay in registration of FIR, also reasonably explained — Judgment of High Court not only cryptic and perfunctory but it also did not take into consideration crucial evidence on record — A-1, convicted of serious crime of kidnapping and rape, acquitted on flimsy grounds — There was no application of mind to evidence of prosecutrix at all — High Court not at all justified in taking a different view or conclusion from trial court — CrPC, 1973, Ss. 374 and 313 (Paras 29 to 38). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

[9124] — Ss. 376, 363 and 366-A — Rape, kidnapping and procuration of minor girl — Age of minor — Benefit of doubt — When available — Prosecution failing to prove age of prosecutrix — *Prosecutrix found as being habitual to sex and her secondary sexual characteristics well developed (as per clinical report of PW 1) — Appellant-accused frequently visiting prosecutrix's house — Prosecutrix in love with appellant, never resisting being repeatedly deflowered by him — Allegation that prosecutrix under threat accompanied appellant on a bicycle to another village where she was raped by appellant and then brought back home — Non-performance of tests for proving age of prosecutrix prescribed by the doctor, held, is a serious flaw in prosecution version — In such circumstances, held, a close and careful examination of age of prosecutrix is imperative, which if not proved, accused is entitled to benefit of doubt, as in present case*

The appellant was convicted by the trial court under Sections 363, 366-A and 376 IPC. The appellant belonged to the same caste and gotra of the prosecutrix and he was visiting the house of the prosecutrix frequently. The finding of the High Court is that the prosecutrix fell in love with the appellant. The High Court also found that she did not ever resist her being repeatedly deflowered by the appellant.

The appellant submitted before the court that he was falsely implicated. No defence evidence was adduced on behalf of the appellant. Admittedly, no test identification parade was conducted in this case. The trial court on the basis of evidence on record came to the conclusion that the appellant kidnapped a minor girl and induced her to go to Village Kalka Madlya and committed rape on her and convicted the appellant. The High Court also found that the offences under Sections 363, 366-A and 376 IPC are proved against the appellant. The appellant aggrieved by the impugned judgment preferred this appeal on various grounds.

Allowing the appeal of the accused,

Held :

The short question in this appeal was as to whether the prosecutrix was a minor. It is clearly borne out from the evidence on record that the appellant belonged to the same caste and gotra of the prosecutrix and was a frequent visitor to the house of the prosecutrix. There was a love affair between them and the court also observed that she did not ever resist her being repeatedly deflowered by the appellant. (Paras 24 and 23)

PW 1, who had clinically examined the prosecutrix, found that her secondary sex characters were well developed. PW 1, after clinical examination of the prosecutrix, categorically observed that possibility cannot be ruled out that the prosecutrix was habitual to sex. In her report, PW 1 also stated that keeping in view the clinical examination, the possibility of rape cannot be ruled out. PW 2 made medico-legal examination of the appellant and found that he had the ability to perform sexual intercourse. In this background, close and careful determination of the age of the prosecutrix is imperative. (Paras 24, 7 and 23)

In a criminal case, the conviction of the appellant cannot be based on an approximate date which is not supported by any record. It would be quite unsafe to base conviction on an approximate date. PW 8, the father of the prosecutrix also could not give the correct date of birth of the prosecutrix. PW 8 stated that he was giving an approximate date without any basis or record. (Para 26)

The failure of getting the prosecutrix examined from the dental surgeon or the radiologist despite the fact that she was referred to them by PW 1 is a serious flaw in the prosecution version. It is not a rule that all these tests must be performed in all cases, but in the instant case, in the absence of primary evidence, reports of the dental surgeon and the radiologist would have helped in arriving at the conclusion regarding the age of the prosecutrix. (Para 24)

The prosecution also failed to produce any admission form of the school which would have been primary evidence regarding the age of the prosecutrix. The school leaving certificate produced by the prosecution was also procured six days after the incident and three days after the arrest of the appellant. As per that certificate also, she joined the school in the middle of the session and left the school in the middle of the session. The attendance in the school of 100 days is also not reliable. The prosecutrix was admitted in the school by *A*, her brother. *A* was not examined. The alleged school leaving certificate on the basis of which the age was entered in the school was not produced. (Para 25)

On consideration of the totality of the facts and circumstances of this case, it would be unsafe to convict the appellant when there are so many infirmities, holes and lacunae in the prosecution version. The appellant is clearly entitled to the benefit of doubt and consequently the appeal filed by the appellant deserves to be allowed. The appellant is directed to be released forthwith, if not required in any case. (Para 27). *Sunil* v. *State of Haryana*, (2010) 1 SCC 742.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 4-12-2009]

Modi's Medical Jurisprudence, referred to

[9125] — Ss. 376 and 366 — Abduction and rape — Defence of consent — But prosecutrix not raising alarm out of fear — *Prosecutrix abducted by the appellants at the point of knife — When she tried to resist or shout she was given a thrashing and threatened to be killed — She categorically stating that she was given a slap on the mouth when she tried to resist — Her statement supported by medical evidence — Prosecutrix made to sit on the bar of the cycle while one of the appellants was driving the cycle and the other was sitting on the back of the cycle — Therefore, it was difficult for the prosecutrix to raise any alarm — Other circumstances mentioned in the judgment of the trial court also consistent with the guilt of the appellants — Held, in the circumstances of the case, the prosecutrix was not a consenting party — Conviction upheld. Harishankar* v. *State of Maharashtra*, (1997) 11 SCC 191: 1997 SCC (Cri) 1065.

Bench Strength 2. Coram: *Faizan Uddin* and *G.T. Nanavati*, JJ. [Date of decision: 9-1-1997]

[9126] — Ss. 376 and 366 — Abduction and rape of a minor girl aged about 10/11 years — *Prosecutrix being below the age of consent finding of the High Court that she was of a loose moral character and might have gone with the accused herself demolishing the case of abduction, held, not sustainable — Conviction restored — However, sentence reduced to the period already undergone which was about 5 years' RI. State of U.P.* v. *Om*, 1998 SCC (Cri) 1343.

Bench Strength 2. Coram: *M.M. Punchhi* and *K. Venkataswami*, JJ. [Date of decision: 21-7-1997]

[9127] — Ss. 376 and 366 — Accused giving lift to the prosecutrix and her two companions in his truck and committing rape on the prosecutrix when her companions had gone to take water — *Accused driving away the truck with the prosecutrix leaving her two companions near a Railway Station — Prosecutrix found below the driver's seat when intercepted by the police — Complaint made by the prosecutrix to her companions immediately after the incident ruling out the defence version that she was a consenting party — Ghagra of the prosecutrix and underwear of the accused found to be stained with semen and spermatozoa — Held, in the circumstances of the case, conviction of accused is justified. Ranvir Singh* v. *State of M.P.*, (1996) 11 SCC 595.

Bench Strength 2. Coram: **G.N. Ray** and *B.L. Hansaria*, JJ. [Date of decision: 1-11-1996]

[9128] — Ss. 376 and 366 — Conviction confirmed — *Appellant-accused (three in number) alleged to have gagged mouth of prosecutrix, bodily lifted her to house of one of the accused and gang raped her — On failure by police concerned to take necessary action, a written complaint (Ext. DA) was filed before the SSP, who forwarded the same to DSP, DW 2 — Facts establishing diabolical role played by police, in particular DW 2 to sabotage entire prosecution case in order to save accused — On the other hand, testimonies of prosecutrix and PW 4 found credible — Hence held, no interference with impugned judgment convicting appellants called for* (Paras 2, 3 and 9 to 14). *Jaswant Singh* v. *State of Punjab*, (2009) 16 SCC 201: (2010) 3 SCC (Cri) 243: AIR 2010 SC 894: 2010 Cri LJ 41: (2010) 2 ECrN 305 (SC): (2010) 85 AIC 193 (SC).

Bench Strength 2. Coram: **B. Sudershan Reddy** and *J.M. Panchal*, JJ. [Date of decision: 5-11-2009]

[9129] — Ss. 376 and 366 — Prosecutrix alleged to have been forcibly taken away by accused and gang raped — Charge under S. 366 not established — Hence, submission that conviction under S. 376(2)(g) on the same evidence was uncalled for — Tenability — *Held, evidence of rape is distinct from the other charge and the matter should be examined in that background — Merely because the accused have been acquitted for the offence punishable under S. 366 IPC is ipso facto no reason to disbelieve the entire prosecution story*

7. Abduction/Kidnapping/Trafficking and rape *(contd.)*

on this solitary ground — Veracity of the story projected by the prosecution qua allegations of rape would be required to be examined (Paras 6 and 13). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 3-12-2008]

Raja Ram v. State of M.P., (1994) 2 SCC 568: 1994 SCC (Cri) 573; Arokia Thomas v. State of T.N., (2006) 10 SCC 542: (2007) 1 SCC (Cri) 140; Suresh Chaudhary v. State of Bihar, (2003) 4 SCC 128: 2003 SCC (Cri) 801, followed

[9130] — Ss. 376 and 366 — Rape — Conviction reversed — *Appellant-accused alleged to have abducted PW 4 allegedly a minor girl, maidservant of PW 2 & PW 3, and took her to a hotel and raped her — Prosecutrix roaming in the city by rickshaws/buses along with appellant for a long time, going to the hotel without any protest, accompanying the appellant to the room, spending the whole night with him, coming out of the hotel after checking out from the hotel, without raising any hue or cry or informing anybody that appellant had misbehaved with her in any manner — Held, such conduct of prosecutrix makes prosecution case unbelievable — No reason indicated as to why in absence of any allegation of threat or coercion, prosecutrix had not raised any alarm or informed any person on the road — Doctor who examined her, found no injury of any kind on her body or private parts, and opined that she was used to sexual intercourse — Further, there were serious contradictions in her deposition in court and her statement recorded under S. 164 CrPC — Material contradictions were also discernible regarding factual aspect of the incident — No material objects like clothes, blood samples, semen samples seized/taken by the IO — Prosecutrix had alleged that appellant had forcibly torn open her clothes, but no torn clothes recovered by IO — No person examined from the hotel to identify appellant or the prosecutrix — She was registered as wife of the appellant under a fictitious name, and hence her identification by some person from the hotel was necessary — Further, the doctor who examined her had opined that she was aged about 18 years, while the prosecutrix stated that she was only 13 years at the time of alleged incident — Her employer PW 2 stating that she was 13/14 years without indicating any basis therefor — However, her parents or any other family member who could be most reliable and natural witness on point of age not examined — Held, prosecutrix appears used to sexual intercourse and a dissolute woman — She had no objection in mixing up and having free movement with any of her known person, for enjoyment — Thus, she appeared to be a woman of easy virtues — Prosecution failed to prove its case against the appellant beyond reasonable doubt — Hence, impugned judgment of High Court convicting appellant under S. 376 set aside — CrPC, 1973, S. 164* (Paras 12 to 18)

Allowing the appeal,

Held :

The trial court and the High Court proceeded with altogether different set of facts. Before the trial court the prosecution case had been that the prosecutrix went to the zoo along with *S* and on her return from the zoo the appellant had seen both of them together and slapped *S* who ran away and thereafter the appellant took the prosecutrix on the pretext of taking her to movie and roamed; took her on a rickshaw to the hotel where she was kept and raped. (Para 12)

However, before the High Court the case was been entirely different. It was stated that when the prosecutrix came out from the house of the informant PW 2 *A* the appellant met her and proposed to take her to a movie and she went along with him. FIR lodged by PW 2 was to the effect that appellant-accused had entered his house and forcibly abducted his maidservant (prosecutrix). Thus, there were material contradictions regarding the factual aspects of the incident itself. (Para 13)

Further no explanation was given as to why the investigating officer did not seize any material objects like clothes, blood samples, etc. from the prosecutrix and the place of occurrence. Prosecutrix had stated that accused had torn open her clothes but no torn clothes were recovered by the IO. (Para 14)

Also no effort was made by IO to take the semen, blood samples, etc. from the appellant which could have given the prosecution an opportunity to obtain medical reports of the appellant as it was necessary to establish the guilt of the appellant. No person was examined from the hotel to identify the appellant or the prosecutrix as the IO has only seized the register of the hotel to establish that Room No. 102 was booked in the name of appellant *MA* and *MB* as husband and wife. Admittedly, the name of the prosecutrix was not *MB*. Therefore, some person from the hotel should have been examined to identify her as well as the appellant. (Para 15)

Furtheremore, discrepancies were discernible in her examination under S. 164 CrPC and deposition in court. No explanation was offered as to why in the absence of any allegation of threat or coercion, the prosecutrix could not have raised the alarm or informed any person on the road, nor as to why an independent witness or an employee of the hotel was not examined and why the parents of the prosecutrix were not examined to find out her age. (Para 16)

The prosecutrix appears to be a lady used to sexual intercourse and a dissolute lady. She had no objection in mixing up and having free movement with any of her known person, for enjoyment. Thus, she appeared to be a woman of easy virtues. The prosecution failed to prove its case against the appellant beyond reasonable doubt. Hence, impugned judgment of the High Court convicting accused under S. 376 set aside. (Paras 17 and 18). *Mussauddin Ahmed* v. *State of Assam*, (2009) 14 SCC 541: (2009) 80 AIC 1 (SC).

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 6-7-2009]

Gopal Krishnaji Ketkar v. Mohd. Haji Latif, AIR 1968 SC 1413, relied on

[9131] — Ss. 376 and 366 — Sentence — Accused guilty of abduction and rape — Accused holding responsible positions of Lambardar and Sarpanch in village — *Held, sentence of three years' and four years' R.I. and fine justified. Gurcharan Singh* v. *State of Haryana*, (1972) 2 SCC 749: 1972 SCC (Cri) 793: AIR 1972 SC 2661: (1973) 2 SCR 197: 1973 Cri LJ 179.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 13-9-1972]

[9132] — Ss. 376 and 366 — Territorial jurisdiction — Kidnapping and rape forming part of same transaction — *Trial court continuing proceedings for kidnapping but dropping charge for rape, on ground of lack of territorial jurisdiction — Held, impermissible — CrPC, 1973, Ss. 228 and 220* (Para 4). *Parshotam Lal* v. *State of Punjab*, (2010) 1 SCC 65.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 6-10-2009]

[9133] — Ss. 376, 366 and 363/109 — Kidnapping, forced marriage and rape — Minor victim — Alleged consent or volition of victim — Relevance — If once victim found to be a minor, then if issue of consent of any relevance — Victim, if was minor on date of incident (14 yrs old) — Determination of — *Reliance upon birth certificate given by Municipality and victim's school and evidence of her mother, for ascertaining her age — Concurrent finding of victim being a minor on date of incident, on basis of, upheld — Conviction confirmed — A-1, after kidnapping victim, forcibly married and raped her — A-2 and A-3 helped A-1 in the act — A-1 convicted under Ss. 376 & 366 and A-2 & A-3 under Ss. 363/109 — Sustainability — Prosecution submission that if finding recorded by courts below on minority of victim remains undisturbed, no other issue is required to be examined — Tenability — Held, birth certificate of victim issued by Municipality, shows date of birth, date of registration and registration number — Names of victim's parents and their address have also been correctly mentioned — Thus, there is no reason to doubt veracity of said certificate — More so, school certificate has been issued by Headmaster on basis of entry made in school register, which corroborates contents of birth certificate issued by Municipality — Both these entries in school register as well as in Municipality, came much before criminal prosecution started — Those entries stand fully supported and corroborated by evidence of PW 15 (mother of victim) — She had been cross-examined at length, but nothing could be elicited to doubt her testimony — Suggestion put to her by defence, that she was talking about age of her younger daughter and not victim, was flatly denied — Her deposition remained unshaken and is fully reliable — In facts and circumstances, there is no reason to hold that victim was major on date of incident — Defence submission that PW 4 (victim) went voluntarily with A-1, as she was in love with him and wanted to marry him, hence of no use — In view thereof, no other issue is required to be considered — Therefore, conviction of appellants confirmed — Evidence Act, 1872, S. 35* (Paras 23, 26 and 27). *Murugan* v. *State of T.N.*, (2011) 6 SCC 111.

Bench Strength **2**. Coram : *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision : 6-5-2011]

Mohd. Ikram Hussain v. State of U.P., AIR 1964 SC 1625: (1964) 2 Cri LJ 590, relied on

[9134] — Ss. 376 & 375 and 366 — Rape — Conviction based on concurrent findings set aside — *Evidence on record not supporting findings of High Court and trial court: (1) that A-1 abducted and forcibly married victim girl, and (2) that victim girl was not a major — Courts while recording concurrent conviction not considering inherent improbabilities in evidence of prime prosecution witnesses — Interference under Art. 136 of Constitution, held, can be made if conclusions recorded by High Court, as in present case, are manifestly perverse and unsupportable by evidence on record*

Allegedly A-1, on 31-7-1993 abducted PW 2 (victim prosecutrix) with the help of A-2, A-4 and A-5 when she declined his proposal to marry him.

7. Abduction/Kidnapping/Trafficking and rape *(contd.)*

A-1 then forcibly married her in a temple and committed rape on her for three days. The father of the victim, PW 1 who was handicapped person though came to know of this from the very first day, lodged the FIR on 2-8-1993. On 4-8-1993, A-1 along with PW 2 went to the police station and A-1 explained that the allegations in FIR were false, that he had legally married PW 2 and that they were husband and wife. On 10-8-1993, the police recovered the girl.

The High Court by the impugned order upheld the conviction of A-1 and others who had helped him under Sections 366 and 376 read with Section 109 IPC.

Allowing the appeal the Supreme Court held as above.

Held :

Even though the power under Article 136 of the Constitution are very wide, in criminal appeals, concurrent findings of facts cannot be interfered with save in very exceptional cases. The assessment of the evidence by the High Court is accepted as final except where the conclusions recorded by the High Court are manifestly perverse and unsupportable by the evidence on record. (Para 19)

The High Court committed a grave error in confirming the conviction of the appellants under Section 366 IPC. Whilst upholding the conviction of A-1 under Section 376 IPC, the High Court has held that the girl would not have voluntarily gone with A-1. It has also been held that she was not a major at the relevant time. Both the conclusions recorded by the High Court are contrary to the evidence on record. (Paras 37 and 38)

The conclusions and findings recorded by both the courts below are perverse and unsupportable by the evidence on record. The trial court as well as the High Court had failed to bestow proper attention to the inherent improbabilities contained in the evidence of the prime witnesses of the prosecution. (Paras 57, 20 and 36). *Alamelu* v. *State*, (2011) 2 SCC 385.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 18-1-2011]

[9135] — Ss. 376, 375 Fifthly (old), 366 and 342 — Abduction, rape and wrongful confinement — *Prosecutrix, a village girl, abducted at knife point and wrongfully confined for one month at different places — Accused 1 committing rape on her — Her evidence found to be truthful and required no corroboration — However, her evidence was corroborated by medical evidence and circumstantial evidence, viz., underwear of the accused and petticoat of the prosecutrix — Prosecutrix being a minor (aged between 15-17 years) question of consent does not arise — Therefore, plea that she was a consenting party is not tenable — Conviction of accused persons upheld — But the High Court committed grave error of law in reducing the sentence to the period already undergone i.e. 1½ months — Consequently sentence enhanced to 5 years' RI with fine. State of Rajasthan* v. *Ram Narain*, (1996) 8 SCC 64: AIR 1996 SC 2987.

Bench Strength **3**. Coram: *K. Ramaswamy*, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 23-1-1996]

[**Ed.**: Under Section 376 IPC age of consent is 16 years. In this case the doctor had opined that the prosecutrix was aged between 15 and 17 years. It has been held in *Jaya Mala* v. *Home Secy., Govt. of J&K*, (1982) 2 SCC 538: 1982 SCC (Cri) 502 that the margin of error in age ascertained by the radiological examination is 2 years. It is not clear as to how the court on the basis of the medical evidence alone came to a definite conclusion that the prosecutrix was a minor i.e. below 16 years of age.

Further the court has not considered the question of delay of one month in lodging the FIR for which the first informant had offered no explanation. Also conduct of the accused in bringing the girl to her native village is unnatural.

See also (1991) 2 SCC 379: 1991 SCC (Cri) 438; (1970) 3 SCC 21: 1970 SCC (Cri) 371; (1981) 1 SCC 560: 1981 SCC (Cri) 208]

[9136] — Ss. 376 and 375 Expln. — Rape on minor girl (aged 11 or 12 years) — Defence case that accused was falsely involved due to long standing enmity between accused's father and prosecutrix's father — *Held on facts, it is unbelievable that prosecutrix and her parents would allow the real culprit to escape and falsely involve an innocent person for commission of the crime. Prithi Chand* v. *State of H.P.*, (1989) 1 SCC 432: 1989 SCC (Cri) 206: AIR 1989 SC 702: (1989) 1 SCR 123: 1989 Cri LJ 841.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 17-1-1989]

[9137] — Ss. 376, 511, 363 and 366 — Rape — Ingredients of — Kidnapping and attempt to commit rape, if made out — Case law discussed — *In the present case, held, rape did not appear to have been committed but attempt was clearly established — In respect of offence under Ss. 363 and 366 both courts below had analysed the evidence in detail and there was no infirmity to warrant interference*

The trial court placed reliance on the evidence of the prosecutrix (PW 1) and her mother (PW 3). As a plea relating to the age of the prosecutrix to show that she was a consenting party was taken, the person who had issued the date of birth certificate was examined as PW 4. The trial court held that the age of the victim was less than 16 years and placed reliance on the documents produced. (Para 7)

The medical officer (PW 9) has stated that rape had not been committed and sexual intercourse had not taken place. In the instant case though rape does not appear to have been committed but the attempt to commit rape is clearly established. That being so, conviction for the offence punishable under Section 376 IPC is not made out but the offence punishable under Section 511 IPC is clearly made out. So far as the offence under Sections 365 and 366 IPC is concerned the trial court and the High Court have analysed the evidence in great detail. There is no infirmity in the conclusion to warrant interference. (Paras 11 and 13). *Arjun Singh* v. *State of H.P.*, (2009) 4 SCC 18: (2009) 2 SCC (Cri) 33: AIR 2009 SC 1568: (2009) 75 AIC 19 (SC): 2009 Cri LJ 1332.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-2-2009]

Vishnu v. State of Maharashtra, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217; State of Chhattisgarh v. Lekhram, (2006) 5 SCC 736: (2006) 3 SCC (Cri) 66; Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551, relied on

Halsbury's Statutes of England and Wales, 4th Edn., Vol. 12; Encyclopaedia of Crime and Justice, Vol. 4, p. 1356; Stephen's Criminal Law, 9th Edn., p. 262; 1 Hon. 6, 1a, 9 Edw. 4, 26 a (Hale PC 628), cited

[9138] — S. 376(1) and proviso thereto — Rape — Mandatory minimum sentence of seven years' RI — Reduction of — When warranted — "Adequate and special reasons" — What are — Marriage and leading of married life by prosecutrix subsequently — *Prosecutrix abducted by appellant-accused and then raped — Prosecutrix rescued from accused after twenty days — Sessions Judge convicting accused under S. 376 IPC to minimum sentence of RI for seven years and under S. 366 IPC to RI for five years — High Court on appeal holding that merely on consideration of age of appellant, reduction of the sentence was not warranted — Supreme Court on examination of evidence holding that sufficient evidence was tendered by prosecution to prove guilt of accused — However, since prosecutrix had since been married and was living with her husband, held, having regard to the peculiar facts and circumstances of the case, the sentence imposed by the courts below is on the highside — Sentence reduced to three years. Ram Kumar* v. *State of Haryana*, (2006) 4 SCC 347: (2006) 2 SCC (Cri) 308.

Bench Strength 2. Coram: *Dr. Ar. Lakshmanan* and *D.K. Jain*, JJ. [Date of decision: 19-4-2006]

[**Ed.**: *See also* (2005) 8 SCC 1 and the cases following it.]

[9139] — S. 376(2)(g) — Gang rape — Sentence warranted — *Appellants convicted under Ss. 376 & 366 and sentenced to RI for 10 years and fine of Rs 1000, and RI of 5 years and fine of Rs 1000 respectively — Considering gravity of crime, prayer for reduction of sentence rejected* (Paras 1 and 16). *Jaswant Singh* v. *State of Punjab*, (2009) 16 SCC 201: (2010) 3 SCC (Cri) 243: AIR 2010 SC 894: 2010 Cri LJ 41: (2010) 2 ECrN 305 (SC): (2010) 85 AIC 193 (SC).

Bench Strength 2. Coram: **B. Sudershan Reddy** and *J.M. Panchal*, JJ. [Date of decision: 5-11-2009]

[9140] — Ss. 376(2)(g)/34 & 366/34 — Kidnapping and gang rape — Conviction can be founded on sole testimony of victim of the rape — Corroboration of her evidence not essential when her evidence otherwise inspires confidence — *Prosecutrix having ample opportunity to see and identify the accused in broad daylight — Being a simple village girl, she cannot be expected to falsely implicate innocent persons leaving her own assailants — However, injuries on her private parts, medical evidence of doctor and FIR providing corroboration — Consent of the prosecutrix cannot be inferred from absence of multiple injuries on her private parts as in case of gang rape at the threat of her life she cannot be expected to have given continuous resistance resulting in sustaining numerous injuries — In the circumstances casual and mechanical approach, without regard to human probabilities, and consequent acquittal by High Court resulted in grave miscarriage of justice — Hence conviction and sentence of 3 years' RI recorded by trial court restored. State of Orissa* v. *Damburu Naiko*, (1992) 2 SCC 522: 1992 SCC (Cri) 400: AIR 1992 SC 1161: 1992 Cri LJ 1537: (1992) 73 CLT 715: (1992) 2 Crimes 77.

Bench Strength 2. Coram: *Kuldip Singh* and **K. Ramaswamy**, JJ. [Date of decision: 31-3-1992]

8. Incest and rape

[9141] — Ss. 375 and 376 — Father charged for raping his own daughter — High Court reversing the order of conviction passed by the trial court and acquitting the accused — Propriety — *Testimony of prosecutrix PW 1, in spite of being subjected to lengthy cross-examination remaining unimpeached — Suggestion that false case had*

8. Incest and rape *(contd.)*

been hoisted against the accused at the instance of her mother (who had strained relations with the father and was residing separately), and that she was having menstruation at that time, denied by her — Testimony of prosecutrix well corroborated by testimony of PW 2 (sister) and PW 3 (mother) and also the medical evidence on record — Held, High Court erred in law as well as on facts, and thereby committed grave miscarriage of justice in acquitting the accused — Despite strained relations between the parents, PWs 1 and 2 were happily staying with the accused and there was no rhyme or reason as to why the daughter should depose falsely so as to expose her honour and dignity and also expose the whole family, risking the outcasting or ostracisation and condemnation by the family circle as well as by society — Hence, impugned order of High Court set aside and that of trial court restored — Supreme Court expressing displeasure and dismay at the way High Court had dealt with such a grave offence

The testimony of PW 1, the prosecutrix, is well corroborated by the testimony of PW 2 and PW 3, corroborated by the medical evidence of PWs 4, 5, 11 and 12, which inspires confidence and the trial court has rightly convicted the respondent-accused under Section 376 IPC. The High Court has erred in law as well as on facts and thereby committed grave miscarriage of justice in acquitting the respondent by reversing the conviction of the respondent recorded by the trial court. The impugned order of the High Court is, accordingly, set aside and the order of the trial court convicting the accused is restored. (Paras 13 and 21)

Contention that because of the strained relationship between PW 3 mother of the prosecutrix and the accused, the prosecution case has been foisted against the accused at the instigation of the mother deserves outright rejection. From the evidence it is clearly established that PWs 1 and 2 despite strained relationship between their mother and father were happily staying with the accused and there is no rhyme or reason as to why the daughter should depose falsely so as to expose her honour and dignity and also expose the whole family to society risking the outcasting or ostracisation and condemnation by the family circle as well as by society. No girl of self-respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely any person of rape, much less her father, sacrificing thereby her chastity. It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is no other than her husband and father of the girl, at the risk of bringing down their social status and spoiling their reputation in the society as well as family circle to which they belong to. (Para 14)

[The Supreme Court while expressing displeasure and dismay at the way the High Court had casually dealt with such a grave offence, overlooking the alarming and shocking increase of sexual assault on minor girls observed that the High Court was swayed by the sheer insensitivity, totally oblivious of the growing menace of sexual violence against minors much less by the father and while doing so totally overlooked the prosecution evidence, which inspired confidence and merited acceptance.] (Para 5). *State of H.P.* v. *Asha Ram*, (2005) 13 SCC 766: (2006) 2 SCC (Cri) 296: AIR 2006 SC 381: 2006 Cri LJ 139.

Bench Strength 2. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 17-11-2005]

[9142] — S. 376 — Conviction of appellant accused for raping his own daughter on the basis of three eyewitnesses and medical evidence — Sufficiency of evidence — *Passer-by witnesses hearing shrieks of prosecutrix in a dilapidated house, separated the prosecutrix from appellant-accused, took them to police station — FIR lodged and medical examination conducted — Medical report opining that possibility of rape could not be ruled out — Evidence, held, is sufficient for conviction*

The prosecutrix is the daughter of the appellant-accused. On 5-2-2004 the appellant took the prosecutrix (PW 4) aged around 13 years on his cycle to Raghogarh to purchase clothes for her. At around 3 p.m., the prosecutrix was coming back with him on his cycle when on the way, the appellant stopped his cycle near "Bawdi Kheda Ashram". The appellant then took the prosecutrix to a dilapidated house situated there and removed the clothes of the prosecutrix. When the prosecutrix cried, the appellant slapped her and forcibly committed rape on her. The High Court affirmed the conviction under Section 376 IPC and sentence of imprisonment for life and fine of Rs 1000 with default stipulation as recorded by the Sessions Judge.

Dismissing the appeal,

Held :

The evidence on records clinchingly nails the appellant as the offender. Three witnesses *K*, *P* and *S* who were passing by, heard the shrieks of the prosecutrix, went inside the room and separated the appellant from the prosecutrix. These witnesses took the prosecutrix and the appellant to the police station where FIR was lodged. The doctor (PW 2) who examined the prosecutrix found that her sexual character had started developing, pubic hairs were scanty and on internal examination found old hymen ruptured at 11 o'clock position including the redness over its posterior side. On the basis of this examination, the doctor opined that possibility of rape could not be denied. The vaginal swab of the prosecutrix was prepared and the panty of the prosecutrix was taken by the doctor and the same was sealed and handed over to the police for chemical examination. As per the x-ray report, the age of the prosecutrix was found above 17 years and below 19 years. The medical report found the appellant competent to perform sexual intercourse. (Paras 11 and 5 to 7)

No sympathy or leniency is called for. It is an unpardonable act. If the protector becomes the violator, the offence assumes a greater degree of vulnerability. Charged of raping his own daughter under his refuge and fortress is worse than the gamekeeper becoming a poacher and treasury guard becoming a robber. He not only delicts the law but, it is a betrayal of trust. The accused's lustful acts have indelible scar not only physically but also emotionally on the victim. There can never be more shocking, depraved and heinous crime than when the father is charged of having raped his own daughter. (Paras 14, 11 and 2). *Siriya* v. *State of M.P.*, (2008) 8 SCC 72: (2008) 3 SCC (Cri) 422: AIR 2008 SC 2314.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-5-2008]

Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499; State of Karnataka v. Raju, (2007) 11 SCC 490: (2008) 1 SCC (Cri) 787, relied on

[9143] — S. 376 — Four years' RI for raping cousin's wife — *Accused of 22 years of age with no past criminal antecedent — Victim and her family forgiving the accused — Taking an overall view of the familial and criminal factors involved, the societal proneness to sex, people's abhorrence of released prisoners and the fact that a long incarceration would make the young accused a hardened criminal, sentence reduced to 2 years' RI — Within limits of Prisons Act and Rules, authorities directed to release the accused on parole, furlough, etc. so as to keep alive the family ties for the purpose of his reform. Phul Singh* v. *State of Haryana*, (1979) 4 SCC 413: 1980 SCC (Cri) 1: AIR 1980 SC 249: 1980 Cri LJ 8.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *P.N. Shinghal*, JJ. [Date of decision: 10-9-1979]

Held to be not good law in State of M.P. v. Balu, (2005) 1 SCC 108

[9144] — S. 376 — Sentence — Appropriate punishment — Father raping his daughter — *Physical and emotional trauma of daughter — Shocking and heinous crime and betrayal of trust — When protector becomes violator the offence assumes greater degree of vulnerability, still worse when a father rapes his own daughter — Leniency and sympathy in such cases, held, unwarranted — Sentence of life imprisonment and fine, upheld — CrPC, 1973, S. 386*

No sympathy or leniency is called for. It is an unpardonable act. If the protector becomes the violator, the offence assumes a greater degree of vulnerability. Charged of raping his own daughter under his refuge and fortress is worse than the gamekeeper becoming a poacher and treasury guard becoming a robber. He not only delicts the law but, it is a betrayal of trust. The accused's lustful acts have indelible scar not only physically but also emotionally on the victim. There can never be more shocking, depraved and heinous crime than when the father is charged of having raped his own daughter. (Paras 14, 11 and 2). *Siriya* v. *State of M.P.*, (2008) 8 SCC 72: (2008) 3 SCC (Cri) 422: AIR 2008 SC 2314.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-5-2008]

Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499; State of Karnataka v. Raju, (2007) 11 SCC 490: (2008) 1 SCC (Cri) 787, relied on

[9145] — S. 376 — Sentence — Father raping his own daughter — *Trial court on conviction sentencing accused to 5 years' RI and fine of Rs 1000 with default stipulation — Held, ordinarily offence of rape is grave in nature, more so, when perpetrator of the crime is the father against his own daughter and the rarest of the rare case which warrants strong deterrent judicial hand — Hence, while maintaining conviction, sentence of life imprisonment and fine of Rs 25,000 (on realisation to be paid to prosecutrix) imposed*

The trial court on conviction sentenced the respondent to 5 years' rigorous imprisonment and a fine of Rs 1000 and in default rigorous imprisonment for 3 months. In the instant case the crime committed by the respondent not only delicts the law but it has a deleterious effect on civilised society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its nature. More so, when the perpetrator of the crime is the father

8. Incest and rape *(contd.)*

against his own daughter it is more graver and the rarest of rare case, which warrants a strong deterrent judicial hand. Hence, while maintaining conviction recorded by trial court, sentence of imprisonment for life and fine of Rs 25,000 is imposed. The fine amount if realised shall be paid to the prosecutrix. (Paras 22 and 24). *State of H.P.* v. *Asha Ram*, (2005) 13 SCC 766: (2006) 2 SCC (Cri) 296: AIR 2006 SC 381: 2006 Cri LJ 139.

Bench Strength 2. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 17-11-2005]

Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598, followed

[**Ed.**: A news report appearing on the internet website Indlaw News Detail dated December 15, 2005 says:

"The Supreme Court today decided to re-examine its judgment convicting and sentencing a man to life imprisonment for raping his daughter who retracted her allegations after the pronouncement of the verdict on November 17".

It is to be seen in the future what the outcome is of the review petition.]

[9146] — Ss. 376 & 451 — Rape of young married woman by a relative — Testimony of the prosecutrix, in absence of any strong reason to falsely implicate the accused, acceptable — *Reliable testimony of other natural witnesses and medical evidence corroborating the version of the prosecutrix — Delay of two days in lodging the FIR not a factor casting doubt on prosecution story in view of the generally known fact that the rape victim or her husband would hesitate to approach the police — On facts held, offence of rape made out and High Court erred in reversing trial court's order of conviction and sentence under Ss. 376 and 451 on trivial grounds*

According to the prosecution the husband of the prosecutrix was serving in the Army and had come to the village to celebrate Diwali with his wife and family members. When her husband had gone out and she was preparing to serve fodder to the cattle, the accused came from behind, put one hand on her mouth and the other on her back and tried to push her into the cattle-shed. She resisted him whereupon he threw her on the ground, lifted her ghagra, untied his dhoti and forcibly raped her. The prosecutrix being a strong woman resisted the accused and in the process sustained abrasions on her lumbar region as well as elbow joints. The prosecutrix cried for help and her cries attracted PWs 4 and 7 who saw the accused on the top of the prosecutrix. PW 7 pulled him up with one hand and consoled the prosecutrix who was weeping. She told the PWs that the accused had forcibly violated her person. While the accused was running away PW 5, the husband of the prosecutrix, saw him tying his dhoti from behind. The prosecutrix also narrated the incident to her husband. He was dissuaded by the accused and others from filing a complaint and was threatened with certain consequences if he did so. However, two days later he went with his wife to the police station to lodge the complaint. The doctor who examined the prosecutrix two days after the incident found that her clothes were torn, they carried slightly watery and blood-like discharge stains and there were two teeth marks, on her left breast near the nipple. On internal examination he found both the labia majora and minora and the clitoris swollen and red with slight bleeding discharge and the walls of the vagina tender with slight swelling. He also noticed abrasions on the back at the lumbar region and on both the elbow joints. In his evidence before the court he stated that the vaginal smear on microscopic examination showed 90 per cent of dead sperms and 10 per cent of live sperms. On the basis of these findings he concluded that the duration of the rape could be about 24 to 48 hours. The trial court found the accused guilty under Ss. 376 and 451 IPC and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs 1000, in default to suffer rigorous imprisonment for three months on the first count and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs 5000, in default to undergo rigorous imprisonment for one month on the second count. The substantive sentences were to run concurrently. But on appeal, the High Court reversed the trial court's order of conviction and sentence. Allowing the appeal

Held :

Unless the evidence discloses that the prosecutrix and her husband had strong reasons to falsely implicate the accused, ordinarily the court should have no hesitation in accepting her version regarding the incident. The accused was a distant relative whom the prosecutrix had met for the first time about 5 or 6 years before. Thereafter she had not many occasions to meet him. Her relations with the accused were not strained. The relations of her husband with the accused were also not strained. In the circumstances there was no motive or reason for the prosecutrix or her husband to falsely involve the accused in the commission of a crime which would put her chastity at stake. Her husband had come to celebrate Diwali with his wife and family members and quarrel with anyone, more so a relative, would be farthest from his thought.

The High Court rejected the testimony of the prosecutrix for wholly unacceptable reasons. There is nothing inconceivable about the accused committing rape with the prosecutrix merely because he happens to be a relative of the latter. Merely because the place of occurrence was near a thoroughfare the High Court also erred in doubting that the accused would commit the rape at such place. There is nothing surprising in the conduct of a man who is lust-ridden in behaving in a carefree manner trying to make most of the situation of the prosecutrix being alone and helpless. Moreover PWs 4 and 7 were natural witnesses being neighbours and in the absence of strong reasons to disbelieve their versions, it is not possible to ignore their evidence as has been done by the High Court. Further corroboration is to be found from the evidence of the doctor who examined her. While accepting the High Court's view that the possibility of her having sexual intercourse with her husband cannot be overlooked, it is not possible to believe that when a married woman has sex with her husband in the privacy of their bedroom she would suffer abrasions on her body and the vaginal walls. The abrasions on the vaginal wall and the consequential inflammation of the labia majora as well as minora and the clitoris provide corroborative evidence that someone had forcible sex with her. Maybe the torn clothes were worn once again by the prosecutrix when she and her husband went to lodge the complaint two days later or the police made out such a panchnama. The same can be said about the attachment of the dhoti also. That by itself does not provide strong reason to doubt the prosecution's story regarding the incident. True it is that the complaint was lodged two days later but in Indian society the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and chastity of a married woman. A woman and her relatives have to struggle with several situations before deciding to approach the police, more so when the culprit happens to be related. In such cases, therefore, the delay is understandable and hence merely on that account the prosecution version cannot be doubted. Thus totally wrong approach adopted by the High Court has resulted in miscarriage of justice. Therefore the Supreme Court's interference is called for. *State of Rajasthan* v. *Narayan*, (1992) 3 SCC 615: 1992 SCC (Cri) 781: AIR 1992 SC 2004.

Bench Strength **3**. Coram: **A.M. Ahmadi**, *Kuldip Singh* and *B.P. Jeevan Reddy*, JJ. [Date of decision: 30-7-1992]

9. Attempt to rape

See also 'A.3.(d) Penetration/Intercourse', above, and

See also 'B.10. Rape or outraging modesty/indecent assault/other lesser sexual offences', below

[9147] — S. 376 or Ss. 376/511 — Case of rape converted to attempt to commit rape — Justifiability — *Trial court convicting appellant-accused under S. 376 — However, High Court converting conviction to that under S. 376 r/w S. 511 — Sustainability — Held, contention of appellant that on the basis of evidence on record, no offence under S. 376 was proved, accepted — However, victim categorically stated in her examination-in-chief that appellant-accused had removed her clothes and gagged her mouth and that subsequently he felt sorry for the incident and also apologised for the same — There was no suggestion in cross-examination on the part of accused to the aforesaid statement of victim — Also, no suggestion was put to the effect that he sought an apology — If accused had removed her clothes and did not rebut the statement of victim in her examination-in-chief, it is definitely a case of attempt to rape — Hence, held, no reason to differ with findings arrived at by High Court — CrPC, 1973, S. 222* (Paras 14 to 16 and 21). *Pandharinath* v. *State of Maharashtra*, (2009) 14 SCC 537: (2009) 80 AIC 240 (SC).

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 6-7-2009]

State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386: 1998 SCC (Cri)) 76; Tarkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, relied on

[9148] — Ss. 376 and 511 — Attempt to commit rape — Proof and corroboration — *Presence of semen/human spermatozoa on salwar — Chemical Examiner reporting that chemical and miscroscopical tests of the seized salwar of the prosecutrix revealed the presence of semen/human spermatozoa — Even in absence of proof that the said spermatozoa was that of the accused, such a report, held, a strong corroborative piece of evidence — Evidence Act, 1872, S. 45. Madan Lal* v. *State of J&K*, (1997) 7 SCC 677: 1997 SCC (Cri) 1151: AIR 1998 SC 386.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 6-8-1997]

[9149] — Ss. 376 and 511 — Attempt to commit rape — Proof and corroboration of — Evidence of prosecutrix — *Proper mode of assessment of — Veracity of such evidence, held, cannot be examined by picking up one sentence in the cross-examination*

9. Attempt to rape *(contd.)*

— The evidence of the prosecutrix in the instant case, read in its entirety, held, rightly accepted by the High Court — More so when there was sufficient corroborative evidence — Hence, conviction under Ss. 376 & 511, upheld

The High Court had reserved the order of acquittal passed by the trial court and convicted the appellant, who was the Headmaster of a Middle School, for the offence of "attempt to commit rape" under Sections 376/511 IPC of the prosecutrix, Mst *R*, a student of the same school. The prosecutrix had in her statement in cross-examination, made against the appellant allegation of penetration but the doctor, who examined the prosecutrix, stated that there was no mark of violence on any part of the body and on local examination there was no mark of violence on her private parts like the vagina, the hymen was intact and on examination of vaginal smear no living or dead sperm was found on the slide and accordingly she opined that *no definite opinion could be given regarding the attempt to sexual intercourse.* The appellant contended that the prosecution story was unbelievable inasmuch as if the prosecutrix's statement was that there had been a penetration into the vagina to a depth of quarter of one inch or one inch, the prosecutrix being a young girl of 13 years the hymen could not have been intact. Rejecting this contention,

Held :

The prosecutrix's evidence cannot be examined by picking one sentence in the cross-examination to find out whether she is a truthful witness or not. A reading of the entire evidence of the prosecutrix that the accused had rubbed his penis with the vagina of the prosecutrix and tried to penetrate but could not succeed in penetrating and ultimately got himself discharged and the hot semen fell on the thighs of the prosecutrix. The statement made by the prosecutrix on which appellant relied might have been made on account of the inexperience of the young girl who was being subjected to sexual harassment for the first time and the same cannot be read in isolation bereft of what she stated just previous to the aforesaid statement. The High Court rightly held that her evidence was that of a truthful witness, which gave an account of the incident that had happened to a rustic girl who was traumatised on account of sexual harassment meted out to her by none other than her own school Headmaster.

Apart from the trustworthy evidence of the prosecutrix herself there are several circumstances as found by the High Court which corroborate the prosecutrix's evidence and makes her statement wholly reliable. On the evidence on record the irresistible conclusion is that the prosecution has been able to establish the charge of attempt to commit rape beyond all reasonable doubts and consequently the conviction and sentence passed by the High Court does not call for any interference. *Madan Lal* v. *State of J&K*, (1997) 7 SCC 677: 1997 SCC (Cri) 1151: AIR 1998 SC 386.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 6-8-1997]

[9150] — Ss. 376 and 511 — Bar on Court Martial's jurisdiction to try the offence of rape, held, not applicable to the offence of attempting to commit rape — *Provisions of Sch. I to CrPC in respect of Ss. 511 and 376 IPC could not be invoked to reach a different conclusion as the question of Court Martial's jurisdiction to try an offence has to be adjudged from the provisions of the Army Act itself and not with reference to CrPC — CrPC, 1973, S. 26(a)(ii) & (iii) and Sch. I — Army Act, 1950 — S. 70* (Para 2). *Madan Lal* v. *Union of India*, (2002) 10 SCC 185.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *N. Santosh Hegde*, JJ. [Date of decision: 21-9-1999]

State v. Jaikaran Singh, AIR 1955 NUC 1721 (All), overruled

[9151] — Ss. 376, 511, 363 and 366 — Rape — Ingredients of — Kidnapping and attempt to commit rape, if made out — Case law discussed *— In the present case, held, rape did not appear to have been committed but attempt was clearly established — In respect of offence under Ss. 363 and 366 both courts below had analysed the evidence in detail and there was no infirmity to warrant interference*

The trial court placed reliance on the evidence of the prosecutrix (PW 1) and her mother (PW 3). As a plea relating to the age of the prosecutrix to show that she was a consenting party was taken, the person who had issued the date of birth certificate was examined as PW 4. The trial court held that the age of the victim was less than 16 years and placed reliance on the documents produced. (Para 7)

The medical officer (PW 9) has stated that rape had not been committed and sexual intercourse had not taken place. In the instant case though rape does not appear to have been committed but the attempt to commit rape is clearly established. That being so, conviction for the offence punishable under Section 376 IPC is not made out but the offence punishable under Section 511 IPC is clearly made out. So far as the offence under Sections 365 and 366 IPC is concerned the trial court and the High Court have analysed the evidence in great detail. There is no infirmity in the conclusion to warrant interference. (Paras 11 and 13). *Arjun Singh* v. *State of H.P.*, (2009) 4 SCC 18: (2009) 2 SCC (Cri) 33: AIR 2009 SC 1568: (2009) 75 AIC 19 (SC): 2009 Cri LJ 1332.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-2-2009]

Vishnu v. State of Maharashtra, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217; State of Chhattisgarh v. Lekhram, (2006) 5 SCC 736: (2006) 3 SCC (Cri) 66; Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551, relied on

Halsbury's Statutes of England and Wales, 4th Edn., Vol. 12; Encyclopaedia of Crime and Justice, Vol. 4, p. 1356; Stephen's Criminal Law, 9th Edn., p. 262; 1 Hon. 6, 1a, 9 Edw. 4, 26 a (Hale PC 628), cited

[9152] — S. 376 r/w S. 511 — Attempted rape — Sentence — Reduction of — *Rape attempted on the victim not succeeding in full measure — Sentence reduced to rigorous imprisonment for 3½ years, that is, half of that originally awarded. Ramcharan* v. *State of M.P.*, (2001) 10 SCC 108.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 5-1-2001]

[9153] — S. 376 r/w S. 511 and S. 354 — Attempt to commit rape — Conviction in respect of — *Essential requirements to be satisfied for*

In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect. (Para 11). *Koppula Venkat Rao* v. *State of A.P.*, (2004) 3 SCC 602: 2004 SCC (Cri) 840: AIR 2004 SC 1874: 2004 Cri LJ 1804.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-3-2004]

[9154] — S. 376 r/w S. 511 and S. 354 — Offence of "attempt to commit rape" — *Proof required in respect of, stated — Said offence distinguished from offence of "indecent assault"*

In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her. (Para 13). *Raju Pandurang Mahale* v. *State of Maharashtra*, (2004) 4 SCC 371: 2004 SCC (Cri) 1259: AIR 2004 SC 1677: 2004 Cri LJ 1441.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 11-2-2004]

R. v. James Lloyd, (1836) 7 C&P 317: 173 ER 141, relied on

[Ed.: *See also* (2004) 4 SCC 379]

[9155] — S. 376 r/w S. 511 and S. 354 — Offence of "attempt to commit rape" — *Proof required in respect of, stated — Said offence distinguished from offence of "indecent assault"*

In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect. (Paras 11 and 14). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

R. v. James Lloyd, (1836) 7 C&P 317: 173 ER 141, relied on

[9156] — Ss. 376/511 — Attempt to commit rape — *Held, is a serious offence as it leads to an assault on the most valuable possession of women, that is their character, reputation, dignity and honour. State of H.P.* v. *Dharam Pal*, (2004) 9 SCC 681: 2004 SCC (Cri) 1477.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 13-11-2003]

State of Haryana v. Prem Chand, (1997) 7 SCC 756: 1997 SCC (Cri) 1176, followed

[9157] — Ss. 376/511 — Attempt to commit rape — Incident taking place in a doctor's clinic — *Prosecutrix, an illiterate villager coming to the clinic with her father-in-law, M — The accused sent away M to fetch hot water — On his return he found*

9. Attempt to rape *(contd.)*

the appellant scantily dressed in his underclothes (kachha and banian) while coaccused (Doctor) standing naked near the prosecutrix who was lying unconscious with half folded salwar — Held, in the circumstances the scanty dress clearly makes the appellant guilty of attempt to commit rape. Nathu Ram v. *State of Haryana*, (1994) 1 SCC 491: 1994 SCC (Cri) 88: 1994 Cri LJ 1095: (1994) 1 An LT (Cri) 3: (1994) 31 ACC 25.

Bench Strength **2**. Coram: *P.B. Sawant* and **S. Mohan**, JJ. [Date of decision: 27-10-1993]

[9158] — Ss. 376/511 — Attempt to commit rape — Sentence — Modification of — Sentence of 10 years' RI imposed by High Court for conviction under Ss. 376/511 appropriately modified to five years' RI (Paras 18 and 19). *Guddu* v. *State of M.P.*, (2007) 14 SCC 654: (2006) 42 AIC 79 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision: 27-4-2006]

[9159] — Ss. 376/511 — Sentence — *Attempt to commit rape — Held, 3½ years' R.I. with fine of Rs 1000 not excessive. Nathu Ram* v. *State of Haryana*, (1994) 1 SCC 491: 1994 SCC (Cri) 88: 1994 Cri LJ 1095: (1994) 1 An LT (Cri) 3: (1994) 31 ACC 25.

Bench Strength **2**. Coram: *P.B. Sawant* and **S. Mohan**, JJ. [Date of decision: 27-10-1993]

[9160] — Ss. 376/511 — Sentence — Release on probation — Attempt to commit rape — Accused aged less than 21 years — Prosecutrix found to be above 16 years of age — *Offence not attracting imprisonment for life but only imprisonment up to 10 years — Held, in the circumstances, trial court justified in extending benefit of probation to the accused — CrPC, 1973, S. 360 — Probation of Offenders Act, 1958, S. 4. State of Haryana* v. *Prem Chand*, (1997) 7 SCC 756: 1997 SCC (Cri) 1176.

Bench Strength **2**. Coram: *M.M. Punchhi* and *S.B. Majmudar*, JJ. [Date of decision: 7-5-1997]

[9161] — Ss. 376/511 & 323 — Attempt to rape — Medical evidence — Presence of "smegma on the dorsal side of posterior 1/4th glans" of accused — *Negates the case of recent intercourse — Victim's hymen and fourchette found intact, no bleeding or dried blood mark, no discharge, no swelling found — Both accused and victim medically examined within seven hours of the occurrence — On microscopic examination of vaginal smear and urethral smear, no semen or spermatozoa found — Witness deposing that on hearing cries when he went to side of the road he found accused raising his underwear and on seeing him he ran away and the victim said that the accused spoiled her — Held, circumstances attending the case, evidence of PWs coupled with medical evidence established attempt of rape and causing simple hurt — Hence accused liable to be convicted under Ss. 376/511 and 323 and sentenced to 5 years' RI and 4 months' imprisonment*

The offence committed by accused-respondent is only an attempt of rape on the medical evidence which does not clinchingly establish the proof of rape as required by law. The presence of smegma was inconsistent with a recent intercourse. It would take about 24 hours to accumulate if the smegma is rubbed off during intercourse.

On the assessment and evaluation of the evidence, it must, therefore, be held that the respondent has made himself liable to be punished under S. 376 read with S. 511 IPC. Therefore, the respondent is convicted thereunder and is sentenced to undergo rigorous imprisonment for five years. The conviction record by the High Court under S. 323 IPC and the sentence of four months' imprisonment is retained. *State of Karnataka* v. *Mahabaleshwar Gourya Naik*, 1992 Supp (3) SCC 179: 1993 SCC (Cri) 180: AIR 1992 SC 2043: (1992) 2 Crimes 654.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M.M. Punchhi*, JJ. [Date of decision: 15-5-1992]

Parikh's Textbook of Medical Jurisprudence and Toxicology, page 439, relied on

[9162] — Ss. 376/511 and 323 — Attempt to rape — Victim committing suicide one and half months after the occurrence — *Mere fact of non-availability of the victim for examination not fatal to the prosecution — Court should decide on the basis of available evidence*

Mere fact that a victim is dead and consequently could not be examined can never be a ground to acquit an accused if there is evidence otherwise available proving the criminal act of the accused concerned. The prosecution case cannot be thrown overboard because of the non-availability of the victim for examination on account of her death. The Court can record a conviction for any offence that is made out on the available evidence, let in by the prosecution. *State of Karnataka* v. *Mahabaleshwar Gourya Naik*, 1992 Supp (3) SCC 179: 1993 SCC (Cri) 180: AIR 1992 SC 2043: (1992) 2 Crimes 654.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M.M. Punchhi*, JJ. [Date of decision: 15-5-1992]

[9163] — Ss. 376/511 & 354 — Offence of attempt to commit rape and to commit indecent assault — Point of distinction between

The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he is just going to have sexual connection with the prosecutrix. (Para 17). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

Ahmed Asalt Mirkhan, Cri A No. 161 of 1930, decided on 12-8-1930 in Law of Crimes by Ratanlal Dhirajlal, p. 922; R. v. James Lloyd, (1836) 7 C&P 317: 173 ER 141, relied on

10. Rape or outraging modesty/ indecent assault/other lesser sexual offences

See also 'B.9. Attempt to rape', above

[9164] — S. 376 — Cases involving sexual molestation — Duty of court to deal with such cases with utmost sensitivity — *Minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case*

Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. A rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend *assurance* to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. *State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210, followed

[9165] — S. 376 or S. 354 — A-1 alleged to have forced the prosecutrix to have sexual intercourse with him on false promise of marrying her, and thereafter A-1 to A-4 intimidating her and her mother, threatening them with dire consequences — *Transfer certificate issued by school conclusively showing that prosecutrix was below sixteen years of age — On consideration of facts, however, conviction altered from S. 376 to S. 354* (Paras 2 and 7 to 10). *Shekara* v. *State of Karnataka*, (2009) 14 SCC 76: (2009) 76 AIC 150 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 18-2-2009]

Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551: 2004 SCC (Cri) 31; Vidyadharan v. State of Kerala, (2004) 1 SCC 215: 2004 SCC (Cri) 260, relied on

Stephen's Criminal Law, 9th Edn., p. 262; Encyclopaedia of Crime and Justice, Vol. 4, p. 1356; Halsbury's Statutes of England and Wales, 4th Edn., Vol. 12, cited

[9166] — S. 376 or S. 354 — Accused charged under S. 376 — Absence of injury on victim — Whether offence committed coming under purview of S. 354 — *Absence of injury on the private parts of the prosecutrix — From a reading of the evidence of the prosecutrix, held, it is clear that the accused outraged the modesty but had not raped her — In her statement she loosely described his act as "fondling" — Offence is one under S. 354 IPC — Sentence reduced to that already undergone*

The prosecutrix filed a report that on the preceding day in the morning, at about 9.00 or 9.30 a.m. when she went to the fields the accused all of a sudden came and caught hold of her and raped her. When she tried to resist, accused *P* gave a blow on her eye and threatened to kill her, if she made any sound. When she again cried for help, her aunt-in-law (PW 2) came and challenged him. Upon this, accused *P* fled away from the place of occurrence. The medical examination of the prosecutrix was conducted by the doctor at 2.00 p.m. The trial court convicted the accused under Section 376 of the Penal Code, 1860 imposing a sentence of 7 years' imprisonment. In appeal a Single Judge of the High Court upheld the conviction under Section 376 IPC.

10. Rape or outraging modesty/indecent assault/other lesser sexual offences *(contd.)*

Disposing the appeal in terms below,

Held :

There was no unexplained delay in lodging the FIR. So far as absence of injury on the private parts of the prosecutrix is concerned, admittedly, she was a married lady. But on a close reading of the evidence of the prosecutrix, it is clear that the accused outraged the modesty but had not raped her. The prosecutrix has not stated specifically about the act, but has loosely described as "fondling". So far as the enmity with the aunt of *L* (PW 4), the husband of the prosecutrix is concerned it is unnatural that a married lady belonging to the rural areas would falsely implicate the accused with whom she or her husband had no enmity. (Para 8)

After careful consideration of the evidence, the trial court and the High Court have found the accused guilty. But the offence is under Section 354 IPC. The conviction of the accused is altered from Section 376 IPC to Section 354 IPC. The accused has undergone nearly two years of sentence. The occurrence is of 1987. Custodial sentence shall be the period already undergone. Directed that the appellant be released forthwith unless required in custody in connection with any other case. (Paras 10 and 11). *Premiya* v. *State of Rajasthan*, (2008) 10 SCC 81: (2008) 70 AIC 45 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 22-9-2008]

State of Punjab v. Major Singh, AIR 1967 SC 63, relied on

[9167] — Ss. 376 and 354 — Sexual assault or indecent assault — *Victim aged about 5 years — Doctor finding the hymen completely torn, laceration on all sides of vagina and fresh bleeding — Evidence of lady doctor showing that a finger could be easily inserted inside the private part — Held, the victim was subjected to sexual assault and not merely indecent assault — Merely because the injuries found on the private part of the victim could also be caused by an instrument like a piece of glass cannot lead to the conclusion that she was not raped unless there is material to support such a conclusion*

The victim girl was brought to the hospital in a semi-conscious state and her general condition was poor. On external examination of the girl the doctor found that the hymen was completely torn and there was laceration on all sides of vagina. The doctor noticed that there was fresh bleeding in her private part. On internal examination the doctor found that a finger could easily be inserted in her private part and bloodstained discharge was coming out. Thus from the medical evidence it is clear that the girl was not only subjected to an indecent assault but there was sexual activity and the girl was subjected to sexual assault, otherwise the doctor would not have found the hymen completely torn, laceration on all sides of the vagina and fresh bleeding. According to the evidence of lady doctor a finger could be easily inserted inside the private part of the victim which otherwise was not possible in the case of a child aged 5 years because according to the *Medical Jurisprudence* by Modi, 21st Edn., p. 376, in a girl under 14 years of age the vaginal orifice is usually so small that it will hardly allow the passage of the little finger through her hymen. In the present case if the girl aged 5 years was not subjected to sexual intercourse the finger could not have been easily inserted in her private part as observed by the lady doctor.

Simply because the injuries found on the private part of the girl could also be caused in several other ways than the sexual assault on the victim cannot lead to the conclusion that the injuries on her private part were not sustained by commission of the rape but by some other instrument in the absence of any material to support such a conclusion. In the present case though the doctor deposed that the injuries could also be caused by instrument like piece of glass but there were neither circumstances nor any material to conclude or even to suggest that the victim had sustained the injuries by any piece of glass. No piece of glass was found at or near the place of occurrence. On the contrary there is positive and convincing evidence showing that there was sexual assault on the girl and the finding that she was subjected to indecent assault is absolutely incorrect. *State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[9168] — Ss. 376, 354 and 506 — Effect of delay in filing FIR in cases of sexual assault — *Respondent-accused alleged to have sexually ravished PW 1 and outraged the modesty of several other girl students of the school where he was a teacher — High Court setting aside his conviction considering delay in lodging FIR — Held, delay in a case of sexual assault, cannot be equated with the case involving other offences — There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint — In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there* *was some delay in lodging the FIR — Further, though prosecution had failed to establish allegations of rape but commission of offence punishable under Ss. 354 and 506 have clearly been established — Hence, respondent deserves to be convicted for the offences punishable under Ss. 354 and 506 — CrPC, 1973, S. 154* (Paras 2 and 6 to 8). *State of H.P.* v. *Prem Singh*, (2009) 1 SCC 420: (2009) 1 SCC (Cri) 351: AIR 2009 SC 1010: (2009) 73 AIC 238 (SC): 2009 Cri LJ 786.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-11-2008]

[9169] — Ss. 376 and 511 — Attempts to molest — Judicial enquiry into — Corroboration of the complainant's evidence when not necessary — *Enquiry into the alleged offence conducted by District Judge on the Pondicherry Administration's request as directed by the Supreme Court — When such an enquiry was conducted 17 long years after the offence was committed, held, the complainant's allegation ought not to have been rejected merely for want of corroboration — Constitution of India, Art. 136* (Paras 3, 5 and 6). *Radha Bai* v. *UT, Pondicherry*, (1995) 4 SCC 141: 1995 SCC (L&S) 942: (1995) 30 ATC 196: AIR 1995 SC 1476.

Bench Strength 2. Coram: *Kuldip Singh* and **K.S. Paripoornan**, JJ. [Date of decision: 20-4-1995]

[9170] — Ss. 376 and 511 or S. 354 — Applicable provision — Attempt to commit rape, held, not negated by mere absence of penetration — *Contention that such a case would attract not Ss. 376 and 511 but only S. 354, rejected*

The appellant contended that in absence of any penetration into the vagina it could not be held that the accused had attempted to commit rape on the prosecutrix, and that therefore, it would at most amount to an offence of indecent assault under Section 354 IPC. Rejecting this contention

Held :

The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove that an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her lie flat on the ground undresses himself and then forcibly rubs his erected penis on the private parts of the girl but fails to penetrate the same into the vagina and on such rubbing ejaculates himself then it cannot be held that it was a case of mere assault under Section 354 IPC and not an attempt to commit rape under Section 376 read with Section 511 IPC. *Madan Lal* v. *State of J&K*, (1997) 7 SCC 677: 1997 SCC (Cri) 1151: AIR 1998 SC 386.

Bench Strength 2. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 6-8-1997]

[9171] — Ss. 376(1) and proviso thereto, 363 and 366 — Trial court imposing sentences of 7 years' RI under Ss. 363 and 376 and ten years' RI under S. 366 — Reduction below statutory minimum by High Court — Sustainability — *Held, High Court was wholly unjustified, while upholding the conviction on all counts, in reducing the sentence to period already undergone, of nearly two years and four months — Matter remanded for decision afresh. State of M.P.* v. *Rakesh*, (2005) 8 SCC 13(4): 2005 SCC (Cri) 1959 (3): AIR 2005 SC 4319.

Bench Strength 3. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-10-2005]

[**Ed.**: Many similar appeals were filed in the Supreme Court by the State of M.P. involving the very same manner of reduction of sentence by Justice N.S. Azad of the M.P. High Court. All such appeals came before the present Bench of three Judges. The leading decision is reported above at (2005) 8 SCC 1.

All the remaining appeals [which are being reported below at pp. 11-14] have been disposed of identically except that in certain appeals besides S. 376 IPC the accused had been convicted of other offences as well, and the period of sentence undergone was also different. Since the text of all the judgments in the connected appeals in other respects is identical to the one reproduced below, they are not being reproduced. The slight difference in the conviction and period of sentence already undergone is detailed in each shortnote given separately below the cause title of each appeal. It is worthy of note that the trial court in each case had awarded the minimum mandatory sentence under S. 376(1) or S. 376(2), as the case may be.]

[9172] — S. 376/S. 354 — Rape alleged for the first time after eleven days of the occurrence for which no explanation put forth — Effect — *Where on the basis of the FIR and the facts as alleged and proved only offence under S. 354 made out, conviction of appellant under S. 376 unsustainable — Sentence of imprisonment for period already undergone i.e. 13 months would serve the ends of justice* (Paras 3 and 4). *Tejpal* v. *State of M.P.*, (2006) 9 SCC 762: (2006) 3 SCC (Cri) 398.

Bench Strength 3. Coram: *B.N. Agrawal, A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 21-2-2006]

[9173] — Ss. 376 (as amended in 1983)/511 or 354 — Applicable provision — After finding the accused guilty under Ss. 376/511, even in absence of a charge under S. 376 read with S. 511, held,

10. Rape or outraging modesty/indecent assault/other lesser sexual offences *(contd.)*

High Court should have convicted him under Ss. 376/511 by invoking S. 222, CrPC and not under S. 354 — Quantum of punishment — Determination of — *Keeping in view the objects of 1983 amendment to S. 376, held, no person committing or attempting to commit rape should be allowed to escape punishment — Having found the accused guilty, the quantum of punishment must be decided in accordance with law without being influenced by the press, electronic media or public agitation, as a trial by such agencies is the very antithesis of rule of law — While imposing fine and apportioning the whole or part thereof to the victim, the damage caused to her and even to her family should be taken into consideration — Father of eight-year-old daughter found guilty of attempting rape on a girl aged below twelve years and also found guilty under S. 57 of Bombay Children Act — High Court, however, setting aside the conviction under Ss. 376/511 and instead convicting him under S. 354 IPC and sentencing him to rigorous imprisonment for the period already undergone (only 33 days) and to a fine of Rs 40,000 of which Rs 25,000 was to be apportioned to the complainant (father of the prosecutrix in this case) — High Court upholding the respondent's conviction under S. 57 of the Bombay Act but restricting the sentence thereunder to the period of imprisonment already undergone — Matter coming up before the Supreme Court 11 long years after the incident and by then the fine imposed by the High Court having already been paid by the accused and the complainant having withdrawn his share of the fine — In such circumstances while converting the conviction of the accused from one under S. 354 IPC to that under Ss. 376/511 IPC, held, a sentence of five years' RI and a fine of Rs 40,000 would meet the ends of justice — Conviction and sentence under S. 57 of Bombay Children Act, however, affirmed — CrPC, 1973, S. 222 — Bombay Children Act, 1948 (71 of 1948), S. 57 — Law Commission Reports 42nd, 69th and 84th — Criminal Law (Amendment) Act, 1983*

The accused-respondent was convicted by the trial court for offences under Section 376 of IPC and Section 57 of the Bombay Children Act, 1948 for having committed rape on a girl of eight years of age on 24-9-1986 and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs 5000 and for offence under Section 57 of the Bombay Children Act he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs 500. The substantive sentences were ordered to run concurrently. The Bombay High Court upset the conviction under Section 376 IPC and instead convicted him for an offence under Section 354 IPC and sentenced him to suffer rigorous imprisonment which he had already undergone (which was 33 days in all) and to pay fine of Rs 40,000 out of which Rs 25,000 was directed to be paid to the complainant who was the father of the girl. The conviction for the offence under Section 57 of the Bombay Children Act was upheld but the sentence was reduced to the imprisonment already undergone. Cross appeals were filed against the High Court's decision. While the State of Maharashtra filed appeal against the conviction and sentence of the accused by the High Court praying for his conviction under Section 376 IPC and for enhancement of his sentence to a minimum of 10 years, the accused filed appeal against his very conviction and sentence under Section 354 IPC and Section 57 of the Bombay Children Act. On the question of sentence under Sections 376/511, IPC, the accused-respondent contended that when the offence was committed the accused had also a daughter of 8 years of age and that a long time had elapsed since the offence was committed and that in terms of the judgment of the High Court the accused had already deposited Rs 40,000 out of which Rs 25,000 had already been withdrawn by the father of the prosecutrix. It was submitted that if the Court came to the conclusion that the sentence had to be enhanced then only the amount of fine could be raised. Dismissing the respondent's appeal and partly allowing the State's appeal

Held :

The circumstances of the case show that the accused intended to commit rape on the girl. In the commission of that crime, he laid the girl on the seat in the Maruti car and then laid himself over her. He pulled down her knickers and also opened the zip of his pants and took out his male organ. He pressed his male organ on the private parts of the girl. But since he discharged, he could not penetrate and was unable to complete the offence of rape. However, it is clear that he did attempt to commit rape.

The High Court after having come to the conclusion that the accused was guilty of an offence under Sections 376/511 of the IPC could not have convicted the accused for an offence under Section 354 IPC. Section 511 IPC provides punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. In the instant case since the girl was under 12 years of age and the Sessions Judge having found that offence of rape had been committed could not have awarded sentence of 7 years when the law prescribes minimum sentence of rigorous imprisonment for a term not less than 10 years, unless exceptional circumstances existed. However, the State of the complainant did not come up in appeal in the High Court for enhancement of the sentence. Though there was no charge under Section 376 read with Section 511 IPC, under Section 222 CrPC when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

The respondent's plea that in case the court took a decision to enhance the sentence the amount of fine could be raised, cannot be accepted. A heinous crime has been committed and the accused must suffer for the consequences. A rapist not only violates the victim's personal integrity but leaves indelible marks on the very soul of the helpless female. The girl of 8 years must have undergone a traumatic experience. Despite the 11 year long lapse of time after the offence, keeping the objects of the 1983 amendment to Section 376 of IPC in view, the law as it exists now and the decisions of the Supreme Court on the question of sentence, the message is loud and clear that no person who commits or attempts to commit rape shall escape punishment.

Considering the whole aspect of the matter, it has to be held that a sentence of five years' rigorous imprisonment and fine of Rs 40,000 will meet the ends of justice. The fine has already been paid, out of that Rs 25,000 has been withdrawn by the father of the girl as per direction of the High Court which is upheld. The conviction of the accused-respondent is converted from one under Section 354 IPC to that under Sections 376/511 IPC and he is sentenced as aforesaid. The conviction and sentence of the accused under Section 57 of the Bombay Children Act as ordered by the High Court shall, however, stand. The sentences shall run concurrently. *State of Maharashtra* v. *Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386: AIR 1997 SC 3986.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 11-9-1997]

[9174] — Ss. 376/511 & 354 — Offence of attempt to commit rape and to commit indecent assault — Point of distinction between

The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he is just going to have sexual connection with the prosecutrix. (Para 17). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

Ahmed Asalt Mirkhan, Cri A No. 161 of 1930, decided on 12-8-1930 in Law of Crimes by Ratanlal Dhirajlal, p. 922; R. v. James Lloyd, (1836) 7 C&P 317: 173 ER 141, relied on

[9175] — Ss. 376/511, 366 and 354 — Charge framed under Ss. 376/511, but conviction under Ss. 366 and 354 — *Conviction where major offence not proved, but minor offence in respect of which no charge was framed is established — Accused charged only under Ss. 376/511 IPC — Said offence not made out — However, ingredients of minor offences under Ss. 366 and 354 IPC present — Held, accused could be convicted under Ss. 366 and 354 IPC by invoking S. 222 CrPC — CrPC, 1973, S. 222*

In the instant case, the accused has been charged with Sections 376/511 IPC only. But, the offence committed does not come within the purview of offence punishable under Sections 376/511 IPC. In the absence of charge under any other section, the question now arises — whether the accused should be acquitted; or whether he should be convicted for committing any other offence pertaining to forcibly outraging the modesty of a girl. In a situation like this, Section 222 CrPC would be invoked which provides that in a case where the accused is charged with a major offence and the said charge is not proved, the accused may be convicted of the minor offence, though he was not charged with it. (Paras 23 and 36)

In the present case, the offence committed squarely covers the ingredients of Sections 366 and 354 IPC. The appellant is clearly guilty of the offences under Sections 366 and 354 IPC. (Paras 36 and 59). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, relied on

[9176] — Ss. 376/511, 375 Expln., 366 and 354 — Rape — Basic ingredients of — Penetration of male organ into private parts of victim/prosecutrix, held, is necessary to constitute the said offence — *Slightest penetration with or without any emission of semen or even an attempt at penetration*

10. Rape or outraging modesty/indecent assault/other lesser sexual offences *(contd.)*

is sufficient — Rupture of hymen is not necessary — Appellant forcibly taking prosecutrix to his gumti with intention of committing illicit intercourse — But, before he could do anything, hearing alarm raised by prosecutrix, the father of prosecutrix and other villagers assembling there and rescuing the prosecutrix — Held, in absence of any attempt to penetrate, conviction under Ss. 376/511 was wholly illegal and unsustainable — However, ingredients of offences under Ss. 366 and 354 IPC being present, appellant held guilty under the said sections — Punished accordingly

On 18-2-1998, at about 1.30 a.m., when the prosecutrix, aged about 12 years, came out of her house to answer the call of nature, the appellant forcibly took her to his gumti for committing illicit sexual intercourse with her. The said gumti of the appellant was only a few feet away from the house of the prosecutrix. The prosecutrix raised an alarm, and immediately thereafter several persons including the father of the prosecutrix came from the adjoining houses and caught the appellant before he could even make any attempt to ravish the prosecutrix.

The trial court convicted the appellant under Sections 376/511 IPC and sentenced him to seven years' rigorous imprisonment. The appellant preferred an appeal before the High Court, but the same was dismissed. Hence, the present appeal.

Partly allowing the appeal,

Held :

The important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration which is altogether missing in the instant case. No offence under Section 376 IPC can be made out unless there was penetration to some extent. In the absence of penetration to any extent, it would not bring the offence of the appellant within the four corners of Section 375 of the Penal Code. (Para 10)

Under Section 375 IPC, six categories indicated therein are the basic ingredients of the offence of rape. In view of the Explanation to Section 375, mere penetration of penis in vagina is an offence of rape. Slightest penetration is sufficient for conviction under Section 376 IPC. (Paras 10 and 13)

Therefore, the basic ingredient for proving a charge of rape is the accomplishment of the act with force. The other important ingredient is penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would be enough for the purpose of Sections 375 and 376 IPC. In order to constitute rape, what Section 375 IPC requires is medical evidence of penetration, and this may occur and the hymen remain intact. In this regard, the position of law in England is the same. There also, where a penetration was proved, but not of such a depth as to injure the hymen, still it was held to be sufficient to constitute the crime of rape. The view has been taken that "proof of the rupture of the hymen is unnecessary". It has been laid down that "it is now unnecessary to prove actual emission of seed; sexual intercourse is deemed complete upon proof of penetration only". (Paras 10, 13, 14 and 21)

In the present case, what to talk about the penetration, there has not been any attempt of penetration to the slightest degree. The appellant had neither undressed himself nor even asked the prosecutrix to undress so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Sections 376/511 IPC is wholly illegal and unsustainable. (Paras 22 and 58)

However, the offence committed squarely covers the ingredients of Sections 366 and 354 IPC. (Para 36). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

State of U.P. v. Babul Nath, (1994) 6 SCC 29: 1994 SCC (Cri) 1585; R. v. Hill, (1781) 1 East PC 439; R. v. M'Rue, (1838) 8 C&P 641: 173 ER 653; R. v. Allen, (1839) 9 C&P 31: 173 ER 727; R. v. Hughes, (1841) 2 Mood 190: 169 ER 75; R. v. Lines, (1844) 1 C&K 393: 174 ER 861; R. v. Marsden, (1891) 2 QB 149; Aman Kumar v. State of Haryana, (2004) 4 SCC 379: 2004 SCC (Cri) 1266, relied on

State of Kerala v. Kundumkara Govindan, 1969 Cri LJ 818: 1968 Ker LJ 485, approved

Nirmal Kumar v. State of Haryana, 2002 Cri LJ 3352 (P&H); Khalilur Rahman v. Emperor, AIR 1933 Rang 98: 34 Cri LJ 696 (FB); Rajendra v. State of Maharashtra, 1997 SCC (Cri) 840; Niranjan Singh v. State, (1986) 2 Crimes 335 (Del); Vishnu v. State of Maharashtra, 1997 Cri LJ 1724 (Bom); State of Kerala v. Hamsa, (1988) 3 Crimes 161 (Ker); State of Punjab v. Major Singh, AIR 1967 SC 63: 1967 Cri LJ 1; Kanhu Charan Patra v. State of Orissa, 1996 Cri LJ 1151 (Ori); Jai Chand v. State, 1996 Cri LJ 2039 (Del); Raja v. State of Rajasthan, 1998 Cri LJ 1608 (Raj); State of Karnataka v. Khaleel, 2004 Cri LJ (NOC) 10 (Kant); Nuna v. Emperor, 15 IC 309: (1912) 13 Cri LJ 469; Bisheshwar Murmu v. State of Bihar, 2004 Cri LJ 326 (Jhar); Keshab Padhan v. State of Orissa, 1976 Cutt LR (Cri) 236; Ram Mehar v. State of Haryana, 1998 Cri LJ 1999 (P&H); Rameshwar v. State of Haryana, 1984 Cri LJ 786 (P&H); Shoukat v. State of Rajasthan, 2002 Cri LJ 364 (Raj), considered

11. Rape of mentally deficient woman

[9177] — S. 376 — Rape on a mentally deficient woman — Sentence — Quantum of — *Held, gravity of offence in such case is more serious than the enumerated categories indicated in S. 376(2) — Hence, need of prescribing higher minimum sentence in a case of this nature, recommended* (Para 8). *Tulshidas Kanolkar* v. *State of Goa*, (2003) 8 SCC 590.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-10-2003]

[9178] — Ss. 376 and 506 Pt. II — Rape — Delay in lodging FIR — Victim, a mentally deficient girl — Delay, held on facts, not fatal — When accusations of rape are involved, held, said delay per se is not a mitigating circumstance — *Such delay, if satisfactorily explained, held, not fatal — If not so explained and there is possibility of embellishment or exaggeration in prosecution version due to such delay, then it is a relevant factor — Where a mentally deficient girl totally unaware of the catastrophe which had befallen her was ravished by accused not once, but several times, held, the unusual circumstances satisfactorily explained the delay in lodging FIR — Thus, said delay did not affect the prosecution version adversely — CrPC, 1973, S. 154*

Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. (Para 5)

Delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. (Para 5). *Tulshidas Kanolkar* v. *State of Goa*, (2003) 8 SCC 590.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-10-2003]

12. Other offences and rape

[9179] — Ss. 376 and 448 — House-trespass and rape — *Alleged to be committed by respondent on 23-9-1981 — Absence of medical report regarding observations of doctor when he examined the victim PW 3 on 24-9-1981 — Hence, subsequent clarifications given by doctor in reply to certain queries asked by IO on 25-9-1981, held, not acceptable — Even though there were children and other adults nearabout the house of PW 3, none responded to her alarm — Further, if at all PW 3 raised an alarm it was only after the respondent went away from her house — No injuries on the body of PW 3 to indicate any forceful assault — Undue delay in lodging complaint — On facts, held, prosecution failed to establish its case — Acquittal upheld* (Paras 2 to 4). *State of Karnataka* v. *Mapilla P.P. Soopi*, (2003) 8 SCC 202: 2003 SCC (Cri) 1977.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 23-9-2003]

[9180] — Ss. 376 and 506 — Offence alleged under both SC/ST Act and IPC — Proceedings under IPC if may continue if proceeding under 1989 Act vitiated — *Accused charged under Ss. 376 and 506 IPC and S. 3(1)(xii) of the Act — High Court in revision against framing of charges quashed the entire proceedings — Investigation was carried out by IO in absence of authorisation by competent authority — Held, investigation of an offence under S. 3 of the Act by an officer not appointed in terms of R. 7 is illegal and invalid — But when the offence complained is also under IPC the investigation by a competent police officer in accordance with CrPC cannot be quashed — The proceedings shall proceed for the offences punishable under IPC notwithstanding investigation and the charge-sheet being not liable to be accepted for cognizance of offence under S. 3 of the Act — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 9 & 3 r/w R. 7 — CrPC, 1973, Ss. 397 and 401* (Paras 5 and 7 to 9). *State of M.P.* v. *Chunnilal*, (2009) 12 SCC 649: (2009) 77 AIC 33 (SC): (2009) 2 KLT 335.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 15-4-2009]

***Applied** in State of Punjab v. Hardial Singh, (2009) 15 SCC 106 at p. 107*

[9181] — Ss. 376/34 and 306/34 — Rape and consequential suicide — Charge against two accused of committing rape on the person of a school teacher aged 20 years — *Statement of the victim recorded by police 11 days after the occurrence and on that basis FIR registered and victim medically examined — In her statement, the victim*

12. Other offences and rape *(contd.)*

narrating the circumstances relating to her rape — Victim committing suicide about 5½ months after the occurrence — Statement of the deceased held to be not a dying declaration and not admissible in evidence — Delay in lodging FIR, medical examination, non-examination of material witnesses and turning hostile of witnesses also going against the prosecution case — On facts held, prosecution failed to prove beyond reasonable doubt the charge of rape under Ss. 376/34 — Since according to the prosecution, suicide was due to humiliation suffered by the victim because of rape, conviction under Ss. 306/34 also cannot be sustained

A school teacher aged about 20 years was allegedly raped by the headmaster and a co-teacher (appellants) of the same school on 9-7-1994. According to the prosecution thereafter the prosecutrix narrated the incident to her mother, brother and uncle and later to her father who came back home after 2-3 days. The matter was reported to the police on 20-7-1994. The statement of the prosecutrix was recorded by an API at the police station and on that basis the crime report was registered. Petticoat of the prosecutrix and the metal bangles which she was wearing at the time of occurrence were seized. After preparation of panchnama, the seized articles were sent to the chemical analyser for his report. On 6-8-1994 statements of two child witnesses were recorded under Section 164 of the Criminal Procedure Code before the Special Executive Magistrate. The doctor who examined the prosecutrix reported that she had been subjected to sexual intercourse in the recent past. The appellants were charged for offences under Section 376 read with Section 34 IPC. Having failed to withstand the humiliation which the prosecutrix was subjected to on account of rape committed by the appellants, she was stated to have committed suicide. Autopsy was conducted on the same date and the cause of death was reported as poisoning. In view of the subsequent development additional charge under Section 306 read with Section 34 IPC was added against the appellants on 8-5-1995. Both the accused pleaded not guilty and claimed to be tried. The trial court convicted the appellants under Sections 376/34 as well as Sections 306/34 IPC relying upon the statement made by the deceased before the API treating the same as the dying declaration being admissible in evidence under Section 32 of the Evidence Act. The High Court dismissed the appeal preferred by the accused-appellants. Allowing their further appeal

Held :

The conviction of the persons accused of offences cannot be based upon conjectures and suspicions. Her statement, if not treated as a dying declaration, there is no cogent and reliable evidence which can connect the accused with the commission of the crime. In that event the other arguments advanced on behalf of the appellants assume importance. Other circumstances such as delay in lodging FIR, medical examination of the prosecutrix, the non-examination of material witnesses and turning hostile of witnesses are also required to be taken note of. It has also to be kept in mind that after the incident on 9-7-1994 the prosecutrix is shown to have attended the school on 10-7-1994 and 11-7-1994 as well. Her mother in cross-examination also stated that the prosecutrix had told her about the incident only on 12-7-1994 at about 5.00 p.m. The father of the deceased deposed that his daughter had not told him on 17th, 18th, 19th July that she wanted to file a complaint, that he did not ask her as to what she wanted to complain about and that he did not disclose before the police on 20-7-1994 that she told him that she wanted to file the criminal complaint. It must, therefore, be held that the prosecution has failed to prove, beyond reasonable doubt, that the appellants had committed forcible sexual intercourse with the deceased on 9-7-1994 under the circumstances as narrated in the statement and relied upon by the courts below. The appellants cannot be convicted and sentenced merely on suspicion. (Paras 6, 11 and 12)

In the absence of the charge being proved under Section 376 IPC, the prosecution could not have asked for conviction of the appellants under Section 306 IPC as according to the prosecution it was the commission of rape on her person which resulted in the suicide of the deceased allegedly on the abetment of the appellants. If the cause for committing suicide is not legally proved, the appellants cannot be held responsible for the abetment of the ultimate offence of suicide. As the prosecution has failed to prove its case against the appellants beyond all reasonable doubt, they are entitled to acquittal. In the present case the investigating as well as the prosecuting agency have not acted promptly and diligently as was expected under the circumstances. (Paras 13 and 14). *Sudhakar* v. *State of Maharashtra*, (2000) 6 SCC 671: 2000 SCC (Cri) 1250: AIR 2000 SC 2602: 2000 Cri LJ 3490.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **R.P. Sethi** and *Shivaraj V. Patil*, JJ. [Date of decision: 17-7-2000]

[9182] — Ss. 376/511 and 323 — Attempt to rape — Victim committing suicide one and half months after the occurrence — *Mere fact of non-availability of the victim for examination not fatal to the prosecution — Court should decide on the basis of available evidence*

Mere fact that a victim is dead and consequently could not be examined can never be a ground to acquit an accused if there is evidence otherwise available proving the criminal act of the accused concerned. The prosecution case cannot be thrown overboard because of the non-availability of the victim for examination on account of her death. The Court can record a conviction for any offence that is made out on the available evidence, let in by the prosecution. *State of Karnataka* v. *Mahabaleshwar Gourya Naik*, 1992 Supp (3) SCC 179: 1993 SCC (Cri) 180: AIR 1992 SC 2043: (1992) 2 Crimes 654.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *M.M. Punchhi*, JJ. [Date of decision: 15-5-1992]

C. TRIAL, SENTENCING AND OTHER ISSUES

See in detail CRIMINAL TRIAL in Vols. 18, 19 and 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

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1. Treatment of prosecutrix

[9183] — S. 376 — Approach — Need of considering a self-respecting woman's state of mind, stressed

The trial Judge convicted A-1 and A-2 under Sections 376 and 506 Part II IPC for allegedly taking the two victim sisters in an auto and raping them after taking them in a wrong direction. The High Court by the impugned order dismissed the appeal against their conviction.

Dismissing the appeal,

Held :

In a case of rape, particularly if the victims are illiterate and uneducated, their statements have to be accepted in toto without further corroboration. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. (Paras 15 and 17). *Santhosh Moolya* v. *State of Karnataka*, (2010) 5 SCC 445.

Bench Strength 2. Coram: **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 26-4-2010]

[9184] — S. 376 — Casting stigma on the character of a victim of rape deprecated — Trial judge not justified in characterising a rape victim as a girl of loose character — *Court must use self-restraint while recording such finding even if the girl is found to be habituated to sexual intercourse — Evidence Act, 1872, S. 155(4). State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

[9185] — S. 376 — Child rape — Sensitive approach of court needed — *Onerous responsibility lies on court to provide proper legal protection to the victims — Constitution of India, Art. 39*

Cases involving sexual molestation and assault require a different approach — a sensitive approach and not an approach which a court may adopt in dealing with a normal offence under penal laws. (Para 15)

Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. It is a crime against humanity. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. It is necessary for the courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in the Constitution of India in Article 39. *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

[9186] — S. 376 — Plight of victim and her family at hand of investigating agency/officials — *Harassment of victim (harassed with unwelcome amorous advances, stalked and finally raped and murdered) and her parents — Conduct of police officials condemned as reprehensible* (Para 80). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength 2. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

[9187] — S. 376 — Rape — Broad parameters in assisting rape victims laid down — *Problems arising from rape and defects in existing criminal justice system in this regard stated*

It is rather unfortunate that in recent times, there has been an increase in violence against women causing serious concern. Rape does indeed pose a series of problems for the criminal justice system. There are cries for harshest penalties, but often times such cries eclipse the real plight of the victim. Rape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behaviour and values and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings. (Para 13)

The defects in the present system are: Firstly, complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had had to suffer as a result of the rape itself. (Para 14)

In this background, it is necessary to indicate the broad parameters in assisting the victims of rape.

(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape. (Para 15)

In the present situation, the third respondent will have to evolve such scheme as to wipe out the tears of such unfortunate victims. Such a scheme shall be prepared within six months from the date of this judgment. Thereupon, the Union of India, will examine the same and shall take necessary steps for the implementation of the scheme at the earliest. (Para 18). *Delhi Domestic Working Women's Forum* v. *Union of India*, (1995) 1 SCC 14: 1995 SCC (Cri) 7: (1995) 1 BLJR 1.

Bench Strength **3**. Coram: *M.N. Venkatachaliah, C.J.* and **S. Mohan** and *S.B. Majmudar*, JJ. [Date of decision: 19-10-1994]

[9188] — S. 376 — Rape — Casting stigma on the character of prosecutrix deprecated — *Absence of hymen — Even if it be concluded that the prosecutrix was used to sexual intercourse prior to the rape, she had every right to refuse to submit herself to sexual intercourse against her will*

In the instant case the High Court after considering the medical evidence, while dealing with the question of rape opined:

"There is no direct evidence to show that the accused alone had sexual intercourse with her. The deceased was aged 16 years."

Held :

By using the word "alone" the High Court almost cast a stigma on the prosecutrix as if, apart from the appellant, there were other persons also who had sexual intercourse with her. There is no basis at all for such an assumption. There was no warrant for recording such a finding and if we may say so, with respect, the finding is an irresponsible finding. We express our strong disapproval of the approach of the High Court and its casting a stigma on the character of the deceased prosecutrix. Even if the Court formed an opinion, from the absence of hymen, that the victim had had sexual intercourse prior to the time when she was subjected to rape by the appellant, she had every right to refuse to submit herself to sexual intercourse by the appellant, as she certainly was not a vulnerable object or prey for being sexually assaulted by anyone and this position becomes all the more clear from the contents of the letter written by the deceased to the accused deprecating the idea of a married man enjoying another woman by terming it an act of grave sin. *State of A.P.* v. *Gangula Satya Murthy*, (1997) 1 SCC 272: 1997 SCC (Cri) 325: AIR 1997 SC 1588: 1997 Cri LJ 774.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 19-11-1996]

[9189] — S. 376 — Rape trial — Unwarranted remarks or suggestions as to conduct, character or disposition of prosecutrix, deprecated — Plight of prosecutrix at hands of defence, highlighted (Para 37). *Satpal Singh* v. *State of Haryana*, (2010) 8 SCC 714: (2010) 3 SCC (Cri) 1081: (2010) 93 AIC 50 (SC): 2010 Cri LJ 4283.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-7-2010]

2. Acquittal justified

[9190] — Ss. 375 and 376 — No charge framed under, nor any evidence suggesting commission of rape — *Medical report of the vaginal swab disclosing presence of semen and hence doctor opining that possibility of rape could not be ruled out — Trial court concluding that the deceased was raped before her death only on the basis of this solitary statement and imposing death sentence — High Court, concurring with the findings of the trial court and affirming the death sentence — Held, in absence of any charge framed under S. 376 and in absence of any evidence supporting the allegation, such finding cannot be sustained* (Paras 19, 20 and 21). *Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689: 2005 SCC (Cri) 893: AIR 2005 SC 913: 2005 Cri LJ 955.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **B.P. Singh**, JJ. [Date of decision: 18-1-2005]

[9191] — S. 376 — Allegation of rape — Doubt regarding the truthfulness of the prosecution case — *Medical expert finding respondent-accused capable of having sexual intercourse, but stating that the prosecutrix would have had intercourse with her husband — Prosecutrix not raising alarm to attract the attention of her brother-in-law and his wife sleeping 20-25 feet away from her — Facts indicating that the accused and prosecutrix were quite intimate, the husband of the prosecutrix had some suspicion about the nefarious activities of his wife and the prosecutrix offered no resistance while having sexual intercourse with the accused — Further, non-seizure of the knife with which the accused, as alleged by the prosecutrix, had threatened her, raising a serious suspicion about the truthfulness of the prosecution version — In view of the said facts, held, the probability of the accused having had sexual intercourse with the prosecutrix with her consent cannot be ruled out — Giving the benefit of doubt, the accused acquitted of all the charges levelled against him*

The medical officer had examined the accused and found that he was capable of having sexual intercourse. He, however, stated that the prosecutrix appears to have had intercourse with her husband. (Para 23)

It is rather surprising that the accused entered the house at night and though the brother-in-law of the prosecutrix and his wife were sleeping only 20-25 feet away, the prosecutrix could not raise alarm so as to attract their attention. It further appears that the prosecutrix was known to the accused and that is why the first question asked by her was as to why he had come in the night. To this the accused replied stating that he wanted to have sexual intercourse with her. In the FIR as well as in the deposition of prosecutrix and her husband, there is a mention of the fact that the accused offered her Rs 20 for having sexual intercourse with her and also stated that one *P* will also pay her the same amount for having sexual intercourse with her. This is not disputed by the prosecutrix. This gives an impression that the prosecutrix and the respondent were quite intimate. According to the prosecutrix, she was having sexual intercourse with the accused when her husband came. According to her, it was her husband who separated the accused from her. The husband of the prosecutrix has not said so, though at one place he has stated that his wife was weeping when the accused was having sexual intercourse with her. It appears that the prosecutrix was offering no resistance while she was having sexual intercourse, when suddenly her husband entered the room. The other surprising feature of the case is that the husband of the prosecutrix after entering the house did not straight away chase the accused. He first questioned his wife as to whether she had called him, and only after her stating that she had not called him and that he had forcibly raped her, he started chasing the respondent and caught him. This again probabilises the fact that the husband also had at least some suspicion about the nefarious activities of his wife, otherwise it would be quite unnatural for a husband asking his wife, even before attempting to catch the accused, as to whether she had called him, and whether the accused had sexual intercourse with her consent. (Paras 24 and 25)

Further, it was contended by the prosecution that the respondent had carried a knife with him and had threatened the prosecutrix with the knife and, therefore, on account of fear, she could not raise an alarm or resist the respondent. It is indeed surprising that the knife has not been exhibited in the trial, nor does it appear to have been seized in the course of investigation. The non-seizure of the knife raises a serious suspicion about the truthfulness of the prosecution version that the respondent had sexual intercourse with the prosecutrix under threat. (Para 25)

Having regard to these features of the case, the probability of the accused having had sexual intercourse with the prosecutrix with her consent cannot be ruled out. The features noticed above probabilise the defence of the respondent, and there exists a serious doubt about the truthfulness of the prosecution case that the accused had sexual intercourse with the prosecutrix without her consent. Hence, the respondent is entitled to the benefit of doubt and therefore he is acquitted of all the charges levelled against him. (Paras 26 and 27). *State of Rajasthan* v. *Kishanlal*, (2002) 5 SCC 424: 2002 SCC (Cri) 1149: AIR 2002 SC 2250: 2002 Cri LJ 2963.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **B.P. Singh**, JJ. [Date of decision: 10-5-2002]

[9192] — S. 376 — Effect of unmerited acquittals on society considered — *It leads to more attacks on women and demand for harsher sentence*

An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittals recorded by criminal courts which gives rise to the demand for death sentence to the rapists. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women. (Para 9). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9193] — S. 376 — Grounds for recording acquittal — *Only because a lesser sentence is imposed by trial court (two years' RI in case of rape), held, the same would not be a ground for acquitting the accused — Matter remanded to High Court for fresh consideration — CrPC, 1973, Ss. 374 and 386* (Para 5). *State of Rajasthan* v. *Bhanwar Singh*, (2006) 6 SCC 9: (2006) 3 SCC (Cri) 9.

Bench Strength 2. Coram: *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision: 2-5-2006]

[9194] — S. 376 — Rape — Held, not proved — *Absence of injury on any of the three accused or the prosecutrix — Case one of sexual intercourse with the consent of the prosecutrix and connivance of her husband. Pratap Misra* v. *State of Orissa*, (1977) 3 SCC 41: 1977 SCC (Cri) 447: AIR 1977 SC 1307: 1977 Cri LJ 817.

Bench Strength 2. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 23-2-1977]

[9195] — S. 376 — Unmerited acquittals, particularly in crimes against girl child encourage the criminals — *Court must be sensitive while dealing with such cases. State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[9196] — Ss. 376 and 342 — Allegation that the appellants committed rape of the prosecutrix when she had gone to the shop of A-1 for purchasing a matchbox — *Evidence of the prosecutrix found suffering from serious infirmities — Absence of injury on her person even though her version was that she was dragged and had received some scratches — Her evidence found to be inconsistent with the FIR lodged by her — Prosecutrix making deliberate improvement on material point (by saying that she was in an advanced stage of pregnancy) with a view to rule out consent — Fact of having suf-*

fered abortion not supported by medical evidence — Circumstances showing that she had gone inside the shop willingly and was not lifted from the outer portion of the shop and then dragged and taken into middle room — Conduct of her brother-in-law in pulling her out from the middle room, giving a kick and telling her to go home, not taking any action and waiting at the shop and purchasing tobacco leading to an inference that no complaint was made by the prosecutrix at the time she was allegedly raped — Held, in the circumstances of the case, no reliance can be placed upon her evidence — High Court not justified in reversing the order of acquittal passed by the trial court. Suresh N. Bhusare v. *State of Maharashtra*, (1999) 1 SCC 220: 1998 SCC (Cri) 1595: AIR 1998 SC 3131.

Bench Strength 2. Coram: *G.T. Nanavati* and *S.P. Kurdukar*, JJ. [Date of decision: 11-8-1998]

[9197] — Ss. 376 and 342 — Offence of rape — Benefit of doubt — *Prosecution case that PW 2 along with her helper came to the house of prosecutrix X and told her that she was required by her superior officer — X left with them in a jeep — Appellant met them on the way where PW 2 and her helper alighted from the jeep and appellant got into the driver's seat — Jeep driven by the appellant along with Ms X, the Malaria Inspector and the driver reached the house of the appellant at about 11.30 p.m. — Allegation that appellant committed forcible sexual intercourse with X at his house — Element of forcible taking away of X by appellant lacking in complaint — Evidence of X not supported by medical evidence — No stains of semen or blood found on the clothes of X — Delay in lodging FIR, on facts, also considered to be of some importance — Serious doubt about the genuineness of the prosecution case — Considering the broad probabilities of the case, held, the appellant was entitled to the benefit of doubt*

It is reasonable to assume that no woman would falsely implicate a person in a sexual offence as the honour and prestige of that woman also would be at stake. However, the evidence of the prosecution shall be cogent and convincing and if there is any supporting material likely to be available, then the rule of prudence requires that evidence of the victim may be supported by such corroborative material. Thus, in rape cases the conviction can be solely based on the evidence of the victim, provided such evidence inspires confidence in the mind of the court. (Para 18)

The prosecutrix, though asserted that she had sustained scratch injuries by nails and biting, her medical examination did not reveal any such injuries. She had also stated that her clothes had seminal stains, but no stains of semen or blood were found on the clothes allegedly worn by her at the time of commission of offence. (Paras 19 and 6)

Ms *X* being an educated woman would have naturally foreseen the impropriety of travelling along with other males in a jeep for such a long distance during the night. It is true, people react differently to same situations. There are persons who are unduly timorous and imagine every path beset with lions and there are others of more robust temperament who fail to foresee or nonchalantly disregard even the most obvious dangers. Ms *X*, an unmarried woman travelled in a jeep for a long distance in the night and her conduct appears to be unusual and there is no rational explanation as to what urgent official work could have been there to undertake this nocturnal journey to meet her superior officer. Further, the previous acquaintance of Ms *X* with the appellant is also evident. That apart, on the next day of the incident, one Junior Engineer along with a driver came and enquired about Ms *X*. How these two persons came to know of the presence of Ms *X* in the house of the appellant, also is not known. (Paras 7 and 8)

It is true that in view of the social conditions prevalent in India, there may be delay in giving the first information of such an offence to the police. A rape victim may think seriously before giving the information to the police about rape as the onslaught of a social stigma may haunt her for life. Though the delay as such is not serious, but while considering the broad probabilities of the case, the delay in giving the information to the police, in the instant case, also assumes some importance. (Para 19)

Though the past conduct of the prosecutrix is an irrelevant matter, in the instant case, Ms *X* asserted that she was a virgin till the alleged incident, but the medical evidence supported by her physical features revealed that she was habituated to sex. (Para 19)

Further, though there is no apparent motive for Ms *X* to falsely implicate the appellant, it may be that Ms *X* must have changed her mind when she came to know that others must have come to know of her conduct. (Para 19)

Thus, in view of the broad probabilities of the case, the appellant is certainly entitled to the benefit of doubt. (Para 19). *Sudhansu Sekhar Sahoo* v. *State of Orissa*, (2002) 10 SCC 743: 2003 SCC (Cri) 1484: AIR 2003 SC 2136.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **K.G. Balakrishnan**, JJ. [Date of decision: 18-12-2002]

Sudhansu Sekhar Sahoo (Dr.) v. State of Orissa, (1993) 76 Cut LT 616, reversed

[9198] — Ss. 376, 366, 363 and 308 — Deceased, a girl aged 16½ years stating in FIR that she had attempted to commit suicide because she felt defamed and unable to live on account of misbehaviour of accused — *That on one occasion while she was going to school along with her brother, accused had forcefully taken her in his white Ambassador car to Rose Garden and threatened her that in case she did not accompany him her brother would not be spared — That on second occasion while she was going to school along with her brother (PW 13) and friend (PW 15) accused along with his two accomplices had forcefully taken all of them in his car to a hotel and raped her — Eyewitnesses PWs 13 and 15 not supporting prosecution version and resiling from their statements made during investigation — Several contradictions/inconsistencies also discernible in two dying declarations, one which was allegedly recorded by the Head Constable and the other by Executive Magistrate — Held, when two courts on analysis of the evidence found the respondents not guilty, there is no scope for interference — Reasons indicated by trial court and affirmed by High Court discarding the two dying declarations do not suffer from any infirmity — Evidence Act, 1872, S. 32(1)* (Paras 3, 4 and 9 to 11). *State of Punjab* v. *Chatinder Pal Singh*, (2008) 17 SCC 90: AIR 2009 SC 974.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-11-2008]

[9199] — Ss. 376, 375, 148, 452, 149, 342, 323, 366 and 506 — Rape after forcible marriage — Allegations of — Acquittal confirmed — *Prosecution failing to discharge its burden of proving ingredients of offences, not examining material witnesses (like father and brother of prosecutrix) — Delay of one month on part of prosecutrix in filing FIR and other discrepancies — Allegedly A-1 (an MP) with the help of other accused, at gunpoint took prosecutrix and her whole family to Bombay on 5-5-1999 — That A-1 converting himself to Islam and forcibly marrying prosecutrix by performing nikaah on 6-5-1999 in the presence of Kazi (PW 3) — Educated family and well-to-do parents of prosecutrix did not find time to report the serious matter concerning their daughter to police — Even FIR was lodged after a delay of about one month after marriage — There being nothing on record to suggest that A-1, at any point of time, coerced or threatened prosecutrix and her family members — Hence, findings of High Court upheld and acquittal confirmed*

A-1 to A-5 were convicted by the trial court for the offences punishable under Sections 148, 452 read with Section 149, Section 366 read with Section 149, Section 342 read with Section 149, Section 323 read with Section 149 and Section 506(2) read with Section 149 IPC. A-1 was also convicted for the offences punishable under Section 386 read with Section 511, Section 376 IPC and Section 25(1)(*a*) of the Arms Act, 1959. The High Court by the impugned judgment set aside the conviction of the appellant.

Dismissing the appeal of the State filed against acquittal,

Held :

The High Court has not erred in coming to the conclusion that the whole prosecution story was a myth. In an appeal against acquittal, the burden was on the prosecution to prove and justify its contention that the findings of the High Court were perverse and were not justifiable and that inferences drawn by the High Court are not possible view or could not have been drawn in law. (Para 17)

Allegedly on 5-5-1999, A-1 under threat, took the prosecutrix and her whole family to Bombay for getting married with the prosecutrix and for that purpose he also converted himself to Islam. Thereafter, nikaah was performed on 6-5-1999 at Bombay in the presence of a kazi. In this nikaah, A-1 was helped by other accused persons who were his henchmen. Even after the nikaah, A-1 is alleged to have moved along with the prosecutrix at various places including Khandala, Mysore and Hyderabad where according to the prosecutrix, under threat, she was raped by A-1 from 9-5-1999 to 17-5-1999. The case of the prosecution was that it was only with the muscle and money power that A-1 (an MP) forced the prosecutrix for nikaah and ravished her. The prosecutrix lodged an FIR against the accused persons on 5-6-1999. (Para 4)

It was submitted that the High Court appreciated the evidence of PW 2 (prosecutrix), PW 8 (mother of prosecutrix), PW 3 (kazi) and other prosecution witnesses threadbare. There is nothing on record to suggest that A-1, at any point of time, coerced or threatened the prosecutrix and her family members. It was submitted that it was surprising that the educated family and well-to-do parents did not find the time to report the serious matter concerning their daughter to the police. Though A-1 allegedly ravished the prosecutrix in her own house in a bedroom when the other family members were also present, but none of them came forward to the rescue of the prosecutrix despite her cries for help and lodged any report. (Para 13)

A very substantial discrepancy in the prosecution case is that the father and the brother of the prosecutrix, who were professor and student, have not been examined as prosecution witnesses. The High Court has taken a reasonable and plausible view of the evidence of PWs 1, 3 and 8 and silence on the part of the material witnesses and failure to explain as to why they did not report the matter to the police of all these events creates a doubt on the prosecution story. (Para 14)

The State was not in a position to justify the evidence of PW 3, particularly, that he did not see happiness on the face of the bride when he performed the nikaah. The High Court has rightly concluded that from the solitary statement of PW 3 that he did not see happiness on the face of the bride, no inference can be drawn that it was a forced nikaah. It is also stated that the father and the brother of the prosecutrix acted as vakils of the prosecutrix and also gave consent for the marriage and in consideration, mehar of Rs 25,0000 was given. There is also a valid nikaahnama on record. (Paras 15 and 16)

Once the appeal fails against the main accused, there remains nothing against the other accused. The counsel for the State did not seriously challenge their acquittal. The evidence also does not suggest any criminal activity on their part. The appeal against their acquittal has to necessarily fail. (Para 18)

The well-considered judgment of the High Court needs no interference. The impugned judgment of the High Court, acquitting the accused persons, is confirmed. (Para 19). *State of Maharashtra* v. *Ravikant Shankarappa Patil*, (2011) 6 SCC 416.

Bench Strength 2. Coram : **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision : 5-5-2011]

[9200] — Ss. 376/149, 375, 148, 452, 342, 323, 366 and 506 — Rape after forcible marriage — Acquittal of main accused — *There being nothing against other accused and State not seriously challenging their acquittal, their acquittal also confirmed*

Once the appeal fails against the main accused, there remains nothing against the other accused. The counsel for the State did not seriously challenge their acquittal. The evidence also does not suggest any criminal activity on their part. The appeal against their acquittal has to necessarily fail. (Para 18)

The well-considered judgment of the High Court needs no interference. The impugned judgment of the High Court, acquitting the accused persons, is confirmed. (Para 19). *State of Maharashtra* v. *Ravikant Shankarappa Patil*, (2011) 6 SCC 416.

Bench Strength 2. Coram : **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision : 5-5-2011]

3. Appeal

[9201] — Ss. 375 and 376 — Rape — Appeal against acquittal — Appreciation of evidence — Powers of court — Compared with appeal against conviction — *Held, though High Court would be slow in interfering with the order of acquittal but it has got same powers to review and reappreciate the entire evidence as in an appeal against conviction and if reasons recorded by the trial court for acquittal are unjustified and untenable, High Court can certainly interfere — On facts held, High Court rightly reversed the order of acquittal — CrPC, 1973, Ss. 378 and 386. Ayub Hussain Mandal* v. *State of Assam*, (2007) 15 SCC 549.

Bench Strength 2. Coram: *Shivaraj V. Patil* and *Arun Kumar*, JJ. [Date of decision: 8-10-2002]

[9202] — Ss. 375, 376 and 511 — Appeal against acquittal — Power of High Court to review evidence — Scope — *Held, High Court can review the evidence and come to its own conclusion — However, it should also examine the reasons for acquittal and should interfere only if the view of the trial court, which recorded the order of acquittal, was unreasonable — No interference if two views possible — Reasons should be given for reversing the order of acquittal — In the instant case, in view of the reasons given by the High Court, held, the High Court did not exceed its powers in interfering with the order of acquittal passed under Ss. 376 and 511, IPC, by the trial court — CrPC, 1973, Ss. 378 and 386*

There is no limitation on the part of the appellate court to review the evidence upon which an order of acquittal is founded. The different expressions used in different judgments of the Supreme Court to the effect that there must be "sufficient and compelling reasons" or "good and sufficiently cogent reasons" for the appellate court to alter an order of acquittal to one of conviction, by no manner curtail the power of an appellate court in an appeal against acquittal to review the entire evidence and come to its conclusion. But in doing so the appellate court should consider every matter on record and the reasons given by the trial court in support of the order of acquittal; and should interfere on being satisfied that the view taken by the acquitting Judge is unreasonable. If two views are possible on a set of evidence then the appellate court need not substitute its own view in preference to the view of the trial court which has recorded an order of acquittal. If the Sessions Judge acquits an accused by giving undue importance to minor discrepancies and taking a suspicious view of the evidence based on conjectures then the High Court will be fully justified in interfering with the order of acquittal. But all the same while reversing an order of acquittal the High Court must give sufficient grounds for holding that the appreciation of evidence by the trial court is unsupportable.

In the instant case, the High Court on reading the evidence of the prosecutrix has come to the finding that the prosecutrix's evidence was cogent and clear to the effect that there was no penetration of the organ of the accused into the vagina of the prosecutrix and on the other hand the accused merely rubbed his genital organ as a result of which there was discharge of hot white liquid substance which fell on the thighs of the prosecutrix. On going through the reasoning advanced by the High Court for interfering with an order of acquittal passed by the trial court, it has to be held that the High Court has not exceeded the parameters indicated in the judgments of the Supreme Court for interference with an order of acquittal.

In assessing the testimonial potency of the victim's version, human psychology and behavioural probability must be looked into. The inherent bashfulness and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication. The High Court review of the evidence on record and on examining the reasons given by the learned Sessions Judge for according an order of acquittal was fully justified in interfering with the said order of acquittal. *Madan Lal* v. *State of J&K*, (1997) 7 SCC 677: 1997 SCC (Cri) 1151: AIR 1998 SC 386.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 6-8-1997]

[9203] — S. 376 — Rape — Delay in filing appeal against acquittal before High Court — Dismissal of appeal by High Court — Impropriety — *Respondent acquitted by trial court from charge under S. 376 for rape of a girl aged 11 years — Delay of 31 days in filing appeal before High Court by the State — Having regard to medical evidence and testimony of the prosecutrix, held, High Court should have gone into merits of the case in view of rise in crime against women, particularly minor children — CrPC, 1973 — Ss. 378 & 386*(Para 4). *State of Rajasthan* v. *Madan*, (2003) 11 SCC 730.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and *Brijesh Kumar*, JJ. [Date of decision: 6-11-2000]

[9204] — S. 376 — Rape — Reversal of acquittal confirmed — *Reiterated, appellate court has full power to review, reappreciate and reconsider evidence upon which order of acquittal is founded — Herein, High Court after evaluating manner in which evidence and other materials on record were appreciated as well as conclusions arrived at by trial court, concluded that findings of trial court were perverse and resulted in miscarriage of justice — Moreover, testimony of victim inspires confidence — Her testimony not only corroborated by other witnesses but also by medical evidence — Also, other corroborative evidence sufficient to connect appellant with crime — Hence, held, appellant committed rape — Therefore, his conviction by High Court justified — CrPC, 1973, Ss. 378 and 386(a)* (Paras 10 to 13, 18 and 21 to 23). *Ram Singh* v. *State of H.P.*, (2010) 2 SCC 445.

Bench Strength **2**. Coram: *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision: 28-1-2010]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

Perla Somasekhara Reddy v. State of A.P., (2009) 16 SCC 98, distinguished

[9205] — S. 376 — Reversal of conviction without appraisal of evidence — Impropriety of — *Sessions Court imposing sentence of seven years' RI — High Court, without any discussion of evidence whatsoever modifying conviction to one under S. 354 and reducing sentence to period already undergone and fine of Rs 5000 — Held, for the serious and heinous crime of rape, judgment of Sessions Court could not have been reversed without adverting to the evidence at all, by general observations made in one paragraph of the impugned judgment — Matter remanded to High Court for decision afresh — Directed that matter be placed before a Judge other than the Judge who delivered the impugned judgment — CrPC, 1973, S. 374*. *State of U.P.* v. *Munni Lal*, (2005) 11 SCC 574.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 15-4-2005]

[9206] — Ss. 376 and 342 — Whether the conviction can be challenged on questions of fact — *Findings of facts cannot be disturbed in special leave criminal appeal*. Chhaterpati v. *State of J&K*, (1970) 3 SCC 201: 1971 SCC (Cri) 19.

Bench Strength **2**. Coram: *S.M. Sikri* and **K.S. Hegde**, JJ. [Date of decision: 16-9-1970]

[9207] — Ss. 376, 506 and 511 — Offences under, held are not trivial — Application for leave to file appeal against acquittal — Manner of disposal of for serious offences — Objective and independent reappreciation of entire evidence, stressed — *Non-application of mind by High Court in a case for offences under Ss. 376, 506 and 511 IPC — Unsustainability — High Court dismissing S. 378(3) CrPC application by summarily stating "Dismissed" — The dismissal of S. 378(3) application without giving reasons, held, is not sustainable — Matter therefore, remanded to High Court — CrPC, 1973, S. 378*

The trial court, giving benefit of doubt, acquitted the respondent-accused for alleged commission of offences under Sections 376/511 IPC r/w Section 506 IPC. By the impugned order, the High Court dismissed an application for grant of leave under Section 378(3) CrPC by summarily stating "Dismissed".

Allowing the appeal,

Held :

In the absence of reason, the impugned judgment of the High Court is unsustainable. Reasons introduce clarity in an order. The High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal and seems to have been completely oblivious to the fact that by such refusal a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. (Paras 9, 7 and 6)

The questions of giving benefit of doubt for alleged offences under Sections 376/511 IPC r/w Section 506 IPC are not trivial. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. The impugned judgment of the High Court is unsustainable. The State was granted leave to file the appeal. The High Court is, therefore, directed to entertain the appeal and after formal notice to the respondent hear the appeal and dispose of it in accordance with law. (Paras 6 and 9)

The trial court on the facts of the case did not perform its duties, as was enjoined on it by law. The trial court is required to carefully appraise the entire evidence and then come to a conclusion. If the trial court was at a lapse in this regard, the High Court was obliged to undertake such an exercise by entertaining an appeal thereagainst. (Para 6). *State of H.P.* v. *Manoj Kumar*, (2008) 13 SCC 654.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 29-9-2008]

State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of Punjab v. Bhag Singh, (2004) 1 SCC 547, relied on

[9208] — Ss. 376(2)(g), 506 and 34 — Appeal against conviction — Proper mode of disposal — Reasons for decision — Clarity of decision, necessity of, restated — *Dismissal of the criminal appeal by a non-reasoned order — Order of High Court set aside, case remanded back — Casual manner in which appeal dismissed, deprecated — CPC, 1908, Or. 20 Rr. 4(2) and 5 — CrPC, 1973, S. 374*

The appellants stood convicted for offence punishable under Sections 447, 376(2)(*g*) and 506 read with Section 34 of the Penal Code, 1860. Contention of the appellants was that the High Court's judgment was practically non-reasoned.

Remanding the case to the High Court,

Held :

A bare perusal of the High Court's impugned judgment shows that the same is non-reasoned and no basis or reasons have been indicated by the High Court and there is not even analysis of the evidence. Various infirmities pointed out by the accused to throw doubt on the authenticity of the prosecution evidence are not even referred to. (Paras 8 and 10). *Prasad* v. *State of Karnataka*, (2009) 3 SCC 174: (2009) 2 SCC (Cri) 70: AIR 2009 SC 1911: (2009) 76 AIC 213 (SC): 2009 Cri LJ 1761.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 9-2-2009]

Breen v. Amalgamated Engg. Union, (1971) 2 QB 175: (1971) 2 WLR 742: (1971) 1 All ER 1148 (CA); Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120 (NIRC); State of Punjab v. Bhag Singh, (2004) 1 SCC 547, relied on

4. Appreciation of Evidence

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(a) Generally

[9209] — S. 376 — Offence of rape being a serious one court should pay careful attention and show greater sensitivity — Evidence should be appreciated on broader probabilities

In view of the evidence of the prosecutrix, which is corroborated by medical evidence and other items of evidence and in the absence of any consent on the part of the prosecutrix, it is clearly established that the accused had committed rape on the prosecutrix and is liable for the offence punishable under Section 376 IPC. The offence of rape being a serious one, the case should have received careful attention and the Sessions Judge and the High Court should have shown greater sensitivity to these type of cases. The evidence should have been appreciated on broader probabilities and they should not have been carried away by insignificant contradictions. (Para 16). *State of H.P.* v. *Mango Ram*, (2000) 7 SCC 224: 2000 SCC (Cri) 1331: AIR 2000 SC 2798.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **K.G. Balakrishnan**, JJ. [Date of decision: 24-8-2000]

[9210] — S. 376 — Rape trial — Duty of court, while evaluating evidence of victim, outlined — Keeping of Indian society's belief and value systems in mind, while examining evidence of prosecutrix — Need by courts for, emphasised

The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Indian society is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix, the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind, as rape is the worst form of women's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. (Paras 26 to 28). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728, relied on

[9211] — Ss. 376, 346 and 366 — Rape — Appreciation of evidence — Approach and duty of courts while appreciating evidence in such cases, restated — Deficiencies and discrepancies in prosecution case — When not fatal — *Victim (PW 1), her husband (PW 2) and their other relatives pursuing the profession of lead coating of utensils sleeping in a bus-stand when PWs 1 and 2 picked up by a Constable ostensibly for interrogation on suspicion allegedly on a complaint — Commission of rape on PW 1 by the Constable in a hotel, established — But dispute raised about the identity of the accused Constable (appellant) — Test identification parade not held — PWs 1, 2 and 4 could not identify the appellant in court — PWs 5 and 6 declared hostile — Name of appellant stated by PW 7 before the Judicial Magistrate at the instance of police — Despite the above deficiencies and discrepancies, bearing in mind the stratum of society to which the victim belonged and the nature of her profession, and considering that (i) accused had beard and moustaches at the time of identification by PWs 1 and 2 in court, but not at the time of occurrence, (ii) booking of a room in hotel by him was established, (iii) he failed to explain his whereabouts during the time the offence was committed, (iv) he declined to give sample of his semen, and (v) witnesses immediately after the commission of offence named him, held on facts, it was proved that the offence was committed by a Constable who was none other than the appellant — Conviction upheld*

The approach required to be adopted by courts in rape cases has to be different. The cases are required to be dealt with utmost sensitivity. Courts have to show greater responsibility when trying an accused on charge of rape. In such cases, the broader probabilities are required to be examined and the courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character. The evidence is required to be appreciated having regard to the background of the entire case and not in isolation. The ground realities are to be kept in view. (Para 12)

Further, it is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In a case of defective investigation, the only requirement is of extra caution by courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to the rejection of the case of prosecution when it is otherwise proved. (Para 12)

It is a common practice with those carrying on the profession which PW 1 and PW 2 were carrying on, to sleep during the night on the roadside or such similar place, while going from place to place. It stands established from the evidence and could not be questioned that PW 1 was picked up and raped by a police Constable substantially in the manner deposed by her. The only dispute that has been raised is about the identity of the accused. (Paras 8 and 7)

An important aspect of the case is that the appellant had a beard and moustaches when PWs 1 and 2 were examined as witnesses for the prosecution. It was not so at the time of the occurrence. PWs 1 and 2, therefore, it is evident, could not identify the appellant in Court and stated in their deposition that the said person was not in Court. It does not mean that the acquittal is to follow as a natural corollary from the statements of PWs 1 and 2. The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when no one is able to identify the accused. The commission of a crime can also be proved by circumstantial evidence. In the present case, there are clinching circumstances unerringly pointing the accusing finger towards the appellant beyond any reasonable doubt. The non-holding of the test identification parade, having regard to the facts of the case, is not fatal and does not create any reasonable doubt in the case of the prosecution. (Paras 11 and 13)

Circumstances which have been taken into consideration against the appellant by the Courts below are that the appellant, a police official, was caught from a room in a hotel. The hotel record showed booking of the room in that hotel by the appellant and also payment of advance of Rs 100. The appellant could not explain his whereabouts during the time the offence was committed. He was not cooperative during investigation. He declined to give sample of his semen. He had a different appearance at the time of examination of PWs 1 and 2 in Court. The testimony of PWs 1 and 2 was straightforward. The witnesses, immediately after the commission of offence, had named the appellant. (Para 13)

From the proved circumstances, it has been fully established that PW 1 was picked up and raped in a hotel room by a police Constable who was none other than the appellant. (Para 13). *Visveswaran* v. *State*, (2003) 6 SCC 73: 2003 SCC (Cri) 1270: AIR 2003 SC 2471: 2003 Cri LJ 2548.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 28-4-2003]

[9212] — Ss. 376, 375, 148, 452, 149, 342, 323 and 506 — Rape after forcible marriage — Allegations of — Appreciation of evidence — Solitary statement of PW 3 that he did not see happiness on face of bride — *Held, inference of forced marriage cannot be drawn therefrom*

The State was not in a position to justify the evidence of PW 3, particularly, that he did not see happiness on the face of the bride when he performed the nikaah. The High Court has rightly concluded that from the solitary statement of PW 3 that he did not see happiness on the face of the bride, no inference can be drawn that it was a forced nikaah. It is also stated that the father and the brother of the prosecutrix acted as vakils of the prosecutrix and also gave consent for the marriage and in consideration, mehar of Rs 25,0000 was given. There is also a valid nikaahnama on record. (Paras 15 and 16). *State of Maharashtra* v. *Ravikant Shankarappa Patil*, (2011) 6 SCC 416.

Bench Strength 2. Coram : **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision : 5-5-2011]

(b) Appellate court's approach

[9213] — S. 376 — Rape — Conviction — Reappreciation of evidence — Unmerited acquittal by High Court — *Held, not justified — Courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children — CrPC, 1973, Ss. 386 and 374(2)*

The High Court was not justified in reversing the conviction of the respondent and recording the order of acquittal. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none reasonably exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females or minor children. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children. (Para 16). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

(c) Contradictions, inconsistencies, exaggerations or embellishments

[9214] — Ss. 375 and 376 — Rape trial — Minor inconsistencies in prosecution case — *Trial court finding prosecutrix's account of rape very natural and confidence inspiring — Her mother, whose testimony too was found natural and trustworthy, however creating some inconsistency about the place of occurrence — In FIR it was mentioned as room on first floor while in the statement before trial court it was mentioned as open lintel — Place of incident inspected by trial court — Lintel and room were near to each other and the place was secluded — Mother was not in the house at the time of incident — On reaching home, she found prosecutrix lying on lintel below a cot — Held, inconsistency in mother's version was too insignificant to be given much weightage — High Court wrongly treated it as a major lacuna in prosecution case* (Para 13). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

Gian Chand v. State of H.P., (1996) 2 Crimes 213 (HP), reversed

[9215] — S. 376 — Cases involving sexual molestation — Duty of court to deal with such cases with utmost sensitivity — *Minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case*

Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. A rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend *assurance* to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. *State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210, followed

[9216] — S. 376 — Effect of minor discrepancy or variance in evidence — Discrepancy and contradiction — Distinguished — Whether a particular discrepancy is a minor one or one amounting to contradiction — Test to determine, stated — *Minor discrepancy or variance in evidence, held, does not make the prosecution's case doubtful — It may rather lend credential to the deposition — Where the prosecutrix, subjected to rape, stated the place of occurrence to be 20 feet away from the road but the FIR lodged by an advocate, after hearing the narration of the prosecutrix (whom he had found then to be scared, nervous and hesitant) mentioned the road as the place of occurrence, held, there was no major discrepancy amounting to contradiction under the circumstances of the case — More so when in her statement under S. 161 CrPC the prosecutrix had stated that the accused persons had taken her to a place 20 feet away from the road — CrPC, 1973, S. 161*

The prosecutrix, a 55-year-old widow who was the mother of two grown-up children, was while coming back to her house after attending the marriage of a relation, criminally assaulted and subjected to forcible intercourse by the respondents. The first information report was submitted by her on the next day against the respondents. She was medically examined and her torn salwar was sent for chemical analysis. On medical examination various injuries were found on her person. The doctor was of the opinion that they reflected the signs of a struggle. The trial court convicted the accused persons under Sections 376(2)(*g*) and 323 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs 5000 each under Section 376 IPC and six months' rigorous imprisonment under Section 323 with a fine of Rs 500 each. The High Court reversed that decision. It acquitted Respondent 2 on the ground that his identity could not be established by the prosecution at the trial. It further held that the case against Respondent 1 was not proved beyond doubt as the medical evidence and the finding showed that no dead or alive spermatozoa was seen. Another circumstance which weighed with the High Court was that the sealing of the salwar was not properly established. Moreover, before the Supreme Court the respondent attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. One of such discrepancies was that the prosecutrix had stated the place of occurrence to be 20 feet away from the road while in the FIR the place of occurrence was mentioned as the road. Upholding the acquittal of Respondent 2 but setting aside the acquittal of Respondent 1 and restoring his conviction by the trial court,

Held :

Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. (Para 7)

The prosecutrix has categorically stated that she was dragged from the road down the path which was about 20 feet away from the road and raped there. The discrepancy or contradiction pointed out is that in the FIR which was submitted in writing and was in the English language, the place of occurrence was mentioned as road. Such mention was based upon recording of the complaint by an advocate after hearing the narration of the prosecutrix whom he found at that time to be scared, nervous and hesitant. Such a discrepancy cannot be held to be a major discrepancy amounting to contradiction under the circumstances of this case. It is not disputed that the statement of the prosecutrix under Section 161 CrPC was recorded immediately and in that statement she had not alleged to have stated that the occurrence had taken place on the road and not away from the road. (Para 9). *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

Ousu Varghese v. State of Kerala, (1974) 3 SCC 767: 1974 SCC (Cri) 243; Jagdish v. State of M.P., 1981 Supp SCC 40: 1981 SCC (Cri) 676; State of Rajasthan v. Kalki, (1981) 2 SCC 752: 1981 SCC (Cri) 593; Leela Ram v. State of Haryana, (1999) 9 SCC 525, relied on

[9217] — S. 376 — Minor discrepancies on trivial matters not affecting core of prosecution case — Held, should not result in rejection of evidence in its entirety — *Evidence of witnesses must be read as a whole and case to be considered in totality of circumstances — After exercising care and caution and sifting evidence to separate truth from untruth, exaggerations and improvements, court can convict accused on basis of residuary evidence — Discrepancies in instant case pertained to circumstances in which alleged occurrence had taken place, and dress prosecutrix was wearing then — Such contradictions having no material bearing on prosecution case, inconsequential, since admittedly prosecutrix was at place of alleged occurrence and appellant and other accused had intercourse with her* (Paras 19 to 24 and 40 to 42). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

State of Rajasthan v. Om Prakash, (2007) 12 SCC 381: (2008) 1 SCC (Cri) 411; State of U.P. v. M.K. Anthony, (1985) 1 SCC 505: 1985 SCC (Cri) 105; State v. Saravanan, (2008) 17 SCC 587; Sohrab v. State of M.P., (1972) 3 SCC 751: 1972 SCC (Cri) 819; Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; Prithu v. State of H.P., (2009) 11 SCC 588: (2009) 3 SCC (Cri) 1502; State of U.P. v. Santosh Kumar, (2009) 9 SCC 626: (2010) 1 SCC (Cri) 88, relied on

4.(c) Contradictions, inconsistencies, exaggerations or embellishments *(contd.)*

[9218] — S. 376 — Rape — Reversal of acquittal confirmed — *Reiterated, appellate court has full power to review, reappreciate and reconsider evidence upon which order of acquittal is founded — Herein, High Court after evaluating manner in which evidence and other materials on record were appreciated as well as conclusions arrived at by trial court, concluded that findings of trial court were perverse and resulted in miscarriage of justice — Moreover, testimony of victim inspires confidence — Her testimony not only corroborated by other witnesses but also by medical evidence — Also, other corroborative evidence sufficient to connect appellant with crime — Hence, held, appellant committed rape — Therefore, his conviction by High Court justified — CrPC, 1973, Ss. 378 and 386(a)* (Paras 10 to 13, 18 and 21 to 23). *Ram Singh* v. *State of H.P.*, (2010) 2 SCC 445.

Bench Strength **2**. Coram: *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision: 28-1-2010]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

Perla Somasekhara Reddy v. State of A.P., (2009) 16 SCC 98, distinguished

[9219] — S. 376 — Rape — Unsatisfactory investigation — Effect — *Held, defence cannot take advantage of a bad investigation where prosecution holds clinching evidence in support of itself* (Para 25). *Zindar Ali Sheikh* v. *State of W.B.*, (2009) 3 SCC 761: (2009) 2 SCC (Cri) 737: AIR 2009 SC 1467: 2009 Cri LJ 1324: (2009) 2 CHN 19 (SC): (2009) 1 ECrN 941 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 6-2-2009]

[9220] — S. 376 — Rape cases — Proof in — *Duty of court to deal with such cases with utmost sensitivity — Minor contradictions or insignificant discrepancies in the statement of the witnesses should not be a ground for throwing out allegations of rape*

The courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection and it must be emphasised that the courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in the totality of the background of the entire case and not in isolation. *State of A.P.* v. *Gangula Satya Murthy*, (1997) 1 SCC 272: 1997 SCC (Cri) 325: AIR 1997 SC 1588: 1997 Cri LJ 774.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 19-11-1996]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9221] — Ss. 376, 363 and 302 — Rape and murder of minor — Minor incongruity — Though there is an incongruity in prosecution evidence regarding recovery of body and inquest thereof, held, there is strong evidence to show guilt of appellant — *Clothes of deceased recovered with blood-stains and lacerated wound found on private parts with hymen completely ruptured — Doctor opining cause of death as asphyxiation — Clothes worn by appellant at time of incident recovered with bloodstains thereon, underwear recovered also having semen stains — No rational explanation could be given by appellant as to presence of said stains on his clothes — Appellant seen near time of alleged abduction of deceased with a girl child on his shoulder, mistaken to be a niece of the appellant by a witness (PW 7) — Held, even though PW 7 had not identified that the girl was the deceased, it is a serious incriminating circumstance, and appellant being an unmarried man, could not have been found at night with a girl — Circumstance clearly shows that he had kidnapped the child during the night — Moreover, previous conduct of appellant (having been rejected sexual favours by mother of deceased and admonished and scolded therefor by mother, uncle and brother of deceased, earlier in the night) though not strictly admissible in evidence, would prove that appellant was prone to do the crimes alleged — Hence, Sessions Judge and High Court appreciated evidence in correct perspective and found appellant guilty and there were no reasons to disbelieve this finding — Evidence Act, 1872, S. 8*

The appellant was staying in one of the rooms of a building owned by the complainant *K*, a widow having three children. On 11-9-2002 at about 10 p.m., the appellant came to PW 2 *K* and offered Rs 150 and sought sexual favours. PW 2 got angry and she asked him to go away, but the appellant declined to leave the place. PW 2 told her brother and her son that the appellant had been harassing her. They came and scolded the appellant and he left the place. During the night, PW 2 along with her two minor daughters was sleeping on a cot lying outside the room. At about midnight she felt cold and went inside and at 1.00 o'clock she came back and then she saw that one of her daughters, namely, *S* was missing. She immediately called her brother and her son who were sleeping in another portion of the same house. They searched for *S* at nearby places, and as they had suspicion on the appellant, they went in search of him to his house but he was not found there. They made enquiry with PW 7. He stated that he had seen appellant going away with a girl on his shoulder but he thought that the girl must be the daughter of a relative of the appellant. The people in the locality collected and at about 4 o'clock in the morning they saw the appellant coming from a nearby road. PW 2 and others took him to the police station. It seems that he made certain revelations and PW 2 gave the FI statement and on the basis of the FI statement a case was registered and investigation was started.

The dead body of *S* was recovered from a pond. The body was found floating on the water and it was identified by relatives. An inquest was held on the dead body and on post-mortem examination it was found that there were a series of injuries on the body of deceased *S*. The clothes were stained with blood and some mud particles. There was lacerated wound on the private parts of the deceased, and the hymen was completely ruptured. The doctor opined that the victim must have died due to asphyxia.

Commuting the sentence of death to life imprisonment,

Held :

There is incongruity in the prosecution evidence regarding recovery of the body and the inquest of the dead body. PW 19, the investigating officer could not throw much light on this infirmity in the investigation. Therefore no importance is being given to the alleged recovery of dead body at the instance of the appellant. (Para 6)

However, there is strong evidence to show that the appellant committed the offence. According to the prosecution, the appellant was immediately arrested and brought to the police station. His clothes were recovered and sent for chemical examination. Items F, G, H and I are the shirt, banyan, pants and underwear respectively worn by the appellant at the time of incident. The chemical analyst's report shows that on Items F, G and H there were presence of bloodstains and Item I was also having bloodstains mixed with semen. The appellant could not give any rational explanation for the presence of bloodstains on his clothes. (Para 7)

Another circumstance is the evidence of PW 7. He went to bed and at about 1 a.m. he got up to answer the call of nature and came to the bathroom situated outside his house, then he found the appellant moving around and he was having a child on his shoulder. In the FI statement also reference has been made to the statement made by Rambaran. Of course PW 7 had not identified that the girl was deceased *S*. Nevertheless, it is a serious incriminating circumstance and the appellant being an unmarried man, he could not have been found at night with a girl and this circumstance clearly shows that the appellant had kidnapped the child during night for the purpose of commission of this crime. The dead body of deceased *S* was found in the early morning of 12-9-2002 and the appellant was arrested immediately and previous conduct also though not strictly admissible in evidence would prove that the appellant was prone to do such crime. The Sessions Judge as well as the High Court appreciated the evidence in the correct perspective had found the appellant guilty and there are no reasons to disbelieve this finding. (Paras 8 and 9). *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127: 2005 SCC (Cri) 653: AIR 2004 SC 4862: 2004 Cri LJ 4642.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 16-9-2004]

[9222] — Ss. 376, 363, 366 and 368 — Case of kidnapping and rape — Minor contradictions and omissions in testimony of prosecutrix — *Prosecutrix being illiterate and rustic young woman — Evidence consistent in material aspects — Held, prosecutrix being illiterate and rustic young woman, some contradictions and omissions were natural, as her recollection, observance, memory and narration of chain of events may not be precise — Conviction restored* (Para 29). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

Prakash Singh v. Union of India, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417, relied on

[9223] — S. 376 r/w S. 34 — Minor discrepancies in evidence of PWs (including victim of rape) — Effect — *Considering that evidence was recorded in court after about seven years of the occurrence, held, said discrepancies were of no consequence* (Para 10). *Sri Narayan Saha* v. *State of Tripura*, (2004) 7 SCC 775.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 8-9-2004]

(d) Credibility of prosecutrix/witness

See also 'C.8. Conduct of accused, prosecutrix, witnesses, etc.',

'C.11. Conviction on sole testimony of prosecutrix', and

'C.22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act', below

[9224] — S. 376 — Alleged rape of a married woman — Prosecution case primarily based on evidence of prosecutrix — *Omissions and contradictions found in her cross-examination creating doubt about the truthfulness of her version and rendering her testimony unsafe to rely upon to convict the accused-appellant — Even otherwise, prosecution case found to be not credible and it appeared that father of the prosecutrix on discovering that prosecutrix was involved with appellant, after due deliberations, lodged a report implicating the appellant — Defence case that prosecutrix was a consenting party probable — On facts held, prosecution failed to prove its case beyond reasonable doubt — Appellant entitled to acquittal. Mohan Lal* v. *State of Rajasthan*, (2002) 10 SCC 14: 2003 SCC (Cri) 1383: AIR 2003 SC 698: 2003 Cri LJ 862.

Bench Strength **2**. Coram: *M.B. Shah* and **B.P. Singh**, JJ. [Date of decision: 3-12-2002]

[9225] — S. 376 — Credibility of witness — Negligence of investigating agency — Whether a ground to discredit testimony of victim — *Blood-stained clothes allegedly handed over to officer-in-charge at police station by husband of rape victim not sent for chemical examination — Effect — Held, victim had no control over investigating agency and negligence, if any, of investigating officer could not affect credibility of statement of victim — On basis of evidence on record, conviction of appellant, held, sustainable* (Para 16). *Ram Singh* v. *State of H.P.*, (2010) 2 SCC 445.

Bench Strength **2**. Coram: *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision: 28-1-2010]

[9226] — S. 376 — Prosecutrix 8 years old, held, competent to give evidence — Rule of corroboration explained — *Statement made to mother admissible for corroboration*

The tender years of the child, coupled with other circumstances appearing in the case, such for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand. *Rameshwar* v. *State of Rajasthan*, AIR 1952 SC 54: 1952 SCR 377: 1952 Cri LJ 547, 549, 55.

Bench Strength **2**. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 20-12-1951]

[9227] — S. 376 — Rape — Prosecution case mainly resting on evidence of prosecutrix — *Absence of spermatozoa — No injuries found on prosecutrix or on accused suggesting forcible intercourse — Prosecutrix being a grown-up married woman doctor unable to give any opinion whether rape had been committed or not — Evidence of prosecutrix found to be highly untrustworthy — In circumstances held, accused entitled to benefit of doubt. Ram Nivas* v. *State of Karnataka*, 1994 SCC (Cri) 503.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 2-4-1993]

[9228] — S. 376 — Village girl below 16 years as prosecutrix — *Due allowance should be made for exaggeration of threats. Gurcharan Singh* v. *State of Haryana*, (1972) 2 SCC 749: 1972 SCC (Cri) 793: AIR 1972 SC 2661: (1973) 2 SCR 197: 1973 Cri LJ 179.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 13-9-1972]

[9229] — Ss. 376 and 506 — Discrepancies in evidence — Victim of offence not an intelligent girl as she passed Class 3 on third attempt — *Her mother, a rustic woman, was practically illiterate — On facts, held, High Court erred in doubting the testimony of said witnesses by making hypothetical calculations regarding dates stated by them — Examining evidence of such witnesses with microscopic approach would be an insult to justice-oriented judicial system — Such approach totally detached from the realities of life* (Para 6). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[9230] — Ss. 376 and 506 Pt. II — Prosecutrices (PWs 1 and 2) being uneducated, poor labourers without any male members in their family to advise them and being threatened by accused — FIR being delayed by 42 days — Effect — *High Court duly considering all material aspects — High Court considering corroboration by PW 14 (mother of prosecutrices) and PW 4 (owner of quarry where prosecutrices worked) regarding cause of delay — Conviction of accused under Ss. 376 and 506 Pt. II, therefore, held, justified*

The evidence of prosecutrices cannot be rejected as unacceptable. Though there was a delay of 42 days in lodging the complaint to the police, PWs 1 and 2, in their evidence, explained that all their family members including themselves are uneducated, there are no male members in their family for their assistance and they settled in the present village to eke out their livelihood. They were working in quarry owned by PW 4 and while returning from their workplace by force A-1 and A-2 committed rape of PWs 1 and 2. PW 14 (mother of PWs 1 and 2) also corroborated them about their illiteracy and fear due to the threat call of A-1 and A-2. All these material aspects were duly considered by the trial court and accepted by the High Court. (Paras 15 and 19). *Santhosh Moolya* v. *State of Karnataka*, (2010) 5 SCC 445.

Bench Strength **2**. Coram: **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 26-4-2010]

(e) Medical evidence vis-à-vis evidence of prosecutrix

See also 'C.20. Medical Jurisprudence/Evidence', below

[9231] — S. 376 — Rape — Evidence — Medical evidence inconsistent with evidence of prosecutrix — Effect — *Prosecutrix aged 8 years at the time of the alleged occurrence — According to evidence of the doctor who examined the prosecutrix immediately after the occurrence, there was no sign of rape — Thus evidence of prosecutrix belied by medical evidence — Held, accused-appellant entitled to acquittal. Yerumalla Latchaiah* v. *State of A.P.*, (2006) 9 SCC 713: (2006) 3 SCC (Cri) 373.

Bench Strength **3**. Coram: *B.N. Agrawal, A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 21-2-2006]

[9232] — Ss. 376 and 375 — Medical evidence not corroborating the alleged forced sexual intercourse — Conviction based solely on oral evidence of prosecutrix and her subsequent conduct, upheld — *Medical examination of prosecutrix not disclosing evidence of sexual intercourse — No injury marks on accused or prosecutrix — But oral testimony of prosecutrix found to be cogent, reliable, convincing and trustworthy as her evidence stood corroborated by other PWs and narration of events in the FIR — No interference with conviction called for — Appellant alleged to have raped prosecutrix in coffee estate — She unequivocally and clearly stating that while she was returning to worksite carrying meals for her mother the accused had suddenly come from behind, held her body with force and then dragged her to some distance in the coffee estate in spite of her resistance and request to the accused to release her — After committing rape accused fleeing away from place of occurrence — She narrating the incident to her mother and was so traumatised by the event and fear of being disgraced/humiliated, that she jumped into a water tank with intention to commit suicide — However, she was rescued by PWs 4 and 5 to whom she narrated the reason for taking the extreme step — She also narrated the incident to PW 6 who was the Manager of coffee estate, and on his advice lodged an FIR — Testimony of prosecutrix not shaken on material aspect — Suggestion by accused that a false case had been lodged against him because of enmity between his family members and the prosecutrix's family not found acceptable — Further, defence by accused that prosecutrix was a consenting party as she did not resist and no injuries were found on her body or on the accused, was unfounded and baseless and falsified by subsequent conduct of prosecutrix — Evidence of prosecutrix found trustworthy and fully corroborated by other PWs and narration of events in FIR — Though the report of the gynaecologist pertaining to medical examination of prosecutrix disclosed no evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted — Though undergarments of the accused and the victim did not contain any seminal stains, but the same cannot be given any importance because the underwear of the accused was taken into possession by the police on the next day of the incident when he was arrested and no evidence brought on record to show that the accused handed over the same underwear to the police, which he was wearing on the day of incident — Possibility of absence of seminal stains on petticoat of the prosecutrix which she was wearing at the time of the incident, could not be ruled out due to the fact that the petticoat got drenched in the water and the seminal stains might have been washed away — On such independent analysis of the oral and documentary evidence on record by Supreme Court, held, the conviction and sentence of 7 years' RI awarded by the trial court and confirmed by the High Court called for no interference* (Paras 2, 11, 12, 13, 17, 18, 19 and 20). *B.C. Deva* v. *State of Karnataka*, (2007) 12 SCC 122: (2008) 2 SCC (Cri) 253.

Bench Strength **2**. Coram: *R.V. Raveendran* and **L.S. Panta**, JJ. [Date of decision: 25-7-2007]

(f) Reappreciation/Reappraisal of evidence

[9233] — S. 376 — Appeal against conviction — Reappreciation of evidence — When warranted — *Where appellant had already served his sentence, appeal not to be dismissed as infructuous since conviction for rape is most stigmatic — Hence reappreciation of evidence called for* (Paras 13 and 14). *Tameezuddin* v. *State (NCT of Delhi)*, (2009) 15 SCC 566.

Bench Strength **2**. Coram: *H.S. Bedi* and *Aftab Alam*, JJ. [Date of decision: 26-8-2009]

5. Bail/Suspension of sentence

[9234] — S. 376 — Anticipatory bail — Grant and cancellation of — Considerations for dealing with application for grant of — *While granting anticipatory bail, held, court must record reasons therefor — Whether accused tampered with evidence should be considered by appropriate authority at appropriate stage — Post-bail conduct of accused and other supervening circumstances should be taken into account while considering application for cancellation of the anticipatory bail — Cases involving serious offences such as one punishable under S. 376 IPC should be allowed to be fully investigated — Prosecutrix being a girl of easy virtue not a relevant consideration — Victims who are lured or coerced for immoral trafficking should be given protection — Accused absconding for a long time, not cooperating with IO, nor complying with the conditions imposed while granting the bail — Held on facts, grant of anticipatory bail by High Court was not justified — CrPC, 1973, S. 438 (as subs. in Maharashtra)*

A girl was lured and while being taken for the purpose of immoral trafficking on 22-4-2007 by the respondent-accused persons comprising police officers, politicians and a businessman, the police arrived and the respondents were taken to police station. The girl was medically examined on the same day and her radiographical (bone) assessment suggested her age to be between 14-16 years. The Municipal Council issued a certificate on 29-5-2007 recording the date of birth of the girl as 28-6-1991 and mentioning name of her father. The date of registration of the said certificate was 4-7-1996 i.e. much before any controversy arose. Three school leaving certificates had also been placed before the court wherein her date of birth was shown as 28-6-1991. The respondents were not named in FIR. However, the girl made several statements thereafter implicating them. She also gave her statement under Section 164 CrPC.

The respondents, having come to know that they have been named by the said girl, absconded. They filed an application for anticipatory bail before the Sessions Judge. The same was dismissed. But the High Court allowed the application for anticipatory bail. The State filed the present appeal against the judgment of the High Court.

The Supreme Court called for a report from SP, CID who in his report pointed out, that the respondent-accused persons had been absconding for a long time and they during the course of interrogation have been giving evasive answers. It was furthermore stated that from the residence of Accused 3, thirteen CDs of blue films and books instigating sex have been seized. It was also submitted that recovery of vehicles used by the respondents from time to time for commission of the offence are yet to be seized and if they are released on bail, they would tamper with evidence.

Allowing the appeal,

Held :

Immoral trafficking is now widespread. Victims, who are lured, coerced or threatened for the purpose of bringing them to the trade should be given all protection. (Para 28)

In an application for cancellation of bail, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But the court while considering an appeal against grant of anticipatory bail would keep in mind the parameters laid down therefor. The matter, however, may be different for deciding an appeal from an order granting bail, where the accused has been at large for a considerable time, in which event, the post-bail conduct and other supervening circumstances will also have to be taken note of. (Para 34)

While granting anticipatory bail, the court must record the reasons therefor. Parameters for grant of anticipatory bail in such a serious offence, being under Sections 376, 376(2)(*g*) IPC, are required to be satisfied. (Paras 28 and 31)

The four factors, which are relevant for considering the application for grant of anticipatory bail, have been set out in Section 438(1) CrPC. There cannot be any direct proof that the respondents have been tampering with evidence, but that question will have to be considered by the appropriate authority at the appropriate stage. Immoral conduct on the part of police officers should not be encouraged. After having come to know that names of the respondents had been taken by the prosecutrix in her supplementary statement, they had been absconding for a long time. Further, the respondents had not scrupulously complied with the conditions imposed upon them. Admittedly, at least on four occasions, some of them were not present. It is not understandable as to how the police officers could go underground. They had been changing their residence very frequently. Although most of them were police officers, their whereabouts were not known. During the aforementioned period attempts had been made even by the person who was taking care of the girl to obtain custody of the girl, but at whose instance, is not known. The mother of the girl, had also affirmed an affidavit in relation to her date of birth showing her to be not a minor on the date of the incident. These may not be acts of voluntariness on their part evidently the evidence is being collected by somebody who intends to save the accused. It, therefore, is a case where no anticipatory bail should have been granted. (Paras 20, 27, 25 and 33)

A mistake in regard to recording of age of the prosecutrix as recorded in the first information report or the first medical document or even in her supplementary affidavit should yield to the public documents which have been produced by the prosecution at this stage. Even before the learned Chief Judicial Magistrate, she disclosed her date of birth to be 28-6-1991. Therefore, even according to that she was below 16 years of age. (Para 32)

It may be true that the date of issuance of the certificates had not been stated, but evidently such certificates had been obtained by the prosecution. It may be true that in the first information report as also in her first supplementary examination, her age was recorded as 18 years, but she had been examined medically. The possibility of her trying to shield herself from prosecution at the time of her arrest and for that purpose disclosing her age to be 18 years cannot be ruled out. (Para 22)

A case of this nature should be allowed to be fully investigated. Once a criminal case is set in motion by lodging an information in regard to the commission of the offence in terms of Section 154 CrPC, it may not always be held to be imperative that all the accused persons must be named in the first information report. It has not been denied nor disputed that the prosecutrix does not bear any animosity against the respondents. There is no reason for her to falsely implicate them. It is also not a case that she did so at the behest of some other person, who may be inimically disposed towards the respondents. The prosecution has disclosed the manner in which she was being taken from place to place which finds some corroboration from the testimonies of the other witnesses and, thus, it can safely be concluded that at least at this stage her evidence should not be rejected outrightly. (Para 30)

So far as the fact that the respondents have not been named in the first information report is concerned, suffice it to say that the first information report may not be encyclop'dic, (Para 23)

The High Court has in regard to the first factor envisaged under the Maharashtra Amendment of Section 438 CrPC proceeded on the basis that the prosecutrix was a girl of easy virtue. This may be so but the same by itself may not be a relevant consideration. (Para 29)

The High Court itself has refused to grant regular bail to the accused against whom charge-sheet has been submitted. The Sessions Judge also did not grant bail to some of the accused persons. If on the same materials, prayer for regular bail has been rejected, there is no reason as to why and on what basis the respondents could be enlarged on anticipatory bail. (Para 36)

In the peculiar facts and circumstances of the case, the High Court ought not to have granted anticipatory bail to the respondents. The impugned judgment, therefore, cannot be sustained which is set aside accordingly. (Para 37). *State of Maharashtra* v. *Mohd. Sajid Husain Mohd. S. Husain*, (2008) 1 SCC 213: (2008) 1 SCC (Cri) 176: AIR 2008 SC 155.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 10-10-2007]

D.K. Ganesh Babu v. P.T. Manokaran, (2007) 4 SCC 434: (2007) 2 SCC Cri 345; Vinod G. Asrani v. State of Maharashtra, (2007) 3 SCC 633: (2007) 2 SCC (Cri) 129; State of U.P. v. Pappu, (2005) 3 SCC 594: 2005 SCC (Cri) 780, relied on

[9235] — Ss. 376 and 450 — Conviction for rape with life imprisonment — Suspension of sentence and enlargement on bail — Propriety — *High Court by impugned judgment granting bail and suspending sentence of life imprisonment passed against respondent-accused for offence punishable under Ss. 376 and 450 IPC — Victim a British journalist and businesswoman who was staying in guest house belonging to respondent-accused, where he forcibly barged into her room and raped her — Held, it was not a fit case where sentence awarded should have been suspended and accused released on bail — High Court totally unjustified in granting bail to accused, or in suspending the sentence — Impugned judgment set aside and High Court directed to dispose of the appeal expeditiously — CrPC, 1973, Ss. 389, 437 and 439* (Paras 3, 5 and 6). *Suzanne Louise Martin* v. *State of Rajasthan*, (2009) 4 SCC 376: (2009) 2 SCC (Cri) 308: AIR 2009 SC 1740: 2009 Cri LJ 1567.

Bench Strength **2**. Coram: *Markandey Katju* and *V.S. Sirpurkar*, JJ. [Date of decision: 16-1-2009]

[9236] — Ss. 376, 460, 325 and 506 — Suspension of sentence pending the appeal — Conviction under Ss. 460, 376, 325 and 506 IPC — *During the pendency of appeal High Court rejecting appellant's application for suspension of sentence — Held, the normal rule is that when the appeal of a person convicted and sentenced is pending the sentence passed on him should be suspended unless any exceptional reason existing therein requires the denial of the same — There being no exceptional reason recorded in the impugned order, Supreme Court suspending the sentence and directing release of appellant on bail — CrPC, 1973 — Ss. 389 and 374. Kiran Kumar* v. *State of M.P.*, (2001) 9 SCC 211.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 28-8-2000]

Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421: 1999 SCC (Cri) 553, followed

6. Charge

See also under Criminal Procedure Code, 1973

[9237] — Ss. 375 and 376 — No charge framed under, nor any evidence suggesting commission of rape — *Medical report of the vaginal swab disclosing presence of semen and hence doctor opining that possibility of rape could not be ruled out — Trial court concluding that the deceased was raped before her death only on the basis of this solitary statement and imposing death sentence — High Court, concurring with the findings of the trial court and affirming the death sentence — Held, in absence of any charge framed under S. 376 and in absence of any evidence supporting the allegation, such finding cannot be sustained* (Paras 19, 20 and 21). *Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689: 2005 SCC (Cri) 893: AIR 2005 SC 913: 2005 Cri LJ 955.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **B.P. Singh**, JJ. [Date of decision: 18-1-2005]

[9238] — Ss. 376 (as amended in 1983)/511 or 354 — Applicable provision — After finding the accused guilty under Ss. 376/511, even in absence of a charge under S. 376 read with S. 511, held, High Court should have convicted him under Ss. 376/511 by invoking S. 222, CrPC and not under S. 354 — Quantum of punishment — Determination of — *Keeping in view the objects of 1983 amendment to S. 376, held, no person committing or attempting to commit rape should be allowed to escape punishment — Having found the accused guilty, the quantum of punishment must be decided in accordance with law without being influenced by the press, electronic media or public agitation, as a trial by such agencies is the very antithesis of rule of law — While imposing fine and apportioning the whole or part thereof to the victim, the damage caused to her and even to her family should be taken into consideration — Father of eight-year-old daughter found guilty of attempting rape on a girl aged below twelve years and also found guilty under S. 57 of Bombay Children Act — High Court, however, setting aside the conviction under Ss. 376/511 and instead convicting him under S. 354 IPC and sentencing him to rigorous imprisonment for the period already undergone (only 33 days) and to a fine of Rs 40,000 of which Rs 25,000 was to be apportioned to the complainant (father of the prosecutrix in this case) — High Court upholding the respondent's conviction under S. 57 of the Bombay Act but restricting the sentence thereunder to the period of imprisonment already undergone — Matter coming up before the Supreme Court 11 long years after the incident and by then the fine imposed by the High Court having already been paid by the accused and the complainant having withdrawn his share of the fine — In such circumstances while converting the conviction of the accused from one under S. 354 IPC to that under Ss. 376/511 IPC, held, a sentence of five years' RI and a fine of Rs 40,000 would meet the ends of justice — Conviction and sentence under S. 57 of Bombay Children Act, however, affirmed — CrPC, 1973, S. 222 — Bombay Children Act, 1948 (71 of 1948), S. 57 — Law Commission Reports 42nd, 69th and 84th — Criminal Law (Amendment) Act, 1983*

The accused-respondent was convicted by the trial court for offences under Section 376 of IPC and Section 57 of the Bombay Children Act, 1948 for having committed rape on a girl of eight years of age on 24-9-1986 and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs 5000 and for offence under Section 57 of the Bombay Children Act he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs 500. The substantive sentences were ordered to run concurrently. The Bombay High Court upset the conviction under Section 376 IPC and instead convicted him for an offence under Section 354 IPC and sentenced him to suffer rigorous imprisonment which he had already undergone (which was 33 days in all) and to pay fine of Rs 40,000 out of which Rs 25,000 was directed to be paid to the complainant who was the father of the girl. The conviction for the offence under Section 57 of the Bombay Children Act was upheld but the sentence was reduced to the imprisonment already undergone. Cross appeals were filed against the High Court's decision. While the State of Maharashtra filed appeal against the conviction and sentence of the accused by the High Court praying for his conviction under Section 376 IPC and for enhancement of his sentence to a minimum of 10 years, the accused filed appeal against his very conviction and sentence under Section 354 IPC and Section 57 of the Bombay Children Act. On the question of sentence under Sections 376/511, IPC, the accused-respondent contended that when the offence was committed the accused had also a daughter of 8 years of age and that a long time had elapsed since the offence was committed and that in terms of the judgment of the High Court the accused had already deposited Rs 40,000 out of which Rs 25,000 had already been withdrawn by the father of the prosecutrix. It was submitted that if the Court came to the conclusion that the sentence had to be enhanced then only the amount of fine could be raised. Dismissing the respondent's appeal and partly allowing the State's appeal

Held :

The circumstances of the case show that the accused intended to commit rape on the girl. In the commission of that crime, he laid the girl on the seat in the Maruti car and then laid himself over her. He pulled down her knickers and also opened the zip of his pants and took out his male organ. He pressed his male organ on the private parts of the girl. But since he discharged, he could not penetrate and was unable to complete the offence of rape. However, it is clear that he did attempt to commit rape.

The High Court after having come to the conclusion that the accused was guilty of an offence under Sections 376/511 of the IPC could not have convicted the accused for an offence under Section 354 IPC. Section 511 IPC provides punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. In the instant case since the girl was under 12 years of age and the Sessions Judge having found that offence of rape had been committed could not have awarded sentence of 7 years when the law prescribes minimum sentence of rigorous imprisonment for a term not less than 10 years, unless exceptional circumstances existed. However, the State of the complainant did not come up in appeal in the High Court for enhancement of the sentence. Though there was no charge under Section 376 read with Section 511 IPC, under Section 222 CrPC when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

The respondent's plea that in case the court took a decision to enhance the sentence the amount of fine could be raised, cannot be accepted. A heinous crime has been committed and the accused must suffer for the consequences. A rapist not only violates the victim's personal integrity but leaves indelible marks on the very soul of the helpless female. The girl of 8 years must have undergone a traumatic experience. Despite the 11 year long lapse of time after the offence, keeping the objects of the 1983 amendment to Section 376 of IPC in view, the law as it exists now and the decisions of the Supreme Court on the question of sentence, the message is loud and clear that no person who commits or attempts to commit rape shall escape punishment.

Considering the whole aspect of the matter, it has to be held that a sentence of five years' rigorous imprisonment and fine of Rs 40,000 will meet the ends of justice. The fine has already been paid, out of that Rs 25,000 has been withdrawn by the father of the girl as per direction of the High Court which is upheld. The conviction of the accused-respondent is converted from one under Section 354 IPC to that under Sections 376/511 IPC and he is sentenced as aforesaid. The conviction and sentence of the accused under Section 57 of the Bombay Children Act as ordered by the High Court shall, however, stand. The sentences shall run concurrently. *State of Maharashtra* v. *Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386: AIR 1997 SC 3986. Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 11-9-1997]

[9239] — Ss. 376/511, 366 and 354 — Charge framed under Ss. 376/511, but conviction under Ss. 366 and 354 — *Conviction where major offence not proved, but minor offence in respect of which no charge was framed is established — Accused charged only under Ss. 376/511 IPC — Said offence not made out — However, ingredients of minor offences under Ss. 366 and 354 IPC present — Held, accused could be convicted under Ss. 366 and 354 IPC by invoking S. 222 CrPC — CrPC, 1973, S. 222*

In the instant case, the accused has been charged with Sections 376/511 IPC only. But, the offence committed does not come within the purview of offence punishable under Sections 376/511 IPC. In the absence of charge under any other section, the question now arises — whether the accused should be acquitted; or whether he should be convicted for committing any other offence pertaining to forcibly outraging the modesty of a girl. In a situation like this, Section 222 CrPC would be invoked which provides that in a case where the accused is charged with a major offence and the said charge is not proved, the accused may be convicted of the minor offence, though he was not charged with it. (Paras 23 and 36)

In the present case, the offence committed squarely covers the ingredients of Sections 366 and 354 IPC. The appellant is clearly guilty of the offences under Sections 366 and 354 IPC. (Paras 36 and 59). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, relied on

7. Circumstantial Evidence

See also in detail under CRIMINAL TRIAL in Vol. 19, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

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(a) Generally

[9240] — Ss. 376 and 302 — When can an accused be convicted solely on the basis of circumstantial evidence — Principles reiterated — *Rape and murder of a girl aged 5 years — Circumstances relied on by prosecution not found to be incriminating circumstantial evidence against accused — Held, courts below erred in convicting the accused on that basis — Evidence Act, 1872, S. 3*

The Court has to proceed to examine each of the pieces of incriminating circumstantial evidence so as to find out if each one of the circumstantial evidence is proved individually and whether collectively it forges such a chain of incriminating circumstances as would fasten the guilt on the accused beyond any shadow of reasonable doubt. None of the pieces of evidence relied on as incriminating, by the trial court and the High Court, can be treated as incriminating pieces of circumstantial evidence against the accused. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. "Human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions". Between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict. (Paras 6 and 24). *Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487; Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315, relied on

[9241] — Ss. 376/511 and 302 — Circumstantial evidence — Conviction on basis of — Sustainability — *Held, when a case rests on circumstantial evidence, a complete chain of circumstances which rule out every other possibility except guilt of the accused has to be established — Attempt to rape and murder of a young girl aged 11 years alleged — Serious injuries sustained by accused not explained — Injuries on accused clearly indicating that he was beaten very badly after he was apprehended — Alleged extra-judicial confession was extracted from the accused by assaulting him severely and hence, neither voluntary nor natural — Moreover, evidence of the mother of the deceased was full of contradictions and inconsistencies — Hence held, High Court's view that the circumstances were not sufficient to fasten the guilt on the accused, calls for no interference* (Paras 2, 12 and 13). *State of U.P.* v. *Raja*, (2008) 10 SCC 318: (2008) 70 AIC 102 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 28-8-2008]

[9242] — Ss. 376/511, 302/34 and 201/34 — Prosecution case solely based on circumstantial evidence — Circumstances should form a chain which should point to the guilt of the accused — *Evidence should prove particular facts relevant for* *the purpose of the case — Proved facts should be wholly consistent with the guilt — On facts held, circumstances shown by prosecution were not sufficient to prove the guilt of the accused — Courts below erred in convicting the appellants under Ss. 376/511, 302/34 and 201/34 IPC on the basis of discrepant and fragile evidence. Sudama Pandey* v. *State of Bihar,* (2002) 1 SCC 679: 2002 SCC (Cri) 239: AIR 2002 SC 293: 2002 Cri LJ 582: (2002) 1 CHN (Supp) 65.

Bench Strength **2**. Coram: *U.C. Banerjee* and **K.G. Balakrishnan**, JJ. [Date of decision: 5-12-2001]

Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156: 1997 SCC (Cri) 1004; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487, relied on

(b) Clues and Tell-Tale Signs/Forensics

[9243] — S. 376 — Rape trial — Vaginal swabs and slides — Late deposit in malkhana — Whether on facts weakened prosecution case — Explanation if satisfactory — *Post-mortem examination of victim conducted on 25-1-1996 — Samples of vaginal swabs and slides deposited in malkhana after a gap of three days on 29-1-1996 — Post-mortem report handed over by hospital to police on 25-1-1996 itself along with dead body whereas samples handed over on 29-1-1996 — In the intervening period, there were three holidays from 26-1-1996 to 28-1-1996 — Held, delay in deposit of samples satisfactorily accounted for — No adverse inference could be drawn against prosecution due to intervening period of three days between preparation of samples and deposit in malkhana* (Para 56). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

[9244] — Ss. 376 and 302 — Genuineness of swabs and slides in rape and murder case — Malkhana register — Credibility of entries made therein — Entries relating to vaginal swabs and slides appeared to have been missed initially but subsequently made by incharge of malkhana — There was plausible explanation for omission — *Initially, articles mentioned on first page of post-mortem examination report were entered in the register and then it was noticed that some more articles (swabs and slides) were mentioned on third page of report — Malkhana incharge, in his evidence, denying theory of interpolation — Even otherwise, there was evidence on record that swabs and slides were received in malkhana from hospital in a sealed jar and were delivered in the same condition to Centre for Cellular & Molecular Biology (CCMB), Hyderabad, for DNA profiling of accused — No suggestion made during cross-examination of doctors and police officials that seals of jar were tampered with — Held, genuineness of samples could not be doubted in such circumstances*

PW 47, Constable Rajinder Singh of CBI, who was the incharge of the malkhana on the day in question deposed that there was no mention that swabs and slides were contained in a glass jar, but the fact that the entries had been interpolated has been emphatically denied by him. These items had been taken by Inspector Shekhawat from the malkhana on 31-1-1996 in a sealed condition and in a glass jar and handed over to CCMB, Hyderabad in an identical condition. PW 49, Dr. Lalji Singh from CCMB deposed on oath that all the aforesaid items along with several others had been received in a sealed condition as his organisation did not accept any item which was without a seal. He further stated that along with samples he had received the sample seals which had been affixed on the bundle of clothes and the bottle carrying vaginal swabs and slides. (Para 58)

The vaginal swabs and slides find mention on the third page of the post-mortem report whereas the other items taken from the dead body are on internal p. 1. This raises the possibility that the Head Constable had, at the initial stage, missed the articles on p. 3 and thereafter rectified the mistake. No adverse inference against the prosecution can be drawn with regard to the retention of the items in the malkhana. No suggestion was put either to the doctors or to DSP Ohri or to Sub-Inspector Shekhawat that the seals of the aforesaid articles had been tampered with. (Para 59). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

[9245] — Ss. 376, 302/34 and 201/34 — Guilt based on circumstantial evidence, established — *Accused labourers taking pleas that semen stains found in their underwears cannot be used as an incriminating circumstance and that circumstances regarding extra-judicial and judicial confessions and part of circumstance relating to carnal intercourse were not proved — Chemical examination of seized underwears, not in dispute — Accused A-1 to A-4, after raping and murdering a minor girl (six years old), were throwing the deceased in a gunny bag, were seen, caught and handed over to police by PWs 2 to 5 established — Accused not disputing chemical examination showing their underwears stained with human semen and spermatozoa —*

7.(b) Clues and Tell-Tale Signs/Forensics *(contd.)*

Nothing on record that PWs 2, 3, 4 and 5 had any enmity with A-1, A-2, A-3 and A-4 or had any special relations with the police — Medical evidence of doctor PW 1 establishing that the victim was subjected to rape and murder — Pleas regarding inadmissibility of semen stains evidence and not proving of confessions, held, have no merit — Circumstances were sufficiently proved and completed the chain cumulatively and unerringly pointed towards the guilt of the accused

On 25-9-2003, the six year old prosecutrix, daughter of PW 4 (a migrant labourer from Nepal) left home at about 8.00 a.m. When she did not return for quite some time and the efforts of PW 4 and other prosecution witnesses to find her out failed, PW 4 lodged an FIR in the police station at around 4.00 p.m. At about 1.30 p.m. in the night, when PWs 2, 3 and 5 (other migrant labourers from Nepal) were waiting for the prosecutrix four persons came from the side of the road up to the vacant plot of one Sardarji in that locality and were seen throwing the dead body of the prosecutrix from the gunny bag in that plot. The gunny bag was also thrown over there. PW 2, PW 3, PW 4 and PW 5 raised alarm and caught hold of them (Accused A-1, A-2, A-3 and A-4). The dead body and A-1, A-2, A-3 and A-4 were taken to police station.

PW 4 lodged the written report at about 2.00 a.m. (26-9-2003) and a case under Sections 302/201/34 IPC was registered against A-1, A-2, A-3 and A-4. Their formal arrest was made. In the morning of 26-9-2003 at about 6.30 a.m. seizure memo of the dead body was prepared by the IO (PW 11). PW 1 (doctor) conducted post-mortem of dead body at about 1.00 p.m. The accused persons were also sent for medical examination. On the basis of the disclosure statement of A-1 and A-2, two feet long electric wire of yellow colour from the house of one *R* where the accused were then residing was recovered.

The trial court awarded death sentence to the four appellant accused. The trial court also convicted the accused-appellants for the offences punishable under Sections 376 and 377 IPC and sentenced them to life imprisonment. Each of the appellants was also convicted for the offence punishable under Sections 201/34 IPC and sentenced to undergo seven years' rigorous imprisonment and fine of Rs 2000 and in default of payment of fine, additional imprisonment of six months. Since death sentence was awarded, the trial court made a reference to the High Court for confirmation.

The accused-appellants challenged the judgment of the trial court in separate appeals before the High Court. The death reference and the appeals were heard together. The High Court maintained the conviction of the appellants under Sections 302/34, 376 and 201/34 IPC. The sentence of death awarded under Sections 302/34 IPC to each of the appellants was commuted to that of rigorous imprisonment for life. The sentence awarded by the trial court under Sections 376 and 201/34 IPC was maintained. The High Court, however, acquitted the appellants of charge under Section 377 IPC and their conviction and sentence under this count was set aside. It is from the judgment dated 12-7-2005 that these four criminal appeals by special leave arise.

The High Court discarded the circumstances mentioned at Serial Nos. (*vi*), (*viii*) and (*x*) and the prosecution case of carnal intercourse. Despite that, the High Court was convinced that all other circumstances have been cogently and firmly established. The High Court discarded the following circumstance (1) That A-1, A-2, A-3 and A-4 made extra-judicial confession of their guilt before PW 1, PW 2, PW 3 and PW 4, (2) That at the instance and on the disclosure statement of A-1 and A-2, a piece of wire was recovered from the house of one *R*, and (3) That A-2 made a confession of his guilt before the Judicial Magistrate on 7-10-2003.

Dismissing the appeal,

Held :

Where the entire case hinges on circumstantial evidence, great care must be taken in evaluating circumstantial evidence to ensure that the circumstances on which the prosecution relies are wholly consistent with the sole hypothesis of the guilt of the accused. There is no eyewitness account and the case depends wholly upon circumstantial evidence. While evaluating circumstantial evidence, which of course has to be done carefully, the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged and the circumstances so shown by the prosecution are compatible with no other reasonable hypothesis. (Paras 15, 13 and 17)

There is no merit in the contention that the accused being labourers, not changing their underwears daily, semen stains found in their underwears cannot be used as an incriminating circumstance. That the underwears of the accused were seized on 27-9-2003 when they were in jail and these articles were sent for chemical examination is not in dispute. That the evidence pertaining to chemical examination of underwears shows that those underwears were found stained with human semen and spermatozoa is also not in dispute. Nothing has been brought on record that PW 2, PW 3, PW 4 and PW 5 had any enmity with A-1, A-2, A-3 and A-4 or had any special relations with the police. That A-1, A-2, A-3 and A-4 were seen throwing the dead body of the victim in the intervening night of 25-9-2003/26-9-2003 is established. (Paras 31, 27 and 33)

It is true that circumstances regarding extra-judicial and judicial confessions and part of circumstance relating to carnal intercourse were not proved, but the remaining circumstances were sufficiently proved and completed the chain cumulatively and, therefore, there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else as the proved circumstances unerringly point towards the guilt of the accused. The medical evidence of (PW 1) establishes that the victim was subjected to rape and murder. The injuries and medical evidence make it highly improbable that four persons raped the minor girl. Firstly, no question or suggestion has been put to PW 1 in this regard. Secondly, and more importantly, semen stains with spermatozoa were found on the underwears of all the four accused. Thirdly, chemical examination of the vaginal smear of the victim has also confirmed presence of human blood, semen and spermatozoa. In view of this evidence, rape of the victim by more than one culprit can be safely held to be established. The medical evidence proves beyond reasonable doubt that the victim died of homicidal death and that she was raped before being murdered. The view taken by the High Court is the only possible view on a proper appraisement of evidence and no other view is possible and it has not committed any error in upholding the conviction of the accused persons for the offences punishable under Sections 302/34, 376 and 201/34 IPC. The sentence awarded to them calls for no interference. (Paras 34, 32 and 43). *Pawan* v. *State of Uttaranchal*, (2009) 15 SCC 259: (2009) 2 ECrN 789 (SC): (2009) 3 All LJ 637: 2009 Cri LJ 2257.

Bench Strength **3**. Coram: *S.B. Sinha*, *A.K. Ganguly* and **R.M. Lodha**, JJ. [Date of decision: 26-2-2009]

Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315; Subhash Chand v. State of Rajasthan, (2002) 1 SCC 702: 2002 SCC (Cri) 256; Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92: (2007) 1 SCC (Cri) 161, distinguished

(c) Acquittal justified

[9246] — S. 375 Thirdly — Rape by a policeman in police station — *Onus on the prosecution to establish ingredients of the offence — Passive consent or submission out of fear by the prosecutrix — Circumstantial evidence regarding — Held, offence not established — Charge against companion policeman under S. 354 for fondling the private parts of the prosecutrix also fails*

The onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It was, therefore, incumbent on it to make out that all the ingredients of S. 375 were present in the case. For the proposition that the requisite consent was lacking in the present case reliance on behalf of the State can be placed only on clause Thirdly so that it would have to be shown that the girl had been put in fear of death or hurt and that that was the reason for her consent. In the absence of such a finding, the alleged fear would not vitiate the consent. Further, for circumstantial evidence to be used in order to prove an ingredient of an offence, it has to be such that it leads to no reasonable inference other than that of guilt. The fear which clause Thirdly of S. 375 speaks of is negatived by the circumstance that the girl is said to have been taken away by the accused policeman right from amongst her near and dear ones at a point of time when they were all leaving the police station together and were crossing the entrance gate. The circumstantial evidence available, therefore, is not only capable of being construed in a way different from that adopted by the High Court but actually derogates in no uncertain measure from the inference drawn by it.

Moreover, no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false. It is further clear that the averments on the part of the girl that she had been shouting loudly for help are untrue.

Thus the sexual intercourse in question is not proved to amount to rape and no offence is brought home to the appellant.

As regards another policeman who was alleged to have fondled the private parts of the girl, the girl's version could not be believed in view of the shifting positions taken by her in this regard. Further the circumstance that this policeman was present at the time of occurrence is not inculpatory and is capable

7.(c) Acquittal justified *(contd.)*

of more explanations than one. *Tukaram* v. *State of Maharashtra*, (1979) 2 SCC 143: 1979 SCC (Cri) 381: AIR 1979 SC 185: 1978 Cri LJ 1864: (1979) 16 ACC 7.

Bench Strength **3**. Coram: *Jaswant Singh, P.S. Kailasam* and **A.D. Koshal**, JJ. [Date of decision: 15-9-1978]

See comments at (1974) 4 SCC (Jour) 17

[9247] — Ss. 376 and 302 — Rape and murder of a girl of five years — *Vital link in the chain of circumstances snapped — Held on facts, offence under Ss. 376 and 302 not established*

The crucial link in the chain of circumstances in the present case is the presence of the accused-appellant in his house at the time when the dead body of the deceased was discovered. Once that link snaps, the entire case would have to rest on slender titbits here and there.

The discovery of a blood-stain of the deceased's group ('B' Group) measuring 0.5 cms in diameter on the accused-appellant's pant could be a circumstance against the accused only if it is shown that that was not his blood group. Presence of a dried stain of semen on the underpant of accused, aged 30, is also a circumstance too feeble to establish the guilt. Absence of smegma around the accused's corona glandis cannot by itself prove that he had sexual intercourse. The presence of smegma may perhaps exclude the possibility of recent sexual intercourse but its absence will not necessarily establish that the person has had a recent intercourse. A small abrasion over the base of the glans-penis and its bluish discoloration are also inconclusive circumstances. Nor indeed can the bruises on the appellant thigh establish his involvement in the crime.

The circumstances that the total ignorance of the incident pleaded by the accused was false, cannot be said to have itself furnished a link in the chain of causation. Falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused. Moreover, from the facts and circumstances of the case it is clear that the accused was not present in the house at the time when the deceased's dead body was discovered from the accused's house. That makes it impossible that the accused's plea was false. *Shankarlal Gyarasilal Dixit* v. *State of Maharashtra*, (1981) 2 SCC 35: 1981 SCC (Cri) 315: AIR 1981 SC 765: 1981 Cri LJ 325: 1981 MLJ (Cri) 320.

Bench Strength **3**. Coram: **Y.V. Chandrachud**, *C.J.* and *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 17-12-1980]

[9248] — Ss. 376 and 320 — Rape and murder — Circumstantial evidence — *First circumstance that accused-appellant came to the house of deceased on the day of occurrence and gave a proposal to the deceased for going to orchard for plucking flowers, established — But the second circumstance that appellant and deceased left the house together, which was very material, could not be established — Prosecution also failed to prove the other circumstances — Hence appellant entitled to acquittal — CrPC, 1973, S. 313* (Paras 17 to 19). *Kanhai Mishra* v. *State of Bihar*, (2001) 3 SCC 451: 2001 SCC (Cri) 537: AIR 2001 SC 1113: 2001 Cri LJ 1259.

Bench Strength **3**. Coram: *K.T. Thomas, R.P. Sethi* and **B.N. Agrawal**, JJ. [Date of decision: 27-2-2001]

(d) Conviction justified

[9249] — S. 376 — Rape — On facts, held, circumstantial evidence is sufficient to conclusively establish guilt of the accused — *No law point laid down. Nagarajan* v. *State of T.N.*, AIR 1995 SC 1926.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 6-12-1994]

[9250] — Ss. 376 and 302 — Conviction — Rape and murder of girl aged 11 years — Circumstantial evidence — *Accused seen enticing deceased by offering toffee, thereafter both last seen together going out in the evening, they having not returned to house PWs searched for them whole night and in the morning dead body of deceased found — Immediately thereafter FIR lodged — Extrajudicial confession made by accused to PW 3 that he committed rape of the deceased and killed her by causing injury on her head by brick when she stated that she would report at the house about the rape — Bloodstained earth, bloodstained brick with hair stuck to it, shawl, chappals taken into possession by police — Bloodstains found on trousers and shirt and blood and semen stains found on underwear for which no explanation given by accused — At the stage of statement under S. 313 CrPC accused abjured his guilt and denied all the allegations made against him — Held, High Court rightly confirmed the conviction order passed by Sessions Court. Raju* v. *State of Haryana*, (2001) 9 SCC 50: AIR 2001 SC 2043: 2001 Cri LJ 2580.

Bench Strength **2**. Coram: **M.B. Shah** and *Brijesh Kumar*, JJ. [Date of decision: 2-5-2001]

[9251] — Ss. 376, 302 and 392 — Circumstances pointing to one hypothesis only, namely guilt of accused — Rape and murder of a woman while she was alone in house and commission of robbery — Offences, held, proved — *Accused seen in house by deceased's seven yr old son (PW 2) who had just returned after playing — Two neighbours (PWs 10 and 11) also seeing accused leaving with a bag containing household articles — Rape by violent sexual assault proved by presence of sperm in deceased's vagina and other injuries on her body, particularly bleeding vagina — Cause of death determined in post-mortem examination as smothering — Household articles taken away by accused, identified by deceased's sister — Accused's fingerprints found on handle of almirah — Besides, accused had also made extra-judicial confession to doctor who examined him for his sexual capacity that he (accused) pushed down deceased, removed her clothes, tied her hands and removed articles from house — Held, circumstantial evidence taken together proves that it was accused who committed rape, murder and robbery — Death sentence also confirmed — Evidence Act, 1872, S. 24*

All the witnesses who claimed to be present at or near the place of occurrence remained unshaken in cross-examination, thereby completing the chain of circumstantial evidence in a manner that clearly indicates that no one other than the appellant committed the offences with which he was charged. The trial court has also relied upon the extra-judicial confession made by the appellant to Dr. Somashekar (PW 26), who examined him as to his sexual capacity, to the effect that he had pushed down the victim, removed her clothes, tied her hands and committed theft in the house. (Para 74)

The aforesaid position is further strengthened by the forensic report and that of the fingerprint expert to establish that the fingerprints which had been lifted by PW 13 from the handle of the steel almirah in the room, matched the fingerprint of the appellant which clearly established his presence inside the house of the deceased. The explanation attempted to be given for the presence of the fingerprints on the handle of the almirah situated inside the room of the deceased does not inspire any confidence whatsoever. In a way, it is the said evidence which scientifically establishes beyond doubt that the appellant was present in the room in which the deceased was found after her death and had been identified as such not only by PW 2, who actually saw the appellant in the house immediately after *J* was murdered, but also by PWs 10 and 11, who saw him coming out of the house at the relevant point of time with the bag in his hand. The fingerprints of the appellant found on the handle of the almirah in the room of the deceased proves his presence in the house of the deceased and that he and no other person caused *J*'s death after having violent sexual intercourse with her against her will. (Para 75)

Apart from causing the death of the victim, the evidence also points to the commission of rape of the deceased by the appellant. That the deceased was lying naked with blood oozing out of her genitals and both her hands tied by a sari at one end clearly indicates violent sexual intercourse with the deceased. The presence of semen-like material in her vagina, which was found during the post-mortem examination, was collected and sent for microbiological examination and showed the presence of sperm. The presence of spermatozoa in the vaginal smear which was sent for microbiological examination and the presence of bloodstains at the vaginal outlet together with laceration of the vagina from the vaginal outlet on the posterior wall establishes and confirms the charge of violent sexual intercourse viz. rape. (Para 76)

In addition to the above, the examination of the accused by PW 26, the doctor, who conducted the post-mortem examination, discloses laceration on the inner aspect of the upper lip and inner abrasions in both lips and scratch abrasions over the right side of the face. Abrasions over the front of right shoulder and over the right side at the back of the neck of the appellant indicated that the same could have been caused due to resistance and strengthens the case of the prosecution of forced sexual intercourse with the victim against her wishes. (Para 77)

Even after committing the abovementioned offences, the appellant robbed various articles, including jewellery and a VCR set from the house of the deceased, and even made up a suitable story about his presence in the house in order to impress a young child who happened to notice him as he was leaving the house. (Para 78). *B.A. Umesh* v. *State of Karnataka*, (2011) 3 SCC 85.

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 1-2-2011]

[9252] — Ss. 376, 302 and 404 — Offences of rape, murder and theft committed as an integral part of same transaction — *Recovery of stolen property belonging to deceased at the instance of accused within 2 days of the offence — Incriminating circumstances not explained — Presumption regarding the connection of accused with the aforesaid three offences — Tests required to be satisfied for said presumption, stated — Rape and sub-*

7.(d) Conviction justified *(contd.)*

sequent murder of 11 year old girl — Medical evidence supporting the prosecution case — Ornaments worn by the victim, crime articles and clothes of accused stained with blood and semen recovered at the instance of accused — Accused seen with victim near the place of occurrence just before the incident — Injuries present on the person of accused — Identification of ornaments by victim's parents — Held, the existing chain of unexplained incriminating circumstantial evidence were sufficient for proving the guilt of the accused charged with the said offences — Evidence Act, 1872, S. 114 Ill. (a)

Where several offences have taken place as part of one transaction, recent and unexplained possession of property belonging to the deceased by the accused may enable a presumption being raised against him that he is guilty not only of the offence of theft or dacoity but also of other offences forming part of that transaction. While raising such presumption, the time factor between the date of the offence and recovery of stolen property from the possession of the accused would play a significant role. Precaution has to be taken that the presumption may not be so stretched as to permit suspicion taking the place of proof. No hard-and-fast rule can be laid down in this regard. (Paras 12 and 14)

Recovery of stolen property from the possession of the accused enables a presumption as to commission of offence other than theft or dacoity being drawn against the accused so as to hold him a perpetrator of such other offences on the following tests being satisfied: (i) the offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to have been committed as an integral part of the same transaction; (ii) the time-lag between the date of commission of the offence and the date of recovery of articles from the accused is not so wide as to snap the link between recovery and commission of the offence; (iii) availability of some piece of incriminating evidence or circumstance, other than mere recovery of the articles, connecting the accused with such other offence; (iv) caution on the part of the court to see that suspicion, howsoever strong, does not take the place of proof. In such cases the explanation offered by the accused for his possession of the stolen property assumes significance. (Para 15)

In the present case, a little before the probable time of commission of the crime, the accused was seen near the place of occurrence. The recovery of ornaments worn by the deceased and the blood-stained axe used in the crime was made at the instance of the accused and there is a time-lag of just two days between the offence and the recovery. The clothes of the accused, which were stained with blood and semen, were also recovered on being produced by the accused from his house. The injuries on the person of accused appear to have been caused at or about the time of occurrence. Besides the said facts, the medical evidence has also supported the case of prosecution. (Para 19)

Thus, offences of rape, murder and theft were committed in one transaction and the accused had failed to offer any explanation to the aforesaid incriminating circumstances and therefore they can be used as inculpatory circumstances against him. It is not only the recovery of stolen property but also availability of other strong circumstances which have fastened inescapable connectivity of the accused with the aforesaid offences. (Para 19). *Ganesh Lal* v. *State of Rajasthan*, (2002) 1 SCC 731: 2002 SCC (Cri) 247: 2002 Cri LJ 967.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 31-10-2001]

Baiju v. State of M.P., (1978) 1 SCC 588: 1978 SCC (Cri) 142; Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447: Gulab Chand v. State of M.P., (1995) 3 SCC 574: 1995 SCC (Cri) 552; Mukund v. State of M.P., (1997) 10 SCC 130: 1997 SCC (Cri) 799; A. Devendran v. State of T.N., (1997) 11 SCC 720: 1998 SCC (Cri) 220; State of Maharashtra v. Suresh, (2000) 1 SCC 471: 2000 SCC (Cri) 263; Shivappa v. State of Mysore, (1970) 1 SCC 487: 1970 SCC (Cri) 215, relied on

[9253] — Ss. 376, 302/34 and 201/34 — Guilt based on circumstantial evidence, established — *Accused labourers taking pleas that semen stains found in their underwears cannot be used as an incriminating circumstance and that circumstances regarding extra-judicial and judicial confessions and part of circumstance relating to carnal intercourse were not proved — Chemical examination of seized underwears, not in dispute — Accused A-1 to A-4, after raping and murdering a minor girl (six years old), were throwing the deceased in a gunny bag, were seen, caught and handed over to police by PWs 2 to 5 established — Accused not disputing chemical examination showing their underwears stained with human semen and spermatozoa — Nothing on record that PWs 2, 3, 4 and 5 had any enmity with A-1, A-2, A-3 and A-4 or had any special relations with the police — Medical evidence of doctor PW 1 establishing that the victim was subjected to rape and murder — Pleas regarding inadmissibility of semen stains evidence and not proving of confessions, held, have no merit — Circumstances were sufficiently proved and completed* *the chain cumulatively and unerringly pointed towards the guilt of the accused*

On 25-9-2003, the six year old prosecutrix, daughter of PW 4 (a migrant labourer from Nepal) left home at about 8.00 a.m. When she did not return for quite some time and the efforts of PW 4 and other prosecution witnesses to find her out failed, PW 4 lodged an FIR in the police station at around 4.00 p.m. At about 1.30 p.m. in the night, when PWs 2, 3 and 5 (other migrant labourers from Nepal) were waiting for the prosecutrix four persons came from the side of the road up to the vacant plot of one Sardarji in that locality and were seen throwing the dead body of the prosecutrix from the gunny bag in that plot. The gunny bag was also thrown over there. PW 2, PW 3, PW 4 and PW 5 raised alarm and caught hold of them (Accused A-1, A-2, A-3 and A-4). The dead body and A-1, A-2, A-3 and A-4 were taken to police station.

PW 4 lodged the written report at about 2.00 a.m. (26-9-2003) and a case under Sections 302/201/34 IPC was registered against A-1, A-2, A-3 and A-4. Their formal arrest was made. In the morning of 26-9-2003 at about 6.30 a.m. seizure memo of the dead body was prepared by the IO (PW 11). PW 1 (doctor) conducted post-mortem of dead body at about 1.00 p.m. The accused persons were also sent for medical examination. On the basis of the disclosure statement of A-1 and A-2, two feet long electric wire of yellow colour from the house of one *R* where the accused were then residing was recovered.

The trial court awarded death sentence to the four appellant accused. The trial court also convicted the accused-appellants for the offences punishable under Sections 376 and 377 IPC and sentenced them to life imprisonment. Each of the appellants was also convicted for the offence punishable under Sections 201/34 IPC and sentenced to undergo seven years' rigorous imprisonment and fine of Rs 2000 and in default of payment of fine, additional imprisonment of six months. Since death sentence was awarded, the trial court made a reference to the High Court for confirmation.

The accused-appellants challenged the judgment of the trial court in separate appeals before the High Court. The death reference and the appeals were heard together. The High Court maintained the conviction of the appellants under Sections 302/34, 376 and 201/34 IPC. The sentence of death awarded under Sections 302/34 IPC to each of the appellants was commuted to that of rigorous imprisonment for life. The sentence awarded by the trial court under Sections 376 and 201/34 IPC was maintained. The High Court, however, acquitted the appellants of charge under Section 377 IPC and their conviction and sentence under this count was set aside. It is from the judgment dated 12-7-2005 that these four criminal appeals by special leave arise.

The High Court discarded the circumstances mentioned at Serial Nos. (*vi*), (*viii*) and (*x*) and the prosecution case of carnal intercourse. Despite that, the High Court was convinced that all other circumstances have been cogently and firmly established. The High Court discarded the following circumstance (1) That A-1, A-2, A-3 and A-4 made extra-judicial confession of their guilt before PW 1, PW 2, PW 3 and PW 4, (2) That at the instance and on the disclosure statement of A-1 and A-2, a piece of wire was recovered from the house of one *R*, and (3) That A-2 made a confession of his guilt before the Judicial Magistrate on 7-10-2003.

Dismissing the appeal,

Held:

Where the entire case hinges on circumstantial evidence, great care must be taken in evaluating circumstantial evidence to ensure that the circumstances on which the prosecution relies are wholly consistent with the sole hypothesis of the guilt of the accused. There is no eyewitness account and the case depends wholly upon circumstantial evidence. While evaluating circumstantial evidence, which of course has to be done carefully, the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged and the circumstances so shown by the prosecution are compatible with no other reasonable hypothesis. (Paras 15, 13 and 17)

There is no merit in the contention that the accused being labourers, not changing their underwears daily, semen stains found in their underwears cannot be used as an incriminating circumstance. That the underwears of the accused were seized on 27-9-2003 when they were in jail and these articles were sent for chemical examination is not in dispute. That the evidence pertaining to chemical examination of underwears shows that those underwears were found stained with human semen and spermatozoa is also not in dispute. Nothing has been brought on record that PW 2, PW 3, PW 4 and PW 5 had any enmity with A-1, A-2, A-3 and A-4 or had any special relations with the police. That A-1, A-2, A-3 and A-4 were seen throwing the dead body of the victim in the intervening night of 25-9-2003/26-9-2003 is established. (Paras 31, 27 and 33)

7.(d) Conviction justified *(contd.)*

It is true that circumstances regarding extra-judicial and judicial confessions and part of circumstance relating to carnal intercourse were not proved, but the remaining circumstances were sufficiently proved and completed the chain cumulatively and, therefore, there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else as the proved circumstances unerringly point towards the guilt of the accused. The medical evidence of (PW 1) establishes that the victim was subjected to rape and murder. The injuries and medical evidence make it highly improbable that four persons raped the minor girl. Firstly, no question or suggestion has been put to PW 1 in this regard. Secondly, and more importantly, semen stains with spermatozoa were found on the underwears of all the four accused. Thirdly, chemical examination of the vaginal smear of the victim has also confirmed presence of human blood, semen and spermatozoa. In view of this evidence, rape of the victim by more than one culprit can be safely held to be established. The medical evidence proves beyond reasonable doubt that the victim died of homicidal death and that she was raped before being murdered. The view taken by the High Court is the only possible view on a proper appraisement of evidence and no other view is possible and it has not committed any error in upholding the conviction of the accused persons for the offences punishable under Sections 302/34, 376 and 201/34 IPC. The sentence awarded to them calls for no interference. (Paras 34, 32 and 43). *Pawan* v. *State of Uttaranchal*, (2009) 15 SCC 259: (2009) 2 ECrN 789 (SC): (2009) 3 All LJ 637: 2009 Cri LJ 2257.

Bench Strength **3**. Coram: *S.B. Sinha, A.K. Ganguly* and **R.M. Lodha**, JJ. [Date of decision: 26-2-2009]

Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315; Subhash Chand v. State of Rajasthan, (2002) 1 SCC 702: 2002 SCC (Cri) 256; Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92: (2007) 1 SCC (Cri) 161, distinguished

[9254] — Ss. 376, 364 and 302 — Circumstantial evidence — Conviction on the basis of — Sustainability — *Appellant-accused alleged to have raped and murdered deceased, aged five years — Accused caught red-handed in completely naked state thrusting a stem/stick of dhanicha in vagina of deceased — Held, for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission — Offence can be proved by circumstantial evidence also — Principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts — Circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed — In the instant case accused wanted to camouflage the serious crime of rape and so in a planned manner, after committing rape, he mercilessly inserted stem/stick deep inside the fragile vagina of the girl to the extent of 33 cm to cause her death, with a view to masquerade the crime as an accident — It was just by providence that due to timely reach of the witnesses (PWs 2, 3 and others) who were frantically searching the girl that he could be caught in naked condition while inserting a stick into the vagina of the lifeless body of the victim — Hence, conviction of appellant for offences punishable under Ss. 364, 376 & 302 IPC imposed by trial court and as affirmed by High Court, held, sustainable* (Paras 3, 17, 18 and 19). *Bantu* v. *State of U.P.*, (2008) 11 SCC 113.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 23-7-2008]

Wills' Circumstantial Evidence' (Chapter VI), cited

(e) Injuries on accused

[9255] — Ss. 376/511 and 302 — Circumstantial evidence — Conviction on basis of — Sustainability — *Held, when a case rests on circumstantial evidence, a complete chain of circumstances which rule out every other possibility except guilt of the accused has to be established — Attempt to rape and murder of a young girl aged 11 years alleged — Serious injuries sustained by accused not explained — Injuries on accused clearly indicating that he was beaten very badly after he was apprehended — Alleged extra-judicial confession was extracted from the accused by assaulting him severely and hence, neither voluntary nor natural — Moreover, evidence of the mother of the deceased was full of contradictions and inconsistencies — Hence held, High Court's view that the circumstances were not sufficient to fasten the guilt on the accused, calls for no interference* (Paras 2, 12 and 13). *State of U.P.* v. *Raja*, (2008) 10 SCC 318: (2008) 70 AIC 102 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 28-8-2008]

(f) Last seen together

[9256] — Ss. 376 and 302 — Child witness — Examination of — Must be nearabout the date and time of the incident — Rape and murder of a girl aged 5 years — *Solitary testimony of a child aged 4 years that while returning home along with the deceased after purchasing a balloon, accused took the deceased inside his house saying that her feet were mudstained — Not clear from her statement whether that happened before the date and time of the incident or on the date on which dead body of deceased was found — How and in what manner investigating officer came to know about this child witness so as to record her statement during investigation also remaining a mystery — Child witness examined by trial court about one year after the incident — On asking a few questions by way of preliminary examination, trial Judge finding that the witness could "answer some of the questions" — Even taking her testimony at its face value, no incriminating inference could be drawn against the accused on that basis so as to connect him with the crime — Evidence Act, 1872, Ss. 8 and 3. Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

[9257] — Ss. 376 and 302 — Rape and murder — Circumstantial evidence — Last seen together — Accused A and victim V (girl aged 11-12 years) last seen together by PWs 1 and 11 — *Evidence of said PWs trustworthy and reliable — Close proximity of place and time between the event of A having been last seen with V and factum of death — In such circumstances, held, burden was on A to explain how and in what circumstances V suffered the death — No explanation offered in statement made by A under S. 313 CrPC — Evidence Act, 1872, S. 106*

The evidence of PWs 1 and 11 is trustworthy and reliable. It has a ring of truth. It stands fully established that they had seen the deceased *V* and the appellant on 28-3-2001 in the forest. When on the next day PW 1 again came to the same area for grazing buffaloes, he found the dead body of *V*. At that time too, PW 11 was with PW 1. (Paras 8 and 2)

In *Mohibur Rahman case*, (2002) 6 SCC 715, it has been observed that there may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. Here it has been established that the death took place on 28th March between 3 and 4 p.m. It is just about that much time that the appellant and the deceased were last seen by PW 1 and PW 11. No explanation has been offered in the statement by the appellant recorded under Section 313 CrPC. His defence is of complete denial. Thus, the conviction for offence under Sections 302 and 376 has been rightly recorded by the Court of Session and affirmed by the High Court. (Para 9). *Amit* v. *State of Maharashtra*, (2003) 8 SCC 93: 2003 SCC (Cri) 1959: AIR 2003 SC 3131: 2003 Cri LJ 3873.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *Brijesh Kumar*, JJ. [Date of decision: 6-8-2003]

Mohibur Rahman v. State of Assam, (2002) 6 SCC 715: 2002 SCC (Cri) 1496, applied

[9258] — Ss. 376 and 302 — Rape and murder of a minor girl aged 4 years — *Three PWs seeing a little girl crying in the company of a man on the day of the incident — Both accused and victim were strangers to the PWs — Reason for the PWs remembering them was that next day when they heard about the murder of a little girl, they recollected seeing the man along with the little girl the previous day — PWs later identifying the accused in test identification parade — Held, recollection about the victim in the company of the accused was natural — Contention that there was inherent incredibility in the evidence of the PWs as normally accused would have taken precaution not to be seen by any other person on the way cannot be accepted*

If a criminal court is to view the testimony of the three witnesses as unnatural it would be easy to brush it aside with the stereotyped reasoning that those persons had no cause to remember having seen the man with the girl accompanying him. Such a reasoning overlooks the broad aspect that a human mind, on hearing about any shocking incident, would have the tendency to recollect any previous event which could have had a connection with that incident. If as a matter of fact those witnesses had occasion to see a crying girl of that age on the very day of the gruesome episode as happened in this case, there is nothing improbable in those witnesses remembering the person who was seen in the company of that girl. If they had immediately informed the police that they noticed a similarly-aged girl crying in the company of an utter stranger of that locality that cannot be brushed aside as a doubtful conduct. Either the three witnesses concocted the story falsely or what they said must be true. No reason was suggested for those three witnesses to bother themselves to concoct such a canard. (Para 17)

7.(f) Last seen together *(contd.)*

It is not possible to accept that there is "an inherent incredibility in the evidence" on the premise that a culprit kidnapping a minor girl with a sinister design would normally take the precaution not to be seen by any other person on the way, but in this case the culprit along with the girl had moved from place to place in the town. Such a reasoning as a proposition of human conduct cannot be accepted. The victim would certainly have been abducted by somebody (even assuming that it was not this respondent) and that person had taken the abducted girl from her house up to the place of occurrence (farm). Unless it is suggested that there was another alternative and a safer route for the culprit to take the girl unnoticed by any shopkeeper or even a pedestrian, there is no rationale in the reasoning that there is "inherent incredibility" in the version that the respondent would have taken the girl through this route. (Para 19). *State of Maharashtra* v. *Suresh*, (2000) 1 SCC 471: 2000 SCC (Cri) 263.

Bench Strength **2**. Coram: *G.T. Nanavati* and **K.T. Thomas**, JJ. [Date of decision: 10-12-1999]

[9259] — Ss. 376, 302 and 201 — Rape and murder — Victim, a girl aged about 10 years — Eyewitness claiming having seen the accused throttling the victim — *Evidence as to last seen together — Acquittal by the High Court — Propriety — Victim seen chewing sugarcane at "**kolhu**" of accused **D** — Later on seen going with **D** towards his sugarcane field — Not returning to her home — Complainant **B** (father of victim) going to the sugarcane field of **D** for searching the victim there — **D** not permitting him to do so — Thereafter, **B** taking "**Pardhan**" of the village and other persons with him making search there — Dead body of victim found buried in the said field — On such facts, held, conviction by trial court was proper — High Court erred in setting aside the same — CrPC, 1973, Ss. 386 and 374(2)* (Paras 7 to 9). *State of U.P.* v. *Devendra Singh*, (2004) 10 SCC 616: AIR 2004 SC 3690: 2004 Cri LJ 3118.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-4-2004]

[9260] — Ss. 376, 363 and 302 — Rape and murder of minor — Minor incongruity — Though there is an incongruity in prosecution evidence regarding recovery of body and inquest thereof, held, there is strong evidence to show guilt of appellant — *Clothes of deceased recovered with blood-stains and lacerated wound found on private parts with hymen completely ruptured — Doctor opining cause of death as asphyxiation — Clothes worn by appellant at time of incident recovered with bloodstains thereon, underwear recovered also having semen stains — No rational explanation could be given by appellant as to presence of said stains on his clothes — Appellant seen near time of alleged abduction of deceased with a girl child on his shoulder, mistaken to be a niece of the appellant by a witness (PW 7) — Held, even though PW 7 had not identified that the girl was the deceased, it is a serious incriminating circumstance, and appellant being an unmarried man, could not have been found at night with a girl — Circumstance clearly shows that he had kidnapped the child during the night — Moreover, previous conduct of appellant (having been rejected sexual favours by mother of deceased and admonished and scolded therefor by mother, uncle and brother of deceased, earlier in the night) though not strictly admissible in evidence, would prove that appellant was prone to do the crimes alleged — Hence, Sessions Judge and High Court appreciated evidence in correct perspective and found appellant guilty and there were no reasons to disbelieve this finding — Evidence Act, 1872, S. 8*

The appellant was staying in one of the rooms of a building owned by the complainant *K*, a widow having three children. On 11-9-2002 at about 10 p.m., the appellant came to PW 2 *K* and offered Rs 150 and sought sexual favours. PW 2 got angry and she asked him to go away, but the appellant declined to leave the place. PW 2 told her brother and her son that the appellant had been harassing her. They came and scolded the appellant and he left the place. During the night, PW 2 along with her two minor daughters was sleeping on a cot lying outside the room. At about midnight she felt cold and went inside and at 1.00 o'clock she came back and then she saw that one of her daughters, namely, *S* was missing. She immediately called her brother and her son who were sleeping in another portion of the same house. They searched for *S* at nearby places, and as they had suspicion on the appellant, they went in search of him to his house but he was not found there. They made enquiry with PW 7. He stated that he had seen appellant going away with a girl on his shoulder but he thought that the girl must be the daughter of a relative of the appellant. The people in the locality collected and at about 4 o'clock in the morning they saw the appellant coming from a nearby road. PW 2 and others took him to the police station. It seems that he made certain revelations and PW 2 gave the FI statement and on the basis of the FI statement a case was registered and investigation was started.

The dead body of *S* was recovered from a pond. The body was found floating on the water and it was identified by relatives. An inquest was held on the dead body and on post-mortem examination it was found that there were a series of injuries on the body of deceased *S*. The clothes were stained with blood and some mud particles. There was lacerated wound on the private parts of the deceased, and the hymen was completely ruptured. The doctor opined that the victim must have died due to asphyxia.

Commuting the sentence of death to life imprisonment,

Held :

There is incongruity in the prosecution evidence regarding recovery of the body and the inquest of the dead body. PW 19, the investigating officer could not throw much light on this infirmity in the investigation. Therefore no importance is being given to the alleged recovery of dead body at the instance of the appellant. (Para 6)

However, there is strong evidence to show that the appellant committed the offence. According to the prosecution, the appellant was immediately arrested and brought to the police station. His clothes were recovered and sent for chemical examination. Items F, G, H and I are the shirt, banyan, pants and underwear respectively worn by the appellant at the time of incident. The chemical analyst's report shows that on Items F, G and H there were presence of bloodstains and Item I was also having bloodstains mixed with semen. The appellant could not give any rational explanation for the presence of bloodstains on his clothes. (Para 7)

Another circumstance is the evidence of PW 7. He went to bed and at about 1 a.m. he got up to answer the call of nature and came to the bathroom situated outside his house, then he found the appellant moving around and he was having a child on his shoulder. In the FI statement also reference has been made to the statement made by Rambaran. Of course PW 7 had not identified that the girl was deceased *S*. Nevertheless, it is a serious incriminating circumstance and the appellant being an unmarried man, he could not have been found at night with a girl and this circumstance clearly shows that the appellant had kidnapped the child during night for the purpose of commission of this crime. The dead body of deceased *S* was found in the early morning of 12-9-2002 and the appellant was arrested immediately and previous conduct also though not strictly admissible in evidence would prove that the appellant was prone to do such crime. The Sessions Judge as well as the High Court appreciated the evidence in the correct perspective had found the appellant guilty and there are no reasons to disbelieve this finding. (Paras 8 and 9). *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127: 2005 SCC (Cri) 653: AIR 2004 SC 4862: 2004 Cri LJ 4642.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 16-9-2004]

(g) Motive

[9261] — Ss. 376 and 302 — Motive — Motive for commission of crime — Relevance — *Held, motive alone cannot form basis for conviction but in the light of other circumstances, motive goes a long way in forging links in chain of evidence — Rape and murder case — Appellant's advances towards deceased, his junior in college, and his subsequent frustration and anger when deceased did not respond positively — Held, amply proved appellant's motive for commission of crime*

The motive stands proved beyond any doubt. It appears that as the appellant's overtures had been rebuffed by the deceased, he had resorted to harassing her in a manner which became more and more aggressive and crude as time went by. It is evident that the appellant was well aware of her family background and despite several complaints against him and the provision of a PSO, he had fearlessly and shamelessly pursued her right to the doorsteps of her residence ignoring the fact that she had first lived in the house of Lt. Col. S.K. Dhar, an army officer from the end of 1994 onwards and after January 1996 with her parents, her father too being a very senior officer in a semi-government organisation. (Paras 79 and 81). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

(h) Recovery of crime articles/ incriminating articles/other articles

[9262] — Ss. 376 and 302 — Murder and rape — Recovery of underwear stained with blood (Group B) and semen on information given by accused — But the same not produced and exhibited in court — *Nothing to show that the same was of the accused — No evidence to show as to what was the blood group of the accused and therefore, possibility of blood on the underwear being of the accused himself not ruled out — Number and extent of spread of stains also not known — Held, recovery of stained underwear was not an incriminating circumstance*

7.(i) Recovery of dead body/corpus delicti

In the present case the age of the accused was about 21 years at the time of the incident. On his arrest he was subjected to medical examination and found to be a potent and capable person. Presence of semen stain on underwear, assuming that the underwear belonged to the accused, though there is no evidence adduced in this regard, is not by itself an incriminating piece of evidence connecting the accused with the crime in question. So also the discovery of Group B bloodstain on the underwear cannot be treated as an incriminating piece of evidence against the accused connecting him with the crime because there is no evidence that the underwear belonged to the accused and further the possibility of the underwear being stained with the blood of the person to whom it belonged, or the accused if he was wearing it has not been ruled out. (Para 19) . *Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315, relied on

(i) Recovery of dead body/corpus delicti

[9263] — Ss. 376 and 302 — Rape and murder of a minor girl — Recovery of dead body at the instance of the accused — Circumstance not mentioned in inquest report — *No panchnama prepared for the recovery made under S. 27, Evidence Act — No evidence showing that accused was present near the place where dead body was found — Though father of the victim and the investigating officer deposing about the circumstance of the recovery, their testimony contradictory and unacceptable — Held on facts, the circumstance not established. Jaharlal Das* v. *State of Orissa*, (1991) 3 SCC 27: 1991 SCC (Cri) 527: AIR 1991 SC 1388: (1991) 2 Crimes 268: (1991) 72 CLT 298.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 12-4-1991]

8. Conduct of accused, prosecutrix, witnesses, etc.

See also 'C.4.(d) Credibility of prosecutrix/ witness', above

'C.11. Conviction on sole testimony of prosecutrix', and

'C.22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act', below

[9264] — S. 376 — Conduct of prosecutrix — Relevance — Resistance — Absence of — Inference — *Held, would merely suggest want of violent resistance on part of prosecutrix and not consensus — Prosecutrix was forcibly caught, threatened at knife-point and thereafter gang raped — Non-resistance because of fear in such circumstances not unnatural* (Paras 25, 26 and 46). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

Gurcharan Singh v. State of Haryana, (1972) 2 SCC 749: 1972 SCC (Cri) 793; Devinder Singh v. State of H.P., (2003) 11 SCC 488: 2004 SCC (Cri) 185, followed

[9265] — Ss. 376, 363 and 302 — Rape and murder of minor — Minor incongruity — Though there is an incongruity in prosecution evidence regarding recovery of body and inquest thereof, held, there is strong evidence to show guilt of appellant — *Clothes of deceased recovered with blood-stains and lacerated wound found on private parts with hymen completely ruptured — Doctor opining cause of death as asphyxiation — Clothes worn by appellant at time of incident recovered with bloodstains thereon, underwear recovered also having semen stains — No rational explanation could be given by appellant as to presence of said stains on his clothes — Appellant seen near time of alleged abduction of deceased with a girl child on his shoulder, mistaken to be a niece of the appellant by a witness (PW 7) — Held, even though PW 7 had not identified that the girl was the deceased, it is a serious incriminating circumstance, and appellant being an unmarried man, could not have been found at night with a girl — Circumstance clearly shows that he had kidnapped the child during the night — Moreover, previous conduct of appellant (having been rejected sexual favours by mother of deceased and admonished and scolded therefor by mother, uncle and brother of deceased, earlier in the night) though not strictly admissible in evidence, would prove that appellant was prone to do the crimes alleged — Hence, Sessions Judge and High Court appreciated evidence in correct perspective and found appellant guilty and there were no reasons to disbelieve this finding — Evidence Act, 1872, S. 8*

The appellant was staying in one of the rooms of a building owned by the complainant *K*, a widow having three children. On 11-9-2002 at about 10 p.m., the appellant came to PW 2 *K* and offered Rs 150 and sought sexual favours. PW 2 got angry and she asked him to go away, but the appellant declined to leave the place. PW 2 told her brother and her son that the appellant had been harassing her. They came and scolded the appellant and he left the place. During the night, PW 2 along with her two minor daughters was sleeping on a cot lying outside the room. At about midnight she felt cold and went inside and at 1.00 o'clock she came back and then she saw that one of her daughters, namely, *S* was missing. She immediately called her brother and her son who were sleeping in another portion of the same house. They searched for *S* at nearby places, and as they had suspicion on the appellant, they went in search of him to his house but he was not found there. They made enquiry with PW 7. He stated that he had seen appellant going away with a girl on his shoulder but he thought that the girl must be the daughter of a relative of the appellant. The people in the locality collected and at about 4 o'clock in the morning they saw the appellant coming from a nearby road. PW 2 and others took him to the police station. It seems that he made certain revelations and PW 2 gave the FI statement and on the basis of the FI statement a case was registered and investigation was started.

The dead body of *S* was recovered from a pond. The body was found floating on the water and it was identified by relatives. An inquest was held on the dead body and on post-mortem examination it was found that there were a series of injuries on the body of deceased *S*. The clothes were stained with blood and some mud particles. There was lacerated wound on the private parts of the deceased, and the hymen was completely ruptured. The doctor opined that the victim must have died due to asphyxia.

Commuting the sentence of death to life imprisonment,

Held :

There is incongruity in the prosecution evidence regarding recovery of the body and the inquest of the dead body. PW 19, the investigating officer could not throw much light on this infirmity in the investigation. Therefore no importance is being given to the alleged recovery of dead body at the instance of the appellant. (Para 6)

However, there is strong evidence to show that the appellant committed the offence. According to the prosecution, the appellant was immediately arrested and brought to the police station. His clothes were recovered and sent for chemical examination. Items F, G, H and I are the shirt, banyan, pants and underwear respectively worn by the appellant at the time of incident. The chemical analyst's report shows that on Items F, G and H there were presence of bloodstains and Item I was also having bloodstains mixed with semen. The appellant could not give any rational explanation for the presence of bloodstains on his clothes. (Para 7)

Another circumstance is the evidence of PW 7. He went to bed and at about 1 a.m. he got up to answer the call of nature and came to the bathroom situated outside his house, then he found the appellant moving around and he was having a child on his shoulder. In the FI statement also reference has been made to the statement made by Rambaran. Of course PW 7 had not identified that the girl was deceased *S*. Nevertheless, it is a serious incriminating circumstance and the appellant being an unmarried man, he could not have been found at night with a girl and this circumstance clearly shows that the appellant had kidnapped the child during night for the purpose of commission of this crime. The dead body of deceased *S* was found in the early morning of 12-9-2002 and the appellant was arrested immediately and previous conduct also though not strictly admissible in evidence would prove that the appellant was prone to do such crime. The Sessions Judge as well as the High Court appreciated the evidence in the correct perspective had found the appellant guilty and there are no reasons to disbelieve this finding. (Paras 8 and 9). *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127: 2005 SCC (Cri) 653: AIR 2004 SC 4862: 2004 Cri LJ 4642.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 16-9-2004]

9. Confession

[9266] — Ss. 376, 302 and 392 — Extra-judicial confession — Confession made to doctor — Relied upon — *Nothing on record to indicate that confessional statement made by appellant before doctor was made in the presence of any police personnel — No suggestion in cross-examination of doctor that at the time of examination of appellant for evidence of sexual intercourse either any force was used or any police personnel was present when he is said to have made confessional statement to doctor — Evidence Act, 1872, S. 24* (Paras 44 to 46 and 65). *B.A. Umesh* v. *State of Karnataka*, (2011) 3 SCC 85.

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 1-2-2011]

M.A. Antony v. State of Kerala, (2009) 6 SCC 220: (2009) 2 SCC (Cri) 959; Ram Singh v. Sonia, (2007) 3 SCC 1: (2007) 2 SCC (Cri) 1; Gura Singh v. State of Rajasthan, (2001) 2 SCC 205: 2001 SCC (Cri) 323, relied on

10. Conviction justified

[9267] — Ss. 375 and 376 — Rape — Conviction of appellant-accused under S. 376 — Challenge to — Sustainability — *On facts, appellant pleading innocence before Supreme Court on grounds that there were certain suspicious circumstances —*

Firstly, admittedly FIR was lodged at 11 a.m. but doctor claimed that she examined victim at 9.15 a.m. — Secondly, victim in her cross-examination clearly stated that her consent was there — Sustainability — Held, according to evidence on record, both pleas were without substance — Hence, appeal lacked merit (Paras 1, 5 and 7 to 11). *Nehru* v. *State of Chhattisgarh*, (2008) 7 SCC 341: (2008) 3 SCC (Cri) 96: AIR 2008 SC 2574: 2008 Cri LJ 3490.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-6-2008]

[9268] — S. 376 — Accused caught redhanded while in act of committing sexual intercourse with prosecutrix — *Testimony of prosecutrix corroborated by evidence of her husband — Lower courts giving very cogent and convincing reasons for accepting testimony of eyewitnesses — No interference by Supreme Court called for — Constitution of India — Art. 136. Mehboob* v. *State of Maharashtra*, 1990 Supp SCC 606: 1991 SCC (Cri) 216.

Bench Strength 2. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 6-3-1987]

[9269] — S. 376 — Rape on married woman — Testimony of the victim of the rape corroborated by her immediate and subsequent conduct as also medical evidence — *Testimony found to be truthful and trustworthy — Prosecutrix neither a woman of easy virtue nor having any grudge or reason to falsely implicate the accused — Non-examination of neighbour who had responded to her cry but was not a witness to the crime, held, not fatal — Held on facts, High Court seriously erred in reversing trial court's verdict of conviction, on the basis of wild surmises — CrPC, 1973, Ss. 374 and 386*

According to the prosecutrix, at midnight during absence of her husband, the two accused-respondents entered her room by making a passage from the thatched roof. Both of them then closed the mouth of the prosecutrix and threatened her. They then subjected her to forcible sexual intercourse one after the other and thereafter, they made good their escape. The prosecutrix raised a cry whereupon one of the neighbours rushed towards her house. Next day the prosecutrix was carried in a trolley to the police station which is seven kilometres away from the place of occurrence. She lodged a report at 1030 hours in the morning. In the course of investigation the police seized the petticoat of the prosecutrix which she was wearing at the time of forcible sexual intercourse with her and also the *kantha* and mat on which she was sleeping. The prosecutrix was sent for medical examination and was found to have stains of human blood and semen and a bruise of 1 cm x 1 cm ¼ cm on the lateral side of the left of the genital channel. The bruise was found to have been caused within 24 hours. According to chemical examination report there was presence of blood and semen stains on the articles including petticoat sent for chemical examination. According to the trial Judge, the version of the prosecutrix was corroborated by the medical evidence and the evidence of the chemical report of the Forensic Science Laboratory. However, the High Court disbelieved the prosecutrix's version. With regard to injuries found on her private parts, the High Court observed that there was no evidence as to how long before and after the alleged offence the husband of the prosecutrix was absent and the possibility of her sexual contact with her husband could not be ruled out. The High Court also took note of the statement made in cross-examination by the doctor that the injury could be self-inflicted. It was observed that the possibility of semen being that of her husband could not be ruled out. It also saw some infirmity in the prosecution case as her neighbour who was alleged to have rushed towards her house after she had given a cry and when the accused ran away, was not examined as a witness. The High Court also took note of the omission of the investigating officer (PW 5) in not making any attempt to collect any evidence of forcible entry of the accused in the house through the roof. On the above reasoning the High Court acquitted the accused.

Allowing the appeal,

Held :

The High Court discarded the apparent truthful testimony of the prosecutrix on wild surmises and strange reasoning. The High Court did not at all bestow any importance to the fact that the victim of the rape was not a woman of easy virtue. There has been no suggestion made to her in cross-examination or in the defence plea of the accused in the course of their examination under Section 313 CrPC that the prosecutrix had any grudge or reason to falsely implicate the two accused in such a heinous crime in which she herself was ravished and her honour was at stake. The High Court gave no importance to the report of the chemical examiner and serologist which showed blood and semen stains on the petticoat of the prosecutrix. It gave no importance to the fact that the trial Judge rejected the defence plea that the semen stains on the petticoat of the prosecutrix might have been caused by her physical contact with her husband. There was nothing to disbelieve, according to the trial Judge — the version of the prosecutrix that her husband had left the house on the previous afternoon and was absent at the time of incident and when she made the report to the police. The High Court then ventured into a wild surmise that the injury found on her private parts could have been self-inflicted. It is most unlikely that only to falsely implicate the accused the prosecutrix would inflict injury on her private parts. Non-examination of one of the neighbours who had rushed towards her house after hearing a call by her, is also not a serious infirmity in the prosecution case as he was not the witness of the commission of the offence. The testimony of the prosecutrix appears truthful and trustworthy being without any embellishments and exaggerations. She is corroborated by her immediate and subsequent conduct as also the medical evidence. Consequently, the judgment of acquittal passed by the High Court is set aside and the judgment of conviction and sentence of the trial court is restored. (Paras 7, 8 and 9). *State of Orissa* v. *Thakara Besra*, (2002) 9 SCC 86: AIR 2002 SC 1963: 2002 Cri LJ 2642.

Bench Strength **2**. Coram: *R.P. Sethi* and **D.M. Dharmadhikari**, JJ. [Date of decision: 16-4-2002]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

Thakara Besra v. State, (1994) 2 Crimes 596 (Ori), reversed

[9270] — S. 376 — Rape proved by evidence — Evidence of prosecutrix corroborated — *Conviction upheld*

There is no doubt that the girl was criminally assaulted and suffered severe injuries as a result. She was examined 40 hours later and injuries were found on her person. It was argued that the lady doctor ought to have smear from the vagina to see if spermatozoa could be found. There was hardly any need. The witnesses found the clothes stained with semen and she had suffered injuries.

The law is that the evidence of the prosecutrix must be corroborated in some measure to connect the accused. Enough corroboration to the evidence of the prosecutrix is available in this case from the evidence of her nephew who gave the information to his grandmother immediately after the incident and also deposed on oath in Court. *Janardhan Tewary* v. *State of Bihar*, (1971) 3 SCC 927: 1972 SCC (Cri) 175.

Bench Strength **3**. Coram: **M. Hidayatullah**, *C.J.* and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 4-3-1970]

***relied on in** (1972) 2 SCC 749: 1972 SCC (Cri) 793*

[9271] — Ss. 376, 323, 342 and 506 — Conviction upheld — *Appellant-accused alleged to have raped the prosecutrix and threatened her with dire consequences in case she disclosed about the incident — Submission that evidence of doctor clearly established that no rape, was in fact committed and that the age of victim was about 18 years — Held, though prima facie it appeared that the doctor had opined that rape was not committed, it was, in fact, not so — On a closer reading of the evidence of PW 9, it is crystal clear that the doctor has, in fact, stated that sexual intercourse had occurred — Apart from that, presence of human semen and protozoa clearly establishes the allegation of rape — Question of age of victim was inconsequential as the stand of the accused was not one of consent, even then the documentary evidence adduced i.e. school certificate clearly showed that she was about 14 years of age — Further, stand of appellant that there was no corroboration of evidence of prosecutrix rejected — PW 1 had told about the alleged occurrence to PWs 2, 3 and 4 — Impugned judgment upholding conviction of appellant under Ss. 376 and 342 calls for no interference* (Paras 3, 8 and 11 to 13). *S. Ramakrishna* v. *State*, (2009) 1 SCC 133: (2009) 1 SCC (Cri) 487: AIR 2009 SC 885: (2008) 71 AIC 66 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 20-10-2008]

[9272] — Ss. 376(2)(e) and 375 — Rape — Conviction for, if proper — *Appellant-accused alleged to have raped the prosecutrix after felling her to the ground while she, PW 8 and PW 2 were collecting cow dung in a "jungle"/"kokad" (land covered by bushes) — Testimony of prosecutrix and other PWs inspiring confidence — No motive imputed to her to falsely implicate the accused — Simple abrasions found on her person corroborating the version that she was felled to the ground and raped — No possibility that such injuries were self-inflicted, in absence of any evidence therefor and in view of clear and categorical case of the prosecution — Absence of any blood or stains of semen on the clothes of the prosecutrix or the appellant inconsequential as the clothes were seized and examined after four days of the occurrence — Conclusion of the trial court that it was consensual sexual intercourse, unwarranted and based solely on conjectures and suspicion, and hence perverse — Held, High Court was fully justified in setting aside judgment and order of the trial court and convicting the accused — CrPC, 1973, Ss. 378 and 386*

Appellant-accused alleged to have raped one *V* (PW 1), a pregnant woman, after felling her to the ground when she had gone to a "jungle"/"kokad" (meaning land covered with bushes) to collect cow dung along with PW 2 and PW 8. The trial court acquitted the appellant finding that: (*i*) It was not possible to commit rape in an open field with a "*rasta*" nearby; (*ii*) No blood or broken bangles were found at the place of occurrence; (*iii*) Medical evidence did not support the prosecution case; (*iv*) Absence of any stains of semen on the clothes of the prosecutrix or the appellant; (*v*) Testimony of PW 2 and PW 8 (eyewitnesses) not inspiring confidence; and (*vi*) It was a consensual sexual course.

The High Court by the impugned judgment reversed the findings of the trial court and held the appellant guilty, and sentenced him to undergo 10 years' rigorous imprisonment and to pay a fine of Rs 1000 with default stipulation. Hence, the present appeal by the appellant-accused.

Dismissing the appeal,

Held :

No interference is called for with the reasoning of the High Court. (Para 5)

The trial court was unduly influenced by the fact that the occurrence took place in an open field and there was a "*rasta*" nearby and hence it was not possible to commit rape at such a location. The finding of the trial court is not supported by any evidence on record because the consistent evidence of the prosecution witnesses is that the place where the occurrence took place was a forest or at least a place where bushes were growing and, therefore, the trial court was not justified in jumping to the conclusion that it was an open field where the offence was committed. (Para 6)

The prosecutrix has fully supported the case of the prosecution. The fact that there was no bleeding or no broken bangles were found at the place of occurrence has been unduly exaggerated by the trial court to disbelieve the witness. There is no good reason to disbelieve the prosecutrix when she has fully supported the case against the appellant. It is not suggested that she had any enmity with the appellant or there was any particular reason for her to involve the appellant in this offence. Some far-fetched disputes were sought to be highlighted, but there is nothing on record to suggest that the prosecutrix or her husband had any motive to falsely implicate the appellant. (Para 7)

Further, the trial court was also impressed by the fact that the medical evidence does not support the case of the prosecution. This is also a finding contrary to the record. Some simple injuries were caused to the prosecutrix when she was felled on the ground and raped. The abrasions found on her person certainly corroborate the case of the prosecution. The fact that abrasions may also be caused by self-infliction is no ground for holding that in this case they were so caused, when there is direct evidence to the effect that she was pushed on the ground and rape was committed. The fact that in his cross-examination the doctor admitted that such injuries may be self-inflicted, is no basis for holding that the injuries were in fact self-inflicted, in the absence of any evidence to prove that. This is particularly so when the case of the prosecution is clear and categorical that the appellant caught the prosecutrix by her neck and felled her on the ground and committed rape. Therefore, the medical evidence does support the case of the prosecution. The absence of any stains of semen on the clothes of the prosecutrix or the appellant is of no consequence in this case since the clothes of the appellant were seized and examined after four days of the occurrence. (Para 8)

The trial court has really not recorded any convincing reason for not accepting the testimonies of PW 2 and PW 8. Their evidence appears to be natural having a ring of truth. Much was sought to be made of minor discrepancies in the evidence of the two eyewitnesses, which have been described as glaring contradictions. Some variation in matters of detail is but natural, and much depends on the capacity of a witness to observe and remember events, particularly in matters of minor details. Moreover, the two witnesses came from two different directions, and they may have observed the incident at different stages, though in quick succession. However, such minor discrepancies do not warrant rejection of their evidence. Their deposition is natural and consistent with the case of the prosecution and there is no reason to disbelieve them. (Para 9)

Lastly, there was no justification for the trial court to have concluded that it was sexual intercourse by consent. This finding is based solely on conjectures and suspicion. The medical evidence discloses that the internal wall of the vagina of the prosecutrix was congested, having reddish colour. In his cross-examination, the doctor did state that this could be caused by sexual intercourse in ordinary course. From this, the trial court jumped to the conclusion that since the prosecutrix, who was pregnant did not abort and gave birth to a normal healthy child after three months, this was a case in which it must be held that the prosecutrix was a consenting party. Such reasoning of the trial court is perverse. (Para 10)

The findings of the trial court are not such as could possibly be reached on the basis of the evidence on record, much less can they be said to be a possible reasonable view of the evidence on record. The High Court was, therefore, fully justified in setting aside the judgment and order of the trial court. (Para 10). *Parbata* v. *State of Rajasthan*, (2005) 13 SCC 398: (2006) 2 SCC (Cri) 252: AIR 2006 SC 747: 2006 Cri LJ 562.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 16-11-2005]

11. Conviction on sole testimony of prosecutrix

See also 'C.4.(d) Credibility of prosecutrix/witness', and

'C.8. Conduct of accused, prosecutrix, witnesses, etc.', above, and

'C.22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act', below

[9273] — Ss. 375 and 376 — Rape — Appreciation of evidence — False implication — *Trial court believing the "straightforward" evidence of the prosecutrix and rejecting the defence put forward by the accused that in order to avoid repayment of loan taken by the husband of the prosecutrix from the employer, the prosecutrix had falsely implicated the accused — Moreover, the court treating one day delay in filing of FIR by the prosecutrix and her husband as not amounting to unexplained delay — In such circumstances, held, the trial court was right in recording the finding of guilt as well as in rejecting the defence*

It is settled law that if a court of law finds evidence of prosecutrix truthful, trustworthy and reliable, conviction can be recorded solely on the basis of her testimony and no further corroboration is necessary. (Para 18)

The trial court rightly held that there was no unexplained delay in filing the complaint. The "straightforward" evidence of the prosecutrix was believed by the court and accordingly the accused was convicted. Therefore, it has to be held that in recording a finding of guilt against the respondent, the trial court had not committed any error, either of fact or of law. It is further held that the trial court rightly rejected the defence. (Paras 17 and 21). *State of M.P.* v. *Babulal*, (2008) 1 SCC 234: (2008) 1 SCC (Cri) 188: AIR 2008 SC 582: 2008 Cri LJ 714.

Bench Strength **2**. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 3-12-2007]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781, relied on

12. Defence

[9274] — Ss. 375 and 376 — Rape — Appreciation of evidence — False implication — *Trial court believing the "straightforward" evidence of the prosecutrix and rejecting the defence put forward by the accused that in order to avoid repayment of loan taken by the husband of the prosecutrix from the employer, the prosecutrix had falsely implicated the accused — Moreover, the court treating one day delay in filing of FIR by the prosecutrix and her husband as not amounting to unexplained delay — In such circumstances, held, the trial court was right in recording the finding of guilt as well as in rejecting the defence*

It is settled law that if a court of law finds evidence of prosecutrix truthful, trustworthy and reliable, conviction can be recorded solely on the basis of her testimony and no further corroboration is necessary. (Para 18)

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Bench Strength **2**. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 3-12-2007]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781, relied on

[9275] — Ss. 376 and 506 — Rape — False implication — Plea of — Sustainability — Accused was teacher of victim — *Stand of accused that he was falsely implicated because the brother of the victim was not successful in the examination and therefore his family had grudge against him, held, unacceptable — The incident involving the accused and mother and brother of the victim took place about a decade back — Not even a remote possibility of the same being the foundation for false implication — That apart, no girl of a tender age and her parents would like to jeopardise her entire future by falsely implicating a person alleging forcible sexual intercourse — Hence contention regarding false implication rejected* (Para 22). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[9276] — S. 376(2)(f) — False implication alleged in a rape case on the ground of enmity — *Neither nature of enmity nor gravity of the same stated — Fact of false implication, held, not established — CrPC, 1973, S. 313* (Para 7). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

13. Dying declaration

[9277] — S. 376 r/w Ss. 302 and 511 — Rape and murder alleged — Improbable prosecution case — Unreliable dying declaration — *Both deceased and accused-appellant found lying in a pool of blood in appellant's room having suffered serious injuries — Deceased found totally naked and underclothes of both the deceased and appellant found in the same room — Appellant and deceased had love affair and deceased had gone to appellant's place alone — Deceased taken to hospital by her brother (PW 5) where she was found dead — Complaint given by PW 5 to police which formed the basis of formal FIR — In the complaint PW 5, after stating that deceased had told him that appellant had tried to rape her and on her refusal he had stripped and stabbed her, adding his own assessment that deceased died due to deep head injuries caused by appellant and that appellant had thereafter tried to kill himself — Last words in the complaint that appellant had also tried to commit suicide by stabbing himself in the stomach appeared to have been inserted later — But on the basis of medical evidence serious nature of injuries found on appellant cannot be said to be self-inflicted — Having regard to facts and circumstances of the case, held, the uncorroborated alleged oral dying declaration was unreliable — Prosecution case of rape and murder of deceased by appellant appears to be improbable — Evidence Act, 1872, S. 32*

In the absence of explanation as to the serious nature of injuries sustained by the appellant giving rise to serious doubt as to the very genesis of the incident, the last portion of the statement in the complaint of PW 5 (wherein he had said that the deceased died due to deep head injuries caused by the appellant, who also tried to kill himself by stabbing in the stomach) appears to have been inserted after deliberation and consultation. This insertion probabilises the defence version that the appellant and the deceased were in love. The very fact that the deceased was totally naked and the underclothes of both the deceased and the appellant were found in the same room probabilises the theory of intercourse by consent and negatives the story of rape. The story that the appellant tried to kill himself by jumping from the upper floor cannot also be accepted. That apart, in the earliest version given in the report given to the police by PW 5, there is no mention about the appellant jumping from the upper floor. In view of the injuries found on the deceased and the defence taken by the appellant that she died on the spot and in the absence of any other evidence except the statement of PW 5, it is difficult to accept that the deceased was alive or at any rate she was in a position to make the statement to PW 5 as sought to be made out. The theory that the appellant tried to kill himself does not appear to be probable as both PW 4 and PW 5 admitted that the deceased and the appellant knew each other; the deceased voluntarily went to the house of the appellant to say goodbye, since she was going back to her country. In this background it appears improbable that the appellant forcefully tried to rape the deceased. It appears that both the appellant and the deceased may have been in a compromising position and were surprised and attacked by an assailant. Since the injuries found on the appellant could not be said to be self-inflicted, his defence that he sustained injuries at the hands of an unknown person when he tried to save the deceased, appears to be probable. It was enough to show that the defence was probable in the given circumstances. In this case the defence statement is probabilised by the surrounding circumstances and the evidence brought on record. The so-called dying declaration does not appear to be in the words of the deceased. It does not inspire confidence. There was considerable delay in registering the FIR and the explanation given for the delay is not convincing. Further, except the interested statement of PW 5 there is no other evidence to corroborate the dying declaration. Having regard to all these infirmities, improbabilities and contradictions found in the case, it is unsafe to act upon the said dying declaration. (Paras 7 to 9). *Ronald Kiprono Ramkat* v. *State of Haryana*, (2001) 6 SCC 423: 2001 SCC (Cri) 1034: AIR 2001 SC 2488.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, *C.J.* and *R.C. Lahoti* and **Shivaraj V. Patil**, JJ. [Date of decision: 31-7-2001]

14. Examination

[9278] — Ss. 375 and 376 — Rape trial — Appreciation of evidence — Non-examination of material witnesses — *Held, is not always fatal to the prosecution case — Facts and circumstances of each case have to be considered — Adverse inference permissible only if available evidence suffers from some infirmity or is unacceptable in the* *absence of other evidence — Minor girls, related both to accused and victim, were eyewitnesses to a rape incident but not examined by the prosecution — Family consideration were the probable cause for their non-examination — Held, prosecution story could not be discarded on this count — Evidence Act, 1872, S. 114 Ill. (g)*

Prosecutrix stated that soon before the incident she was playing with three girl-children of the same age as hers, and they were present when the accused committed rape on her. One of the girls picked up a broom and tried to scare away the accused by striking the broom on him. This girl also raised a hue and cry but none from the neighbourhood came to the spot.

Held :

Non-examination of a material witness is not a mathematical formula for discarding weight of testimony available on record howsoever natural, trustworthy and convincing it may be. Withholding a material prosecution witness should be considered in the background of facts and circumstances of each case so as to find whether the witnesses were available for being examined in the court and were yet withheld by the prosecution. The court has first to assess the trustworthiness of evidence adduced and available on record. If court finds the evidence adduced worthy of being relied on, then testimony has to be accepted and acted upon, though there may be other witnesses available who could also have been examined but were not examined. However, if available evidence suffers from some infirmity or cannot be accepted in the absence of other evidence which though available has been withheld from the Court then the question of drawing an adverse inference against the prosecution for non-examination of such witness may arise. (Para 14)

The accused in the present case being a relation of the in-laws of the mother of the prosecutrix and the other young girls being from family of in-laws, it was futile to expect that the girls of tender age would have been allowed by their parents to be examined as witnesses, and if allowed, could have freely deposed to, in the court. The question of drawing an adverse inference against the prosecution for such non-examination does not arise. (Para 14). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898; State of H.P. v. Lekh Raj, (2000) 1 SCC 247: 2000 SCC (Cri) 147; Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598, relied on

Gian Chand v. State of H.P., (1996) 2 Crimes 213 (HP), reversed

[9279] — Ss. 375 and 376 — Rape trial — Non-examination of witness — *Held, undoubtedly, non-examination of material witnesses may go against the prosecution in some cases but not in all cases — On facts held, such non-examination was not material having regard to the evidence brought on record, particularly the evidence of victim girl herself. Ayub Hussain Mandal* v. *State of Assam*, (2007) 15 SCC 549.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *Arun Kumar*, JJ. [Date of decision: 8-10-2002]

[9280] — S. 376 — Failure of prosecution to produce witness to whom prosecution narrated her story after the rape — *Held, on facts, not fatal in view of the remaining evidence*

It would have been better if she would have been examined. However, no dent is caused in the case of the prosecution by her non-examination. She would have repeated the same story as had been narrated by the father of the prosecutrix. *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 SCR 377: 1952 Cri LJ 547; Sidheswar Ganguly v. State of W.B., AIR 1958 SC 143: 1958 Cri LJ 273; Madho Ram v. State of U.P., (1973) 1 SCC 533: 1973 SCC (Cri) 417; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598; State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490: 1996 SCC (Cri) 133; Sk. Zakir v. State of Bihar, (1983) 4 SCC 10: 1983 SCC (Cri) 76; Balwant Singh v. State of Punjab, (1987) 2 SCC 27: 1987 SCC (Cri) 249; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977, relied on

[9281] — S. 376 — Rape — Appreciation of evidence — Non-examination of some persons — Effect — Victim, a mentally deficient girl — *Evidence Act, 1872, S. 134*

Non-examination of some persons per se does not corrode the vitality of the prosecution version, particularly when the prosecutrix has, notwithstanding her mental deficiencies, withstood incisive cross-examination and pointed to the appellant as the perpetrator of the crime. (Para 6). *Tulshidas Kanolkar* v. *State of Goa*, (2003) 8 SCC 590.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-10-2003]

15. FIR

(a) Generally

[9282] — S. 376(2)(g) — Evidentiary value of FIR — *Prosecutrix naming Accused 4 in FIR but neither identifying him in Court nor naming him in her deposition — Held, the allegations, made in FIR are not evidence — CrPC, 1973, Ss. 154 and 164 — Evidence Act, 1872, Ss. 145 and 9*

The prosecutrix, a coolie, was gang raped while on her way back from a movie at about 10.00 p.m. on 20-11-1994. Her brother, *P* who was slapped, ran for help and when he returned with other villagers, found her sister lying unconscious and naked. FIR was lodged at about 7.00 p.m. on 21-11-1994 after the victim regained her consciousness. The conviction of six accused persons under Section 376(2)(*g*) IPC was upheld by the High Court.

Allowing the appeal of Accused 4 to 6 and dismissing the appeal of Accused 1 to 3,

Held :

The allegations made in the first information report are not evidence. Naming some of the accused persons in the first information report and not naming them in the course of deposition casts a serious doubt. The prosecutrix might have named four persons, namely, Accused 1 to 4 in the FIR, but, she named only Accused 1 to 3 in her deposition. She neither named nor identified Accused 4 to 6. On what basis, therefore, their guilt is said to have been established is not known. Both, the learned trial Judge as also the High Court, in their judgments did not deal with this aspect of the matter. (Paras 16 and 18). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

Devinder Singh v. State of H.P., (2003) 11 SCC 488: 2004 SCC (Cri) 185, relied on

[9283] — Ss. 376(2)(g), 302, 201 and 120-B — FIR — Contents of — Eyewitness' account of incident not incorporated in complaint lodged with police — Whether fatal to prosecution — *Held, not fatal since complainant and eyewitness had not talked with each other prior to filing of FIR* (Paras 13 to 15). *State of Rajasthan* v. *Hanif Khan*, (2009) 3 SCC 549: (2009) 2 SCC (Cri) 161: AIR 2009 SC 2043: 2009 Cri LJ 1765.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 23-2-2009]

(b) Delay in lodging/filing FIR

See in detail under S. 154, CrPC, 1973 in Vol. 16, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 1 of *SC on CrPC and Criminal Trial*

[9284] — Ss. 375 and 376 — Delay in filing FIR — Effect — Delay, held, by itself is not fatal to the prosecution case but requires satisfactory explanation — *Delay in filing FIR in rape cases is normal especially when the perpetrator is a relative — A village girl of the age of 5 years 6 months, complaining commission of rape on her at about 6.30 p.m. on 29-10-1991 while her widow mother was away — The accused (appellant) was a relative — FIR lodged by mother on 31-10-1991 in the morning — In the intervening period, the mother discussed the incident with her in-laws who in turn called upon respondent's father — The matter was reported to police when it was not settled within the family — Held, the sequence of events as projected by the prosecution sounded quite natural and provided satisfactory explanation for the delay — Prosecution story could not therefore be disbelieved on the ground of delay — CrPC, 1973, S. 154*

Delay in lodging FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding it. Delay has the effect of putting the court on its guard to search if any explanation has been offered, and if offered, whether or not it is satisfactory. If prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution case. However, if the delay is explained to the satisfaction of the court, it cannot by itself be a ground for disbelieving and discarding the entire prosecution case. The accused, in the present case, is a close relation of prosecutrix's late father. The mother obviously needed her in-laws to accompany her or at least to help her in lodging an FIR. The incident having occurred in a village, the approach of in-laws displayed rusticity in first calling upon father of the accused. It remained an unpleasant family affair on the next day of the incident which was tried to be settled, if it could be, within the walls of the family. That failed. It is thereafter only that the complainant who is a widow, left all by herself and having no male family member willing to accompany her, proceeded alone to the police station. She was lent moral support by the village *Panch*, whereupon report of the incident was lodged. The sequence of events soon after the crime provide a satisfactory explanation for the delay. The High Court has not looked into the explanation offered and very superficially recorded a finding of the delay having remained unexplained. It is common knowledge and also judicially noted fact that incidents like rape, more so when the perpetrator of the crime happens to be a member of the family or related therewith, involve the honour of the family and therefore there is a reluctance on the part of victim's family to report the matter to police and carry it to the court. A cool thought may precede lodging of FIR. The delay has been satisfactorily explained in this case and therefore it does not cause any dent in the prosecution case. (Para 12). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Harpal Singh v. State of H.P., (1981) 1 SCC 560: 1981 SCC (Cri) 208, relied on

Gian Chand v. State of H.P., (1996) 2 Crimes 213 (HP), reversed

[9285] — Ss. 375 and 376 — Delay in lodging FIR — When does not affect prosecution case — *In instant case of gang rape, delay in lodging FIR stood properly explained — CrPC, 1973, S. 154*

When FIR by a Hindu lady is to be lodged with regard to commission of offence like rape, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of the victim who has been criminally assaulted in such a manner. Obviously, the victim must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reason for little delayed FIR. The delay was found to be properly explained by both the courts below. (Para 13). *Sohan Singh* v. *State of Bihar*, (2010) 1 SCC 68.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 9-10-2009]

[9286] — Ss. 375 and 376 — Rape of a minor — Appreciation of medical evidence — *No semen detected on person or clothes of prosecutrix, but hymen found absent — Injuries detected on her private parts despite passage of a long time — Inference of partial/incomplete penetration — Offence of rape if made out — Effect of discrepancies in evidence of prosecutrix — Appellant alleged to have gagged mouth of prosecutrix aged about 11 years, and sexually assaulted her — On hearing her aunt's (PW 5) voice, accused fleeing away — No semen detected on any of the exhibits sent to chemical examiner — However, hymen found absent — Prosecutrix medically examined after a long time — Despite long passage of time (about 80 hours) injuries found on her private parts — Though the doctor failing to state specifically anything as regards actual intercourse, she testifying that there had been attempt to commit rape — PW 5 had detected the accused committing the offence, and he had fled away on hearing her voice — Thus, the act was incomplete — Evidence of PW 5 was found reliable by courts below — Hence, held, conclusion of High Court that absence of hymen clearly indicated that there was penetration, or that penetration may have been partial with no emission of semen, calls for no interference — Medical evidence in such cases needs to be appreciated in context of ocular evidence and other circumstances surrounding thereto — Discrepancies in evidence of prosecutrix also inconsequential, because she was a minor — Besides, there was time gap between occurrence and examination of witnesses — Hence, lapse of some memory on part of child witness possible — Delay in lodging FIR was also a natural phenomenon in rape cases — Conviction of appellant under S. 376, sustainable — CrPC, 1973, S. 154* (Paras 10, 14, 17 to 21). *Satyapal* v. *State of Haryana*, (2009) 6 SCC 635: (2009) 3 SCC (Cri) 108: AIR 2009 SC 2190: (2009) 77 AIC 66 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-4-2009]

Satyapal v. State of Haryana, 2007 Cri LJ 2095 (P&H), affirmed

Modi's Medical Jurisprudence, 23rd Edn., at pp. 897 and 928, relied on

[9287] — Ss. 375 and 376 — Rape trial — Delay in lodging/filing FIR — Held on facts, was not fatal — *In cases involving offence of rape, the victim or her family members hesitate to file a complaint as there are other factors to be considered — Besides, no cross-examination on this aspect was made — CrPC, 1973, S. 154. Ayub Hussain Mandal* v. *State of Assam*, (2007) 15 SCC 549.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *Arun Kumar*, JJ. [Date of decision: 8-10-2002]

[9288] — Ss. 375, 376 and 366 — Rape — Delay in lodging/Filing FIR — Case of taking away victim fraudulently and subjecting her to rape by appellant-accused and forcing her to indulge in prostitution by coercion — *Delay was bound to occur as FIR was filed only after return of victim from her captivity after one-and-a-half years — Reasons for which she could not come back or inform her parents, held, stood well explained by victim that she was given threat by appellant that dead body of some other girl had been identified by her parents to be of the victim and thus if she went*

15.(b) Delay in lodging/filing FIR *(contd.)*

back, her parents would be in difficulty — She had been living under a constant threat and could not muster courage to inform any person — CrPC, 1973, Section 154 (Paras 14 and 13). *Fateh Chand* v. *State of Haryana*, (2009) 15 SCC 543: AIR 2009 SC 2729: (2009) 81 AIC 216 (SC): 2009 Cri LJ 3942.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 29-5-2009]

[9289] — S. 376 — Child rape — Appreciation of evidence — Delay of 26 hours in lodging FIR fully explained by prosecution — *When testimony of the prosecutrix and her relatives and the doctor, who had examined her, found to be trustworthy, convincing and reliable, non-examination of other witnesses cannot be a ground to reject the prosecution case — It cannot be expected from the mother of the victim to have shouted on seeing the accused committing the rape so as to collect others, nor can it be expected that after the occurrence in the village others would have visited her house who would stand as prosecution witnesses — Courts should adopt a sensitive approach in dealing with cases of child rape — On facts held, trial court by a well-considered and well-analysed judgment was justified in convicting the respondent under S. 376 and High Court erred in reversing the same and acquitting the respondent on benefit of doubt*

According to the testimony of PW 2, her daughter, then aged 8 years, had gone to the house of one *S* to take therefrom buttermilk. When her daughter did not return for a long time, she went to that house and when she pressed open the door which was closed, she found the respondent, son of *S* then aged 18 years, committing rape on her daughter, who was totally unconscious. On seeing her the respondent, who was then alone in the house, ran away. She lifted her daughter and brought her back home. At that time her husband and brother-in-law had gone to another village. Next day a report was lodged with the police. Besides the mother (PW 2), the father of the prosecutrix (PW 1) and wife of the brother of PW 1 also deposed supporting the version of PW 2. Prosecutrix, PW 5, being a child witness, the Additional District and Sessions Judge before administering her oath asked general questions so as to satisfy that she was competent to answer the questions and take oath. Her statement in court was recorded about four years after the date of the incident. Her deposition also was that the respondent had committed rape on her under the same circumstances as narrated by PW 2. The testimony of the doctor, PW 11, who had examined the prosecutrix was that externally there was no injury on her body but on the inner parts of both thighs and at the outer part of the left foot there were signs of blood. For internal examination she was referred to Family Incharge Hospital. The injury report was in his handwriting wherein the reports of a lady doctor and another doctor had been incorporated. PW 11 stated that: "In my opinion, the intercourse was done with the girl i.e. the possibility of doing the intercourse cannot be ruled out." The tip of the finger in the whole of her uterus was passing easily. PW 11 deposed that: "According to the opinion of the lady doctor, the opinion of the pathologist and my opinion of the examination, something was penetrated in her vagina." The only cross-examination of the witness was that the main examination report by the lady and the other doctors was not before him, that the seminal stains were not present on the clothes and that after the sexual contact the vagina remained intact. The Additional District and Sessions Judge found the respondent guilty for offence under Section 376 of the Indian Penal Code and imposed rigorous imprisonment for seven years and fine of Rs 1000 and in default of payment of fine to further undergo six months' rigorous imprisonment. The High Court gave benefit of doubt to the respondent and acquitted him. The main reasons which prevailed with the High Court in reversing the conviction were two. First, the non-examination of other independent witnesses and second, the rejection of medical evidence i.e. testimony of the doctor, PW 11. As regards non-examination of other witnesses, the High Court noticed that the incident had taken place in the environment of the village where there were other residential houses; the house of the prosecutrix from where the incident took place was 2-3 houses away and in the house of the accused his other brothers and sisters-in-law were also living. The High Court held that it was unnatural that PW 2 and PW 5 would not have shouted and others might not have gathered at the place of incidence and that, except the family members no other witness had come forward to support the case of the prosecution. The High Court also described as unnatural the statement of the mother that except her husband's brother's wife, PW 4, not a single person of the village had come to her house. As regards the second reason the High Court held that in absence of the evidence of the lady doctor, there was no support from any medical evidence. The prosecution case was also questioned on the ground of delay of nearly 26 hours in lodging the FIR. The offence was alleged to have taken place at about 9 a.m. The FIR was registered at about 11.30 a.m. on the next day. It was contended that this delay had assumed importance and was fatal particularly when the brother of the prosecutrix, was admittedly at the house. The delay, according to the defence counsel, resulted in embellishments.

Allowing the State's appeal,

Held :

As regards the contention regarding the delay in lodging the FIR, the real question is about the explanation for the delay. It is not at all unnatural for the family members to await the arrival of the elders in the family when an offence of this nature is committed before taking a decision to lodge a report with the police. The reputation and prestige of the family and the career and life of a young child is involved in such cases. Therefore, the presence of the brother of the prosecutrix at home is not of much consequence. It has been established that the father of the girl along with his brother came back to their house at 7 o'clock in the evening. The girl was unconscious during the day. PW 2 told her husband as to what had happened to their daughter. The police station was at a distance of 15 km. According to the testimony of PW 1 no mode of conveyance was available. The police was reported to the next day morning and FIR was recorded at 11.30 a.m. The delay in reporting the matter to the police has thus been fully explained. (Para 9)

The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim. However, after carefully scanning and scrutinising the evidence of the parents of the prosecutrix, her brother, the prosecutrix herself and the doctor (PW 11), the same is found to be trustworthy, convincing and reliable. At the time of the incident the accused was alone at home. When such an act is done, the natural tendency is not to talk about it to others but, to an extent possible, hide it. There was nothing unnatural in other villagers not visiting the house of PWs 1 and 2. Being a child witness, the testimony of the prosecutrix and that of her mother had been examined by the trial court with utmost care and caution. The High Court has clearly committed a serious illegality in assuming that in the natural course of events if rape had been committed, the young girl child and her mother would have shouted so as to collect others and they would have visited her house. The prosecutrix was unconscious. There was no question of the prosecutrix shouting as assumed by the High Court. Too much was made by the High Court on account of non-examination of persons other than the family members. The aspect of non-examination was given undue importance without having regard to the contextual facts. Cases involving sexual molestation and assault require a different approach — a sensitive approach and not an approach which a court may adopt in dealing with a normal offence under penal laws. (Para 15)

The evidence of the doctor, PW 11 is clear and specific. He was the author of the report. Though ideally the lady doctor could have been examined or her absence explained but that does not destroy the prosecution case, which otherwise stands proved. The High Court was clearly in error in coming to the conclusion that in the absence of evidence of the lady doctor there was no support from any medical evidence. She had reported to PW 11, who categorically stated that in his opinion, on examination, something had been penetrated in the vagina of the prosecutrix and that intercourse was done with the girl i.e. the possibility of doing intercourse cannot be ruled out. For no valid reason the High Court discarded the evidence of the doctor. (Para 16)

The evidence of a child witness is required to be evaluated carefully as the child may be swayed by what others may tell him or her as the child is an easy prey to tutoring. Wisdom requires that the evidence of a child witness must find adequate corroboration before it is relied on. In this case the evidence of the child (PW 5) and the other evidence had been examined carefully and it had been found that the reasons given by the High Court for rejecting the said evidence were wholly unconvincing. It is unfortunate that what to talk of considering, the High Court has not even noticed the testimony of the prosecutrix in the judgment under appeal. (Para 17)

There is no force in the contention that if there was any forcible sexual intercourse, it would have resulted in some injuries upon the prosecutrix. Presence of injuries are not always a sine qua non to prove a charge of rape. It has to be kept in mind that the case under consideration is one of rape on a girl child aged eight years and not on a grown-up woman. (Para 18)

Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. It is a crime against humanity. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the

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modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. It is necessary for the courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in the Constitution of India in Article 39.

The overturning of a well-considered and well-analysed judgment of the trial court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt, was not called for. The minor contradiction of recovery of one or two underwears was wholly insignificant. (Paras 19 and 1)

Lastly, it is not possible to accept the contention on behalf of the respondent that the incident took place about 13 years back and by now the accused has matured and would be around 31 years of age and having already undergone nearly three years of sentence, the same may be treated by the Supreme Court as sufficient punishment to him and, therefore, taking a sympathetic view, the sentence already undergone be imposed. The trial court imposed on the respondent a sentence of seven years' rigorous imprisonment besides fine. Having played with the life of a child, the respondent does not deserve any leniency and for him sympathy on the ground sought for will be wholly uncalled for. The respondent deserves to undergo the remaining part of the sentence awarded by the trial court. (Para 20). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of H.P. v. Gian Chand, (2001) 6 SCC 71: 2001 SCC (Cri) 980; State of U.P. v. Ashok Dixit, (2000) 3 SCC 70: 2000 SCC (Cri) 579, relied on

Joseph v. State of Kerala, (2000) 5 SCC 197: 2000 SCC (Cri) 926, distinguished

[9290] — S. 376 — Delay in filing FIR — By itself not fatal to the prosecution case, if the delay is explained to the satisfaction of the court — *Incident of rape taking place on Oct. 1 but reported to the police on Oct. 5 — Initial hesitation on the part of victim's father to give publicity as also other factors such as likelihood of communal tension etc. stated as reasons for the delay — Held, on facts explanation acceptable — Hence prosecution case cannot be wholly disbelieved merely on ground of such delay — CrPC, 1973, S. 154*

A mere delay in lodging the FIR cannot be a ground by itself for throwing the entire prosecution case overboard. The court has to seek an explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the court it cannot be counted against the prosecution. (Para 15)

In the present case it is true that the incident dated 1-10-1993 was reported to the police on 5-10-1993. The prosecutrix was a married woman. Her *muklana* ceremony had not taken place. Muklana ceremony is a rural custom prevalent in Rajasthan, whereunder the bride is left with the parents after marriage having been performed and is taken away by the husband and/or the in-laws to live with them only after a lapse of time. The origin of the custom owes its existence to performance of child-marriages which are widely prevalent there. The *muklana* was yet to take place. The prosecutrix was a virgin prior to the commission of the crime and this fact finds support from the medical evidence. The parents of such a prosecutrix would obviously be chary to such an incident gaining publicity because it would have serious implications for the reputation of the family and also on the married life of the victim. The husband and the in-laws having become aware of the incident may even refuse to carry the girl to reside with them. The incident if publicised may have been an end to the marriage of the prosecutrix. Added to this is the communal tinge which was sought to be given by the community of the accused. (The accused and the prosecutrix belonged to different communities.) The father of the prosecutrix and other witnesses have stated that while they were about to move to the police station they were prevented from doing so by the community fellows of the accused who persuaded them not to lodge a report with the police and instead to have the matter settled by convening a *panchayat* of the village people. After all the family of the victim had to live in the village in spite of the incident having taken place. The explanation is not an afterthought. An indication thereof is to be found in the FIR itself where the complainant stated — "the delay in lodging the report is due to village panchayat, insult and social disrepute". Nothing has been brought out in the cross-examination of the witnesses to doubt the truth and reasonableness of the explanation so offered. (Para 14). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781; State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977, relied on

[9291] — S. 376 — Delay in lodging FIR — Effect — Factors that usually cause delay in such matters considered — *Held, though mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact — Circumstances under which delay may be condoned, stated — On facts, further held, FIR was lodged eight days after the alleged occurrence, for which no satisfactory explanation was rendered — Hence, appellants given benefit of doubt — CrPC, 1973, S. 154*

In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. (Para 24)

It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them. (Para 24)

In the case of sexual offences there is another consideration which may weigh in the mind of the court i.e. the initial hesitation of the victim to report the matter to the police which may affect her family life and family's reputation. Very often in such cases only after considerable persuasion the prosecutrix may be persuaded to disclose the true facts. There are also cases where the victim may choose to suffer the ignominy rather than to disclose the true facts which may cast a stigma on her for the rest of her life. These are cases where the initial hesitation of the prosecutrix to disclose the true facts may provide a good explanation for the delay in lodging the report. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No straitjacket formula can be evolved in such matters, and each case must rest on its own facts. (Para 24). *Ramdas* v. *State of Maharashtra*, (2007) 2 SCC 170: (2007) 1 SCC (Cri) 546: AIR 2007 SC 155: (2007) 49 AIC 418 (SC).

Bench Strength **2**. Coram: **B.P. Singh** and *Tarun Chatterjee*, JJ. [Date of decision: 7-11-2006]

[9292] — S. 376 — Rape — Acquittal — Delay in filing FIR, effect of — *Acquittal on the ground that FIR was delayed thus the prosecutrix may be a consenting party as she was above 16 years of age — Absence of explanation in filing delayed FIR, does not per se apply to cases of rape, reiterated* (Para 3). *State of U.P.* v. *Manoj Kumar Pandey*, (2009) 1 SCC 72: (2009) 1 SCC (Cri) 244: AIR 2009 SC 711: (2009) 1 ECrN 862 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *D.K. Jain*, JJ. [Date of decision: 7-11-2008]

[9293] — S. 376 — Rape — Delay in lodging complaint — Case solely based on evidence of prosecutrix — *Complaint made by prosecutrix seven months after the alleged commission of rape on her by appellant — At the time of filing the complaint prosecutrix was carrying child of seven months — Prosecutrix explained that initially she had not protested in view of appellant's promise to marry her but on appellant's refusal to her proposal for marriage at the stage of her seven months' pregnancy, she filed the complaint — Held, prosecutrix having waited for seven months for filing FIR, in absence of any other supporting evidence it would be unsafe to convict appellant wholly on the basis of testimony of the prosecutrix*

In cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, specially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenceless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix has willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR it will be very hazardous to convict on

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such sole oral testimony. Moreover, no DNA test was conducted to find out whether the child was born out of the said incident of rape and that the appellant-accused was responsible for the said child. In the face of lack of any other evidence, it is unsafe to convict the accused. Therefore, the view taken by the trial court and the Single Judge of the High Court in convicting the appellant-accused under Section 376 IPC cannot be sustained. (Para 5). *Vijayan* v. *State of Kerala*, (2008) 14 SCC 763: (2009) 3 SCC (Cri) 585.

Bench Strength **2**. Coram: *A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 16-7-2008]

[9294] — S. 376 — Rape — Delay in lodging FIR — Effect of — *FIR lodged after about four months of commission of offence — Panchayat had intervened and it pressurised complainant to compromise — Panchayat met several times — Fine of Rs 1100 imposed on appellant — Complainant had demanded that appellant be fined to the tune of Rs 5000 and be taken in procession after blackening his face and be paraded in village — Demand not accepted by Panchayat — Ultimately complainant raised grievance before SP — Report lodged on instruction of SP — Held, delay in lodging FIR has been satisfactorily explained — Delay in lodging FIR in sexual offences has to be considered with a different yardstick* (Paras 10 to 18). *Satpal Singh* v. *State of Haryana*, (2010) 8 SCC 714: (2010) 3 SCC (Cri) 1081: (2010) 93 AIC 50 (SC): 2010 Cri LJ 4283.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-7-2010]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of A.P. v. M. Madhusudhan Rao, (2008) 15 SCC 582: (2009) 3 SCC (Cri) 1123; Satyapal v. State of Haryana, (2009) 6 SCC 635: (2009) 3 SCC (Cri) 108; State of H.P. v. Prem Singh, (2009) 1 SCC 420: (2009) 1 SCC (Cri) 351, relied on

[9295] — S. 376 — Rape — Delay of about 17-18 days in lodging the FIR — On facts, explained — Hence, did not prove fatal — *CrPC, 1973, S. 154*

Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version, as was done by the High Court in the present case. (Para 9)

The evidence of PWs 4 and 5 read with that of the victim clearly explained as to why the first information report was lodged after 17-18 days. The evidence of the aforesaid three witnesses clearly shows that PW 5 (father of victim) was seriously ill and the family members did not want to create tension in his mind when he was not physically well and waited for his recovery. In spite of the lengthy cross-examination this aspect has not been shaken by the defence. The view of the High Court that PW 4 should have told some respectable person or the father earlier to say the least is a view which has no foundation and overlooks the very reason to shun or openly publicise it to avoid the ignominy involved in it. In a tradition-bound and conservative society, more particularly in a rural area, the shame of sexual assault on a girl of about 14 years cannot be lost sight of. This down-to-earth reality has been lost sight of by the High Court. The trial court had rightly emphasized this aspect, but unfortunately, the High Court took a contrary view irrationally. (Para 10). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

[9296] — S. 376 — Rape case — Delay in lodging FIR — Effect of — *In view of the social conditions prevalent in India, there may be delay in giving the first information of such an offence to the police — Though the delay as such is not serious, but while considering the broad probabilities of the case, the delay in giving information to police in the instant case, considered to be of some importance — CrPC, 1973, S. 154*

It is true that in view of the social conditions prevalent in India, there may be delay in giving the first information of such an offence to the police. A rape victim may think seriously before giving the information to the police about rape as the onslaught of a social stigma may haunt her for life. Though the delay as such is not serious, but while considering the broad probabilities of the case, the delay in giving the information to the police, in the instant case, also assumes some importance. (Para 19). *Sudhansu Sekhar Sahoo* v. *State of Orissa*, (2002) 10 SCC 743: 2003 SCC (Cri) 1484: AIR 2003 SC 2136.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **K.G. Balakrishnan**, JJ. [Date of decision: 18-12-2002]

[9297] — S. 376 — Rape of a "married woman" — Delay in lodging FIR — *Held, does not necessarily indicate that the version of victim is false — CrPC, 1973, S. 154*

In India if the prosecutrix happened to be a married person, she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly, does not raise the question that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women. It casts doubt and shame upon her rather than comfort and sympathy. Therefore, the delay in lodging complaint in such cases does not necessarily indicate that her version is false. (Para 8). *Sri Narayan Saha* v. *State of Tripura*, (2004) 7 SCC 775.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 8-9-2004]

[9298] — S. 376 — When offence under clearly made out, delay in filing complaint, held, cannot wash away the offence (Para 17). *Bhupinder Singh* v. *UT, Chandigarh*, (2008) 8 SCC 531: (2008) 3 SCC (Cri) 553: 2008 Cri LJ 3546.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 10-7-2008]

[**Ed.**: An interesting question arises whether on these facts the appellant could have been charged under Sections 493 and 494 IPC, and if so why not.]

[9299] — Ss. 376 and 302 — FIR — Fardbeyan — Delay in recording — Rape and murder — *According to prosecution, informant had gone to the police station, narrated the occurrence and after 10-20 minutes' stay there, returned to his village where the officer in charge of the police station recorded his fardbeyan naming appellant as having committed the offence — But while in police station, informant had not disclosed the name of appellant — Held, recording of fardbeyan at the house of informant instead of at police station when he had gone there shows that there was inordinate delay in recording the fardbeyan — This further shows that by the time the informant was at the police station he did not suspect complicity of the appellant with the crime and subsequently, after due deliberations, fardbeyan was given by the informant at his house alleging therein that the appellant had committed the crime — Thus the evidence of this witness makes the prosecution case showing complicity of the appellant with the crime doubtful — CrPC, 1973, S. 154* (Para 7). *Kanhai Mishra* v. *State of Bihar*, (2001) 3 SCC 451: 2001 SCC (Cri) 537: AIR 2001 SC 1113: 2001 Cri LJ 1259.

Bench Strength **3**. Coram: *K.T. Thomas*, *R.P. Sethi* and **B.N. Agrawal**, JJ. [Date of decision: 27-2-2001]

[9300] — Ss. 376, 354 and 506 — Effect of delay in filing FIR in cases of sexual assault — *Respondent-accused alleged to have sexually ravished PW 1 and outraged the modesty of several other girl students of the school where he was a teacher — High Court setting aside his conviction considering delay in lodging FIR — Held, delay in a case of sexual assault, cannot be equated with the case involving other offences — There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint — In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there was some delay in lodging the FIR — Further, though prosecution had failed to establish allegations of rape but commission of offence punishable under Ss. 354 and 506 have clearly been established — Hence, respondent deserves to be convicted for the offences punishable under Ss. 354 and 506 — CrPC, 1973, S. 154* (Paras 2 and 6 to 8). *State of H.P.* v. *Prem Singh*, (2009) 1 SCC 420: (2009) 1 SCC (Cri) 351: AIR 2009 SC 1010: (2009) 73 AIC 238 (SC): 2009 Cri LJ 786.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-11-2008]

[9301] — Ss. 376, 363, 366 and 368 — Delay in lodging/filing FIR — Reasonably explained — *Held, in such a case, High Court was in grave error in concluding that there was no reasonable and plausible explanation for belated FIR and that it was lodged after consultation and due deliberation which created doubt about instant case — Unfortunately, High Court did not advert to evidence of PW 1 (complainant, brother of rape victim) and reasoning of trial court in this regard — CrPC, 1973, S. 154* (Para 33). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Prakash Singh v. Union of India, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417, relied on.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

[9302] — Ss. 376, 375, 148, 452, 149, 342, 323 and 506 — Rape after forcible marriage — Acquittal confirmed — *Prosecution failing to discharge its burden of proving ingredients of offences, not examining material witnesses (like father and brother of prosecutrix) — Delay of one month on part of prosecutrix in filing FIR and other discrepancies — Allegedly A-1 (an MP) with the help of other accused, at gunpoint took prosecutrix and her whole family to Bombay on 5-5-1999 — That A-1 converting himself to Islam and forcibly marrying*

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prosecutrix by performing nikaah on 6-5-1999 in the presence of Kazi (PW 3) — Educated family and well-to-do parents of prosecutrix did not find time to report the serious matter concerning their daughter to police — Even FIR was lodged after a delay of about one month after marriage — There being nothing on record to suggest that A-1, at any point of time, coerced or threatened prosecutrix and her family members — Hence, findings of High Court upheld and acquittal confirmed. State of Maharashtra v. *Ravikant Shankarappa Patil*, (2011) 6 SCC 416.

Bench Strength **2**. Coram : **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision : 5-5-2011]

[9303] — Ss. 376 & 375 and 366 — Delayed lodging of FIR — Effect — Benefit of doubt — When available — *Doubtful facts and circumstances being: (1) though fact of abduction of PW 2 (victim girl) on 31-7-1993 was immediately brought to notice of PW 1 (father of victim), PW 1 lodging FIR on 2-8-1993, (2) false implication by father not being ruled out because victim girl could have run away to avoid an arranged marriage, (3) there being no evidence of previous involvement of A-1 with victim, (4) important witnesses of abduction and forced marriage not having been examined, (5) there being no evidence of victim being forcibly taken in car, (6) close relations of girl witnessing alleged forced marriage in temple not lodging a complaint with police or rescuing girl, (7) victim not even raising a cry in temple when she was being married forcibly, (8) there being contradiction in evidence of victim's father and victim, (9) evidence of victim being wholly unreliable and contrary to evidence, and (10) it not being conclusively established that girl was minor — Appellants, held, are entitled to benefit of doubt — Hence, acquitted — Prosecution story of A-1 abducting and forcefully marrying PW 2 and then raping her have not been proved beyond reasonable doubt. Alamelu* v. *State*, (2011) 2 SCC 385.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 18-1-2011]

[9304] — Ss. 376 and 375 Sixthly — Rape of a girl below sixteen years — Delay of ten days in filing FIR — Explanation that delay caused due to deliberations in the family whether to take the matter involving family honour to the court, held, reasonable — *Testimony of prosecutrix consistent save a few minor contradictions and corroborated by her father and brother to whom she had related the details of the occurrence without delay after she was rescued — Conviction under S. 376 and four years' RI upheld. Harpal Singh* v. *State of H.P.*, (1981) 1 SCC 560: 1981 SCC (Cri) 208: AIR 1981 SC 361: 1981 Cri LJ 1.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 14-11-1980]

[9305] — Ss. 376 and 376(2)(f) — Rape — Delay in filing complaint/FIR — *The mere factum of, held, by itself not fatal to prosecution case — Occurrence on 6-3-1990 — Filing of complaint on 10-3-1990 — Victim, a girl of eight years — Her father out of station on the date of occurrence — Possibility of hesitation on the part of mother in lodging complaint — Thus said delay, held, explained — Hence, did not prove fatal* (Para 7). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

[9306] — Ss. 376, 377, etc. — Delay in lodging FIR — Effect — *Held, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same. Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

[9307] — Ss. 376, 457 and 380 — FIR — Delay in lodging FIR — Rape case — Version of prosecutrix that the FIR was lodged after three days of the incident — Reliability of — *Held on facts, not correct — Evidence indicating that the FIR was lodged six days after the occurrence — CrPC, 1973, S. 154*

The prosecutrix claimed that she lodged the report on the third day of the incident. This apparently is not correct because the report identified by her as the report lodged by her was lodged on 26-2-1994. She deposed that on the third day she had talked to some labourers and narrated to them the incident. None of those labourers has been examined as a witness. In fact evidence of the residents of the building in which she was residing, who appeared as witnesses, is not that the prosecutrix, either in the morning following the incident or on any other day, mentioned to them about the incident which took place on the night of 20-2-1994. The evidence on record, therefore, does establish that for six days after the occurrence, the prosecutrix did not narrate the incident to anyone. (Para 16). *Devinder Singh* v. *State of H.P.*, (2003) 11 SCC 488: 2004 SCC (Cri) 185: AIR 2003 SC 3365.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 17-9-2003]

[9308] — Ss. 376 and 506 — FIR — Delay in lodging FIR — Rape cases — Inordinate delay of 6 months — *When accusations of rape involved, held, said delay per se is not a mitigating circumstance — Such delay, if satisfactorily explained, held, not fatal — If not so explained and there is possibility of embellishment or exaggeration in prosecution version due to such delay, then it is a relevant factor — Victim, a girl of about 14 years, ravished by her teacher in the month of May — She not disclosing about the incident to anyone due to threats given by the accused — Few days after the incident, accused again committing sexual intercourse with her — Since victim complaining about stomach ache, her mother taking her to a hospital in the month of September — Doctor telling the mother about pregnancy of victim — On enquiry by mother, victim disclosing that her conception was due to sexual intercourse by accused — FIR lodged in the month of November — Victim totally unaware of the catastrophe which had befallen her — Held, High Court's conclusion that there was unexplained delay in lodging the FIR was not sustainable — CrPC, 1973, S. 154* (Paras 18 and 19). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength 2. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

Tulshidas Kanolkar v. State of Goa, (2003) 8 SCC 590: 2004 SCC (Cri) 44, relied on

[9309] — Ss. 376 and 506 Pt. II — Prosecutrices (PWs 1 and 2) being uneducated, poor labourers without any male members in their family to advise them and being threatened by accused — FIR being delayed by 42 days — Effect — *High Court duly considering all material aspects — High Court considering corroboration by PW 14 (mother of prosecutrices) and PW 4 (owner of quarry where prosecutrices worked) regarding cause of delay — Conviction of accused under Ss. 376 and 506 Pt. II, therefore, held, justified*

The evidence of prosecutrices cannot be rejected as unacceptable. Though there was a delay of 42 days in lodging the complaint to the police, PWs 1 and 2, in their evidence, explained that all their family members including themselves are uneducated, there are no male members in their family for their assistance and they settled in the present village to eke out their livelihood. They were working in quarry owned by PW 4 and while returning from their workplace by force A-1 and A-2 committed rape of PWs 1 and 2. PW 14 (mother of PWs 1 and 2) also corroborated them about their illiteracy and fear due to the threat call of A-1 and A-2. All these material aspects were duly considered by the trial court and accepted by the High Court. (Paras 15 and 19). *Santhosh Moolya* v. *State of Karnataka*, (2010) 5 SCC 445.

Bench Strength 2. Coram: **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 26-4-2010]

[9310] — Ss. 376 and 506 Pt. II — Rape — Delay in lodging FIR — Victim, a mentally deficient girl — Delay, held on facts, not fatal — When accusations of rape are involved, held, said delay per se is not a mitigating circumstance — *Such delay, if satisfactorily explained, held, not fatal — If not so explained and there is possibility of embellishment or exaggeration in prosecution version due to such delay, then it is a relevant factor — Where a mentally deficient girl totally unaware of the catastrophe which had befallen her was ravished by accused not once, but several times, held, the unusual circumstances satisfactorily explained the delay in lodging FIR — Thus, said delay did not affect the prosecution version adversely — CrPC, 1973, S. 154*

Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. (Para 5)

Delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. (Para 5). *Tulshidas Kanolkar* v. *State of Goa*, (2003) 8 SCC 590.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-10-2003]

[9311] — S. 376(2)(g) — FIR — Delay in lodging FIR — Grounds/considerations for ascertaining bona fides — Offence under S. 376(2)(g) IPC — *Prosecution case, held, should not be thrown out only on the ground of delay in lodging FIR — Other factors like trauma suffered by the victim, sociological factors along with other evidence should be taken into consideration — CrPC, 1973, S. 154*

15.(b) Delay in lodging/filing FIR *(contd.)*

The prosecutrix, a coolie, was gang raped while on her way back from a movie at about 10.00 p.m. on 20-11-1994. Her brother, *P* who was slapped, ran for help and when he returned with other villagers, found her sister lying unconscious and naked. FIR was lodged at about 7.00 p.m. on 21-11-1994 after the victim regained her consciousness. The conviction of six accused persons under Section 376(2)(*g*) IPC was upheld by the High Court.

Allowing the appeal of Accused 4 to 6 and dismissing the appeal of Accused 1 to 3,

Held:

The prosecution case should not be thrown out only on the ground of delay in lodging the FIR. Some delay has occurred in the lodging of the FIR but keeping in view the trauma suffered by the victim, her statement that she had regained her composure only in the evening cannot be disbelieved particularly in view of the evidence of PW 8. The fact that she was found lying naked at the place of occurrence in an unconscious state, stands proved not only by PW 7 but also by PW 8. The evidence of PW 8 remains uncontroverted. Prosecution case and the factor of delay should also be considered with regard to the sociological backgrounds from which PW 6 and PW 7 and other witnesses hail. (Paras 20, 19 and 14). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

[9312] — S. 376(2)(g) — FIR — Gang rape by entering into victims' house at night — Victims taking shelter in another's house after the rape and lodging FIR next morning — *Delay in lodging FIR, held on facts, satisfactorily explained. Pramod Mahto* v. *State of Bihar*, 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206: AIR 1989 SC 1475: 1989 Cri LJ 1479.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 21-4-1989]

[9313] — Ss. 376(2)(g) and 506 Pt. II — Gang rape — Delay in lodging the FIR — Absence of Test identification parade — Identification of the accused persons by the prosecutrix in court — Conviction — Legality of — *Gang rape committed by the three appellants on a school teacher in broad daylight — Medical evidence supporting the prosecution case to some extent — Prosecutrix had abundant opportunity to notice the features of the accused persons — Further, on account of traumatic and tragic experience of the prosecutrix, the faces of the appellants must have got imprinted in her memory — Hence the chance of mistaken identity was remote — Evidence of prosecutrix found to be implicitly reliable — In such circumstances, held on facts, the identification of the appellants by the prosecutrix in court did not require further corroboration — The delay of about 10 days in lodging the FIR was fully explained and strongly supported by circumstantial evidence and, therefore, did not affect the prosecution case adversely — Hence, conviction of appellants by the courts below upheld*

The courts below have carefully considered the evidence on record and have come to the conclusion that the delay, if any, in lodging the first information report was fully explained by the prosecutrix and was strongly supported by the circumstantial evidence on record. The prosecutrix was living all alone and was an unmarried person, about 28 years of age. She did not have any family member to whom she could have narrated her story immediately after the occurrence on 4-3-1992. Moreover, the sense of shame coupled with the fear on account of threats given out by the appellants must have deterred her from immediately reporting about the occurrence to others. The prosecutrix narrated the incident to the Deputy Director of Education on 6-3-1992. Later she narrated the incident to one of her colleagues whom she found to be sympathetic towards her and thereafter when her cause was taken up by the Teachers' Association, she could muster courage to lodge a report with the Superintendent of Police. Thus in the facts and circumstances of the case, the mere delay in lodging of the first information report does not discredit the prosecution case. (Para 5)

The courts below have also examined the medical evidence on record and have observed that the medical evidence, to some extent, supported the case of the prosecution that the prosecutrix may have been subjected to forcible sexual intercourse within a week or two of her medical examination. The medical evidence also indicated that the prosecutrix was not habituated to sexual intercourse. (Para 5)

The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court. (Paras 7 and 10)

But failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The identification parades belong to the stage of investigation, and there is no provision in the CrPC which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. These parades do not constitute substantive evidence. The substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (Paras 7 and 16)

In the instant case, the crime was perpetrated in broad daylight. The prosecutrix had sufficient opportunity to observe the features of the appellants who raped her one after the other. Before the rape was committed, she was threatened and intimidated by the appellants. After the rape was committed, she was again threatened and intimidated by them. All this must have taken time. This is not a case where the identifying witness had only a fleeting glimpse of the appellants on a dark night. She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features. In fact on account of her traumatic and tragic experience the faces of the appellants must have got imprinted in her memory, and there was no chance of her making a mistake about their identity. The prosecutrix appears to be a witness on whom implicit reliance can be placed and there is no reason why she should falsely identify the appellants as the perpetrators of the crime if they had not actually committed the offence. In these circumstances if the courts below have concurrently held that the identification of the appellants by the prosecutrix in court does not require further corroboration, there is no reason to interfere with the finding recorded by the courts below after an appreciation of the evidence on record. (Para 16). *Malkhansingh* v. *State of M.P.*, (2003) 5 SCC 746: 2003 SCC (Cri) 1247: AIR 2003 SC 2669: 2003 Cri LJ 3535.

Bench Strength **3**. Coram: *N. Santosh Hegde*, *Ashok Bhan* and **B.P. Singh**, JJ. [Date of decision: 8-7-2003]

Kanta Prashad v. Delhi Admn., AIR 1958 SC 350: 1958 Cri LJ 698; Vaikuntam Chandrappa v. State of A.P., AIR 1960 SC 1340: 1960 Cri LJ 1681; Budhsen v. State of U.P., (1970) 2 SCC 128: 1970 SCC (Cri) 343; Rameshwar Singh v. State of J&K, (1971) 2 SCC 715: 1971 SCC (Cri) 638; Jadunath Singh v. State of U.P., (1970) 3 SCC 518: 1971 SCC (Cri) 124; Parkash Chand Sogani v. State of Rajasthan, Crl. A. No. 92 of 1956 decided on 15-1-1957 (SC); Harbajan Singh v. State of J&K, (1975) 4 SCC 480: 1975 SCC (Cri) 545; Ram Nath Mahto v. State of Bihar, (1996) 8 SCC 630: 1996 SCC (Cri) 726; Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60; State of U.P. v. Boota Singh, (1979) 1 SCC 31: 1979 SCC (Cri) 115; Ramanbhai Naranbhai v. State of Gujarat, (2000) 1 SCC 358: 2000 SCC (Cri) 113, relied on

[9314] — S. 376 r/w S. 34 — Rape — Delay in lodging FIR, explained — Hence held, not fatal — *CrPC, 1973, S. 154*

Mere delay in lodging the FIR is really of no consequence, if the reason is explained. In the instant rape case, the evidence of PW 3, the victim and that of her husband, PW 4, clearly shows that there was initial reluctance to report the matter to the police by PW 4. He, in fact, had taken his wife to task for the incident and had slapped her. (Para 5). *Sri Narayan Saha* v. *State of Tripura*, (2004) 7 SCC 775.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 8-9-2004]

16. Identification

See in detail under CRIMINAL TRIAL in Vol. 19, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[9315] — Ss. 375 and 376 — Rape — Appreciation of evidence — Identification of accused — Appellant-accused not named in FIR — *Hence, submission that he had been falsely implicated — He not known to victim personally — Held, in such circumstances there was no question of naming him in FIR — However, prosecutrix categorically stating that she was raped by the truck driver and correctly identifying him in TI parade — Impugned judgment convicting appellant accused calls for no interference — Evidence Act, 1872, S. 9* (Paras 2 and 15). *Mohan Chand* v. *State of Uttarakhand*, (2009) 4 SCC 63: (2009) 2 SCC (Cri) 67: AIR 2009 SC 1896: (2009) 3 All LJ 240: 2009 Cri LJ 1755.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 23-1-2009]

[9316] — S. 376 — Child rape — Rape of a 10-year-old girl at night — Accused-respondent's case was that he was misidentified for the rapist — *Respondent was known to the victim as he was residing in the vicinity of victim's house — Victim had identified the respondent to PW 3, a neighbour who had rushed to the scene hearing a commotion as well as to her mother when she returned home next day — PW 3 deposed that he had seen the respondent running away from the victim's house — Held, merely because the victim had said in cross-examination that she could recognise the voice of respondent when he had uttered some words to her does not mean that she had identified the accused only by his voice at night — Further, merely because PW 3 had not caught hold of the respondent while respondent was running away, his testimony cannot be disbelieved — Furthermore, investigating officer's failure to subject the respondent to medical examination would not be fatal to the prosecution case — Hence trial court was justified in convicting the respondent under S. 376*

In the facts and circumstances of the case there is no scope for doubt that the victim had identified the respondent as the rapist. The mere fact that she had said in cross-examination that the rapist had uttered some words to her and she could realise that it was the voice of the rapist himself, is not enough for the Court to ignore the other broad aspects regarding the evidence of identity of the rapist. Moreover, PW 3 had said in court that when he rushed to the house after hearing the commotion he saw the respondent running away from the house. There can be no possibility of doubt that PW 3 would have correctly identified the person who ran away. Even the defence did not dispute the competence of PW 3 to identify the accused if the version of PW 3 can be accepted as correct. (Paras 5 and 6)

The High Court did not place any reliance on the testimony of PW 3 on the fragile reasoning that PW 3 did not venture to catch the rapist. If PW 3 would have caught hold of the rapist, it was well and good. But if he had not done so, that cannot be regarded as a reason to doubt the truth of the testimony of PW 3. At the time when PW 3 saw the accused running away he had no reason to think that the said person had ravished the little girl inside the house and was in the process of escaping. Perhaps, PW 3 did not think why the respondent was running at that stage. Even that apart, PW 3 had to take a decision on the spur of the moment as to the wisdom of catching hold of such a person. If he had failed to take a right decision in a split second it is not a good ground for a court of law to jettison the testimony of such a witness. (Para 7)

Though the investigating officer did not subject the respondent to medical examination, but the worst against the prosecution and the best for the respondent in such a situation is that the respondent did not have any injury on his person. However, the counsel for the respondent was not able to satisfy the court that a person of the respondent's age and health would necessarily have sustained some injury if he had committed rape on a girl like PW 1. Therefore, it is not necessary to go into the question of absence of injury on the person of the respondent. (Para 10)

Thus the High Court has seriously erred in interfering with a well-merited conviction passed by the trial court on the respondent. (Para 11). *State of U.P.* v. *Munnoo Lal*, (2001) 10 SCC 79.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 18-1-2001]

[9317] — S. 376 — Identification of rapist — Rape victim allegedly identifying the accused twice before Army Officers prior to T.I. parade — *But such Army Officers not examined in the court — Held, no credence can be given to the identification allegedly made before the T.I. parade — Evidence Act, 1872* — S. 9. *Prahlad Singh* v. *State of M.P.*, (1997) 8 SCC 515: AIR 1997 SC 3442: 1997 Cri LJ 4078.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 13-8-1997]

[9318] — Ss. 376 and 304 Pt. II — Rape and murder — Identification of the accused at night — *According to eyewitness, he had seen the occurrence by flashing torchlight — Failure on the part of the investigating agency to seize the torchlight, held, not fatal to the prosecution case* (Para 20). *State of Orissa* v. *Dibakar Naik*, (2002) 5 SCC 323: 2002 SCC (Cri) 1128: AIR 2002 SC 2148: 2002 Cri LJ 2826.

Bench Strength **2**. Coram: **R.P. Sethi** and *Doraiswamy Raju*, JJ. [Date of decision: 23-4-2002]

Balo Yadav v. State of Bihar, (1997) 5 SCC 360: 1997 SCC (Cri) 701, relied on

[9319] — Ss. 376, 457 and 380 — Non-holding of Test identification parade — Rape case — Identification for the first time in court after 2 years of the incident — *Held, holding of Test identification parade may not be necessary in every case, but that depends on the facts and circumstances of each case — Rape committed at night in a room where there was no light — Held, even if it was accepted that the prosecutrix had a fleeting glimpse of the* *accused-appellants when they lighted the torch in her room, in the absence of any other evidence to show that the prosecutrix had occasion to see the appellants earlier, or to know them, it was incumbent on the prosecution to hold a Test identification parade — Failure to do so, held, fatal to the prosecution case — Evidence Act, 1872 — S. 9*

Though the appellants were arrested within a few days of the incident, they were never put up for identification in a test identification parade. While it is true that in every case the holding of a test identification parade may not be necessary, but that depends on the facts and circumstances of each case. (Para 20)

In the instant case the prosecutrix had not said in the course of her deposition that she had personally known all the appellants by name or otherwise. She also does not claim that she had other reasons to know them as to be able to identify them. In her first information report, she had stated that some unknown persons were knocking at her door, but she identified the appellants in court after about two years of the incident. (Para 20)

In the facts and circumstances of the case, even if it is accepted that the prosecutrix had a fleeting glimpse of the appellants when they lighted the torch in her room, in the absence of any other evidence to show that the prosecutrix had occasion to see the appellants earlier, or to know them, it was incumbent on the prosecution to hold a test identification parade. This is not a case where an occurrence took place in broad daylight and the prosecutrix had ample opportunity of noticing the features of the appellants. (Para 21). *Devinder Singh* v. *State of H.P.*, (2003) 11 SCC 488: 2004 SCC (Cri) 185: AIR 2003 SC 3365.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 17-9-2003]

[9320] — Ss. 376, 457 and 380 — Rape — Occurrence at night — Identification in torchlight — Prosecution version in respect of, if on facts reliable — *Prosecutrix alleged to have been raped in a room where there was no light — Further alleged that she identified the accused persons when they took out a torch from her almirah and lighted the same in the room to see each other's face — Prosecution story about prosecutrix having an opportunity to identify the accused-appellants, held on facts, doubtful*

The story narrated by the prosecutrix about her having an opportunity to identify the appellants is very unconvincing. In the first information report she stated that after the appellants entered the room they asked her to switch on the light but when she said there was no light, they lighted a matchstick and took out a torch from her almirah, put cells in it and then lighted the same and started seeing each other. This gave her an opportunity to identify them by face. Thereafter they switched off the torch. In her deposition also she has deposed to the same effect, except that lighting of the matchstick and torch took place after she was raped by them, and just before they departed. The story appears to be highly improbable and unworthy of belief. In the first instance it is difficult to believe that the appellants knew that the prosecutrix had kept a torch in her almirah. Moreover, after discovering the torch they also found cells to be put into the torch and thereafter they switched on the torch. The lighting of the torch and flashing it on the faces of the appellant was, as if only to give an opportunity to the prosecutrix to see their faces. Thereafter the torch was switched off. (Para 20). *Devinder Singh* v. *State of H.P.*, (2003) 11 SCC 488: 2004 SCC (Cri) 185: AIR 2003 SC 3365.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 17-9-2003]

[9321] — S. 376(2)(g) — Gang rape — Identification of the accused for the first time in court — Non-holding of TI parade, on facts, was not fatal — Non-holding of TI parade — When not fatal — Rape case — *Prosecutrix (PW 1) saw the accused-appellants on three occasions almost immediately prior to the commission of offence and also when they committed sexual assault on her — On hearing cries of PW 1, her father and brother came to the spot and saw the appellants running away — Brother identifying them by their description — Appellants, when chased and caught by the father, confessed their guilt but refused to come with him — Later when arrested, appellants shown to PW 1 by IO in order to ensure that correct persons were arrested — That apart, appellants named in FIR — Held, TI parade was not necessary in the instant case — Non-holding of it, on facts, did not vitiate the trial — Evidence Act, 1872, S. 9*

Non-holding of TI parade would not by itself disprove the prosecution case. To what extent and if at all the same would adversely affect the prosecution case, would depend upon the facts and circumstances of each case. (Para 9)

In the facts of this case, holding of TI parade was wholly unnecessary. PW 1 (prosecutrix) disclosed enough materials to show that she had occasion to see the accused persons at least on three occasions almost immediately prior to the commission of offence and also when the accused-appellants forcibly committed sexual assault on her. PW 1 gave sufficient particulars of the persons committing the offence of criminal assault on her. They had been identified by their description by her brother. The appellants were chased and they were caught and allegedly they had made a confession of their guilt. (Paras 10, 5 and 14)

The appellants were arrested on 6-11-1993 (six days after the incident) and according to the investigating officer they were shown to the prosecutrix to ensure that they have arrested the correct persons and in that view of the matter it was impracticable to hold a test identification parade. (Para 7)

That apart, the names of the appellants have been mentioned in the first information report. (Para 14)

Thus, in view of the peculiar facts and circumstances of this case, it is held that non-holding of a test identification parade cannot be said to have vitiated the trial. (Para 7). *Dastagir Sab* v. *State of Karnataka*, (2004) 3 SCC 106: 2004 SCC (Cri) 678: (2004) 3 Mah LJ 694: (2004) 3 MPLJ 154.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **S.B. Sinha**, JJ. [Date of decision: 22-1-2004]

State of H.P. v. Lekh Raj, (2000) 1 SCC 247: 2000 SCC (Cri) 147; Malkhansingh v. State of M.P., (2003) 5 SCC 746: 2003 SCC (Cri) 1247; Ashfaq v. State (Govt. of NCT of Delhi), (2004) 3 SCC 116: (2003) 10 Scale 732, followed

Dana Yadav v. State of Bihar, (2002) 7 SCC 295: 2002 SCC (Cri) 1698, relied on

[9322] — S. 376(2)(g) — Requirement of TI Parade in the absence of other evidence to identify the accused — *Accused 4 to 6 had been arrested on the basis of statements by co-accused — Neither TI parade nor any other basis laid for establishing involvement of Accused 4 to 6 — Prosecutrix could identify only Accused 1 to 3 in the court although Accused 4 was named by her in FIR — However, Accused 5 and 6 were not named in FIR also — Conviction of Accused 4 to 6 (without TI parade or any identification in the court) solely on the statements made by co-accused, held, was wrong — Evidence Act, 1872, S. 9*

The prosecutrix, a coolie, was gang raped while on her way back from a movie at about 10.00 p.m. on 20-11-1994. Her brother, *P* who was slapped, ran for help and when he returned with other villagers, found his sister lying unconscious and naked. FIR was lodged at about 7.00 p.m. on 21-11-1994 after the victim regained her consciousness. The conviction of six accused persons under Section 376(2)(*g*) IPC was upheld by the High Court.

Allowing the appeal of Accused 4 to 6 and dismissing the appeal of Accused 1 to 3,

Held:

In the absence of any test identification parade having been held or they having been identified in court, Accused 4 to 6 cannot be held guilty of commission of the offence. Before the learned trial Judge, the victim did not identify all the accused. She identified Accused 1, 2 and 3. The names of Accused 5 and 6 were not mentioned by her at all. They had been arrested on the basis of the statements made by their co-accused. (Paras 18, 9 and 16). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

[9323] — Ss. 376(2)(g) and 323 — Identification, necessity of for person unknown to prosecutrix/complainant — Necessity of Test identification parade and exception — Explained — *Where the accused (Respondent 2 herein) was neither a person already known to the prosecutrix nor was specifically named in the FIR nor was subjected to test identification, putting him on trial for offence under Ss. 376(2)(g) and 323, held, was improper — Further held, identification of the accused for the first time at the trial is a weak evidence — Evidence Act, 1872 — S. 9*

The prosecutrix, a 55-year-old widow who was the mother of two grown-up children, was while coming back to her house after attending the marriage of a relation, criminally assaulted and subjected to forcible intercourse by the respondents. The first information report was submitted by her on the next day against the respondents. She was medically examined and her torn salwar was sent for chemical analysis. On medical examination various injuries were found on her person. The doctor was of the opinion that they reflected the signs of a struggle. The trial court convicted the accused persons under Sections 376(2)(*g*) and 323 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs 5000 each under Section 376 IPC and six months' rigorous imprisonment under Section 323 with a fine of Rs 500 each. The High Court reversed that decision. It acquitted Respondent 2 on the ground that his identity could not be established by the prosecution at the trial. It further held that the case against Respondent 1 was not proved beyond doubt as the medical evidence and the finding showed that no dead or alive spermatozoa was seen. Another circumstance which weighed with the High Court was that the sealing of the salwar was not properly established. Moreover, before the Supreme Court the respondent attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. One of such discrepancies was that the prosecutrix had stated the place of occurrence to be 20 feet away from the road while in the FIR the place of occurrence was mentioned as the road. Upholding the acquittal of Respondent 2 but setting aside the acquittal of Respondent 1 and restoring his conviction by the trial court,

Held :

During the investigation of a crime the police agency is required to hold identification parade for the purposes of enabling the witness to identify the person alleged to have committed the offence particularly when such person was not previously known to the witness or the informant. The absence of test identification may not be fatal if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement. Identification parade may also not be necessary in a case where the accused persons are arrested at the spot. The evidence of identifying the accused person at the trial for the first time is, from its very nature, inherently of a weak character. (Para 3)

Admittedly Respondent 2 was not known to the prosecutrix and his name was not specifically mentioned in the FIR. Admittedly no identification parade was held and the prosecutrix saw Respondent 2 only in the court after the day of occurrence. Though the holding of identification proceedings are not substantive evidence, yet they are used for corroboration purposes for believing that the person brought before the court was the real person involved in the commission of the crime. The identification parade even if held, cannot, in all cases, be considered as safe, sole and trustworthy evidence on which the conviction of the accused could be sustained. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant. (Para 3)

The holding of identification parade in the instant case would have been irrelevant, had the name of Respondent 2 been mentioned in the FIR Exhibit P/D. The identity of Respondent 2 was, admittedly, not established during the investigation and it is not clear as to how the said respondent was put on trial along with Respondent 1. Hence, Respondent 2 could not have been put on trial and held guilty. (Para 4) . *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

17. Investigation

Synopsis

(a)	Generally	**625**
(b)	Defective or illegal or delayed investigation	**626**
(c)	Tests which can be conducted on accused or prosecutrix	**627**

(a) Generally

[9324] — S. 376 — Exercise of discretion by Magistrate under Ss. 156(3) & 200 CrPC — If proper — Application under S. 156(3) CrPC, but, initiation of proceeding directly under S. 200 CrPC — Warrantedness — Scope of interference by High Court — *Application filed under S. 156(3) CrPC by R-3 (alleged rape victim), before appellant Judicial Magistrate, alleging rape by her father-in-law and praying that appellant direct police to register her complaint and investigate case against accused under S. 156(3) — Appellant, after calling for police report and considering all material filed by R-3 finding case unfit to be referred to police for investigation under S. 156(3), therefore, directed application to be registered as complaint and further ordered Registry to present file before her for recording statement of R-3 under S. 200 — However, High Court, while severely criticising appellant for such order, set aside the order and directed appellant to decide application of R-3 within ambit of her power under S. 156(3) and also directed her to pass an order for registration of FIR against erring police officers, who had refused to register FIR of R-3 — Sustainability — If on reading of complaint, Magistrate finds that allegations therein disclose cognizable offence and forwarding of complaint to police for investigation under S. 156(3) will not be conducive to justice, held, Magistrate will be justified in adopting the course suggested in S. 200 — Herein, judicial discretion exercised by appellant was in consonance with scheme postulated by CrPC — There was no material on record to indicate that judicial discretion exercised was either arbitrary or perverse — Hence, there was no occasion for High Court to interfere with discretion exercised judiciously in terms of provisions of CrPC merely because another view was possible — CrPC, 1973, Ss. 156(3), 200 and 482* (Paras 21 to 24). *Mona Panwar* v. *High Court of Judicature of Allahabad*, (2011) 3 SCC 496.

Bench Strength **2**. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 2-2-2011]

Gulab Chand Upadhyaya v. State of U.P., 2002 Cri LJ 2907 (All); Ram Babu Gupta v. State of U.P., (2001) 43 ACC 50; Chandrika Singh v. State of U.P., (2007) 50 ACC 777; Sukhwasi v. State of U.P., (2007) 59 ACC 739, approved

(b) Defective or illegal or delayed investigation

[9325] — S. 376 — Credibility of witness — Negligence of investigating agency — Whether a ground to discredit testimony of victim — *Blood-stained clothes allegedly handed over to officer-in-charge at police station by husband of rape victim not sent for chemical examination — Effect — Held, victim had no control over investigating agency and negligence, if any, of investigating officer could not affect credibility of statement of victim — On basis of evidence on record, conviction of appellant, held, sustainable* (Para 16). *Ram Singh* v. *State of H.P.*, (2010) 2 SCC 445.

Bench Strength **2**. Coram: *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision: 28-1-2010]

[9326] — S. 376 — Rape — Evidence and proof — Rape of a married woman, a labourer, by another labourer — *Failure of the prosecution to examine independent witnesses who could have corroborated the testimony of the prosecutrix — Recovery of semen-stained chaddi of the accused not proved — Presence of semen stains on the petticoat and in the vagina of the prosecutrix lending assurance to her accusation — Held, in the circumstances of the case, defective investigation by the police cannot be a ground for acquitting the accused — Mere delay in lodging FIR does not raise the inference that the complaint was false — Indian women are slow and hesitant to complain of such assault — Rape having been committed on a pile of sand, absence of injury on her person inconsequential*

The prosecutrix, a labourer, was working in a factory along with another labourer *C*. The appellant and his companion came to the factory premises and asked *C* to fetch tea and on his departure the appellant lifted her bodily and took her inside the machine room and committed rape. After the appellant had satisfied his lust and before his companion could take his turn the prosecutrix ran away and met *R*, a female co-labourer, and narrated to her the incident. Thereafter she searched for her husband, a rickshaw-puller, and lodged the FIR. The witnesses *C* and the female co-labourer were not examined by the prosecution. Recovery or seizure of chaddi of the accused which contained semen stains was also not proved. Both the courts below convicted the appellant.

Dismissing the special leave appeal

Held :

In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Any investigating officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the 'chaddi'. But the accused cannot be acquitted solely on that ground. (Para 5)

Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false. The possibility of tutoring is ruled out because the evidence does not show that her husband knew the appellant and his companion before the incident. (Para 7)

In the instant case the prosecutrix, a victim of the crime, had absolutely no reason whatsoever to falsely involve the appellant nor did her husband have any reason to do so or tutor his wife to involve the appellant. The prosecutrix is a poor labourer who was toiling to earn her livelihood to augment the family income. She was working in the factory since the last few days only and the appellant and his companion, taking advantage of the situation, drove away *C* by asking him to fetch tea and after he left the appellant violated her person. The finding of semen stains on the petticoat and in the vagina lend assurance to the story narrated by the prosecutrix. The submission that there was delay in lodging the complaint has to be stated to be rejected for the simple reason that immediately after the incident she had to go in search of her husband who was a rickshaw-puller, narrate to him the incident, go down to the police station and then lodge the complaint. She has explained the absence of injuries by stating that she was laid on minute sand which was lying on the floor and, therefore, there were no marks of injury. Therefore, taking an overall view of the matter it must be held that the courts below rightly placed reliance on the testimony of the prosecutrix and convicted the appellant. (Para 8). *Karnel Singh* v. *State of M.P.*, (1995) 5 SCC 518: 1995 SCC (Cri) 977: AIR 1995 SC 2472.

Bench Strength **2**. Coram: **A.M. Ahmadi**, **C.J.** and *S.C. Sen*, J. [Date of decision: 11-8-1995]

[9327] — S. 376 — Rape — Unsatisfactory investigation — Effect — *Held, defence cannot take advantage of a bad investigation where prosecution holds clinching evidence in support of itself* (Para 25). *Zindar Ali Sheikh* v. *State of W.B.*, (2009) 3 SCC 761: (2009) 2 SCC (Cri) 737: AIR 2009 SC 1467: 2009 Cri LJ 1324: (2009) 2 CHN 19 (SC): (2009) 1 ECrN 941 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 6-2-2009]

[9328] — S. 376 — Rape trial — Vaginal swabs and slides — Late deposit in malkhana — Whether on facts weakened prosecution case — Explanation if satisfactory — *Post-mortem examination of victim conducted on 25-1-1996 — Samples of vaginal swabs and slides deposited in malkhana after a gap of three days on 29-1-1996 — Post-mortem report handed over by hospital to police on 25-1-1996 itself along with dead body whereas samples handed over on 29-1-1996 — In the intervening period, there were three holidays from 26-1-1996 to 28-1-1996 — Held, delay in deposit of samples satisfactorily accounted for — No adverse inference could be drawn against prosecution due to intervening period of three days between preparation of samples and deposit in malkhana* (Para 56). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

(c) Tests which can be conducted on accused or prosecutrix

[9329] — Ss. 375 and 376 — Right to privacy — Basis, scope and extent — Privacy as an aspect of personal liberty — Mental privacy and physical privacy — Held, while physical privacy may be curtailed to some extent in reasonable exercise of police powers under CrPC, there is no corresponding provision for intruding upon a person's mental privacy — *A female who alleges to be victim of sexual offence cannot be subjected to polygraph test to ascertain whether she is making truthful allegation — Extracting testimonial responses by means of narcoanalysis, polygraph and BEAP tests, held, intrude upon a person's mental privacy and are therefore impermissible in law — Protection of mental privacy is available to accused as well as to victim of an offence — Evidence Act, 1872, Ss. 24 to 27 and 114-A — CrPC, 1973, S. 164-A — Laboratory Procedure Manual for Polygraph Examination, Para 3.4(v) — European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Art. 8 — Police and Criminal Evidence Act, 1984 (UK), S. 64(1-A)*

Medical test for ascertaining mental condition of a person is most likely to be in the nature of a psychiatric evaluation which usually includes testimonial responses. Subjecting a person to the impugned techniques (narco-analysis, lie-detector and BEAP tests) in an involuntary manner violates prescribed boundaries of privacy. Forcible interference with a person's mental processes is not provided for under any statute and it most certainly comes into conflict with right against self-incrimination. However, this determination does not account for circumstances where a person could be subjected to any of the impugned tests but not exposed to criminal charges and the possibility of conviction. In such cases, he/she could still face adverse consequences such as custodial abuse, surveillance, undue harassment and social stigma among others. In order to address such circumstances, it is important to examine some other dimensions of Article 21. (Paras 204 and 226)

There is possibility that victims of offences could be forcibly subjected to any of these techniques during the course of investigation. There is provision in *Laboratory Procedure Manual* for polygraph tests which contemplates the same for ascertaining the testimony of victims of sexual offences. Irrespective of the need to expedite investigations in such cases, no person who is a victim of an offence can be compelled to undergo any of the tests in question. Such a forcible administration would be an unjustified intrusion into mental privacy and could lead to further stigma for the victim. (Para 254). *Selvi* v. *State of Karnataka*, (2010) 7 SCC 263.

Bench Strength **3**. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision: 5-5-2010]

M.P. Sharma v. Satish Chandra, AIR 1954 SC 300: 1954 Cri LJ 865: 1954 SCR 1077; Kharak Singh v. State of U.P., AIR 1963 SC 1295: (1963) 2 Cri LJ 329; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Gobind v. State of M.P., (1975) 2 SCC 148: 1975 SCC (Cri) 468; R. Rajagopal v. State of T.N., (1994) 6 SCC 632; People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301; 'X' v. Hospital 'Z', (2003) 1 SCC 500; Attorney General's Reference (No. 3 of 1999), (2001) 2 AC 91: (2001) 2 WLR 56: (2001) 1 All ER 577 (HL), relied on

M. Vijaya v. Singareni Collieries Co. Ltd., AIR 2001 AP 502; R.(S) v. Chief Constable of the South Yorkshire Police, (2002) 1 WLR 3223: (2003) 1 All ER 148 (CA), approved

'X' v. Hospital 'Z', (1998) 8 SCC 296, held, partly overruled

94 Journal of Criminal Law and Criminology 243-293 (2004), relied on

18. Judge/Presiding Judge/Court — Role of in rape cases

[9330] — Ss. 375 and 376 — Rape trial — Responsibility of courts — *Observations made in Gurmit Singh (1996) 2 SCC 384, repeated that courts shoulder a great responsibility while considering a rape case — Such cases must be considered with utmost sensitivity — Courts should examine broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case* (Para 17). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9331] — S. 376 — Approach — Need of considering a self-respecting woman's state of mind, stressed

The trial Judge convicted A-1 and A-2 under Sections 376 and 506 Part II IPC for allegedly taking the two victim sisters in an auto and raping them after taking them in a wrong direction. The High Court by the impugned order dismissed the appeal against their conviction.

Dismissing the appeal,

Held :

In a case of rape, particularly if the victims are illiterate and uneducated, their statements have to be accepted in toto without further corroboration. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. (Paras 15 and 17). *Santhosh Moolya* v. *State of Karnataka*, (2010) 5 SCC 445.

Bench Strength **2**. Coram: **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 26-4-2010]

[9332] — S. 376 — Casting stigma on the character of a victim of rape deprecated — Trial judge not justified in characterising a rape victim as a girl of loose character — *Court must use self-restraint while recording such finding even if the girl is found to be habituated to sexual intercourse — Evidence Act, 1872, S. 155(4). State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

[9333] — S. 376 — Child rape — Sensitive approach of court needed — *Onerous responsibility lies on court to provide proper legal protection to the victims — Constitution of India, Art. 39*

Cases involving sexual molestation and assault require a different approach — a sensitive approach and not an approach which a court may adopt in dealing with a normal offence under penal laws. (Para 15)

Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. It is a crime against humanity. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. It is necessary for the courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in the Constitution of India in Article 39. *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

[9334] — S. 376 — Effect of unmerited acquittals on society considered — *It leads to more attacks on women and demand for harsher sentence*

An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittals recorded by criminal courts which gives rise to the demand for death sentence to the rapists. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women. (Para 9). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9335] — S. 376 — Exercise of discretion by Magistrate under Ss. 156(3) & 200 CrPC — If proper — Application under S. 156(3) CrPC, but, initiation of proceeding directly under S. 200 CrPC — Warrantedness — Scope of interference by High Court — *Application filed under S. 156(3) CrPC by R-3 (alleged rape victim), before appellant Judicial Magistrate, alleging rape by her father-in-law and praying that appellant direct police to register her complaint and investigate case against accused under S. 156(3) — Appellant, after calling for police report and considering all material filed by R-3 finding case unfit to be referred to police for investigation under S. 156(3), therefore, directed application to be registered as complaint and further ordered Registry to present file before her for recording statement of R-3 under S. 200 — However, High Court, while severely criticising appellant for such order, set aside the order and directed appellant to decide application of R-3 within ambit of her power under S. 156(3) and also directed her to pass an order for registration of FIR against erring police officers, who had refused to register FIR of R-3 — Sustainability — If on reading of complaint, Magistrate finds that allegations therein disclose cognizable offence and forwarding of complaint to police for investigation under S. 156(3) will not be conducive to justice, held, Magistrate will be justified in adopting the course suggested in S. 200 — Herein, judicial discretion exercised by appellant was in consonance with scheme postulated by CrPC — There was no material on record to indicate that judicial discretion exercised was either arbitrary or perverse — Hence, there was no occasion for High Court to interfere with discretion exercised judiciously in terms of provisions of CrPC merely because another view was possible — CrPC, 1973, Ss. 156(3), 200 and 482* (Paras 21 to 24). *Mona Panwar* v. *High Court of Judicature of Allahabad*, (2011) 3 SCC 496.

Bench Strength 2. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 2-2-2011]

Gulab Chand Upadhyaya v. State of U.P., 2002 Cri LJ 2907 (All); Ram Babu Gupta v. State of U.P., (2001) 43 ACC 50; Chandrika Singh v. State of U.P., (2007) 50 ACC 777; Sukhwasi v. State of U.P., (2007) 59 ACC 739, approved

[9336] — S. 376 — Offence of rape being a serious one court should pay careful attention and show greater sensitivity — Evidence should be appreciated on broader probabilities

In view of the evidence of the prosecutrix, which is corroborated by medical evidence and other items of evidence and in the absence of any consent on the part of the prosecutrix, it is clearly established that the accused had committed rape on the prosecutrix and is liable for the offence punishable under Section 376 IPC. The offence of rape being a serious one, the case should have received careful attention and the Sessions Judge and the High Court should have shown greater sensitivity to these type of cases. The evidence should have been appreciated on broader probabilities and they should not have been carried away by insignificant contradictions. (Para 16). *State of H.P.* v. *Mango Ram*, (2000) 7 SCC 224: 2000 SCC (Cri) 1331: AIR 2000 SC 2798.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **K.G. Balakrishnan**, JJ. [Date of decision: 24-8-2000]

[9337] — S. 376 — Rape — Courts should be strict and vigilant to protect the society from such evils — But it is equally important that there must be fairness to all sides — *Purpose of criminal law and duty of court while dealing with criminal cases, discussed*

It is true that the evidence of the prosecutrix in a rape case is to be given due weight. Sexual violence is a dehumanising act and it is an unlawful encroachment into the right to privacy and sanctity of a woman. The courts also should be strict and vigilant to protect society from such evils. It is in the interest of the society that serious crimes like rape should be effectively investigated. It is equally important that there must be fairness to all sides. In a criminal case, the court has to consider the triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family and the public. The purpose of criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. (Para 9). *Sudhansu Sekhar Sahoo* v. *State of Orissa*, (2002) 10 SCC 743: 2003 SCC (Cri) 1484: AIR 2003 SC 2136.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **K.G. Balakrishnan**, JJ. [Date of decision: 18-12-2002]

18. Judge/Presiding Judge/Court — Role of in rape cases *(contd.)*

[9338] — S. 376 — Rape cases — Proof in — *Duty of court to deal with such cases with utmost sensitivity — Minor contradictions or insignificant discrepancies in the statement of the witnesses should not be a ground for throwing out allegations of rape*

The courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection and it must be emphasised that the courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in the totality of the background of the entire case and not in isolation. *State of A.P.* v. *Gangula Satya Murthy*, (1997) 1 SCC 272: 1997 SCC (Cri) 325: AIR 1997 SC 1588: 1997 Cri LJ 774.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 19-11-1996]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9339] — S. 376 — Rape on child — *Unmerited acquittals, particularly in crimes against child encourage the criminals — Court must be sensitive while dealing with such cases. State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[9340] — S. 376 — Rape trial — Duty of court, while evaluating evidence of victim, outlined — Keeping of Indian society's belief and value systems in mind, while examining evidence of prosecutrix — Need by courts for, emphasised

The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Indian society is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix, the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind, as rape is the worst form of women's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. (Paras 26 to 28). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728, relied on.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

[9341] — Ss. 376 and 366 — Territorial jurisdiction — Kidnapping and rape forming part of same transaction — *Trial court continuing proceedings for kidnapping but dropping charge for rape, on ground of lack of territorial jurisdiction — Held, impermissible — CrPC, 1973, Ss. 228 and 220* (Para 4). *Parshotam Lal* v. *State of Punjab*, (2010) 1 SCC 65.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 6-10-2009]

[9342] — Ss. 376 and 511 — Bar on Court Martial's jurisdiction to try the offence of rape, held, not applicable to the offence of attempting to commit rape — *Provisions of Sch. I to CrPC in respect of Ss. 511 and 376 IPC could not be invoked to reach a different conclusion as the question of Court Martial's jurisdiction to try an offence has to be adjudged from the provisions of the Army Act itself and not with reference to CrPC — CrPC, 1973, S. 26(a)(ii) & (iii) and Sch. I — Army Act, 1950 — S. 70* (Para 2). *Madan Lal* v. *Union of India*, (2002) 10 SCC 185.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *N. Santosh Hegde*, JJ. [Date of decision: 21-9-1999]

State v. Jaikaran Singh, AIR 1955 NUC 1721 (All), overruled

19. Juvenile/Child accused

[9343] — S. 376 — Juvenile delinquents — Appropriate sentence when convicted for rape — *Background, social circumstances, etc. must be considered — Putting the child under parental control rather than in an approved school considered. Satto* v. *State of U.P.*, (1979) 2 SCC 628: 1979 SCC (Cri) 534: AIR 1979 SC 1519: 1979 Cri LJ 943: (1979) 16 ACC 264: 1979 ALJ 904.

Bench Strength **2**. Coram: **V.R. Krishna Iyer**[1] and **R.S. Pathak**[2], JJ. [Date of decision: 26-4-1979]

[9344] — Ss. 376 and 82, 83 — Juvenile delinquent — Need for reformatory approach in awarding punishment — *Accused aged 13 committing rape on child of 2 years — Sentence reduced to one year's rigorous imprisonment and a fine of Rs 2000 imposed — Fine if realised to be paid to victim's mother. Kakoo* v. *State of H.P.*, (1976) 2 SCC 215: 1976 SCC (Cri) 270: AIR 1976 SC 1991: 1976 Cri LJ 1545.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 27-2-1976]

[9345] — S. 376 r/w S. 511 — Sentencing of juvenile — *Appellant aged 16 years 5 months and 19 days on date of occurrence — Hence held, was a juvenile, and thus, could not be compelled to undergo sentence of RI as imposed by trial court and affirmed by High Court — Setting aside sentence, appellant directed to be produced before Juvenile Justice Board for passing appropriate sentence in consonance with 2000 Act — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(k), 2(l), 7-A, 20 and 64 (as amended by Act 33 of 2006 w.e.f. 22-8-2006)* (Paras 13 to 15). *Daya Nand* v. *State of Haryana*, (2011) 2 SCC 224.

Bench Strength **2**. Coram: **Aftab Alam** and *R.M. Lodha*, JJ. [Date of decision: 7-1-2011]

Hari Ram v. State of Rajasthan, (2009) 13 SCC 211: (2010) 1 SCC (Cri) 987; Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344: (2010) 2 SCC (Cri) 1274; Mohan Mali v. State of M.P., (2010) 6 SCC 669: (2010) 3 SCC (Cri) 208, followed

Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551: 2005 SCC (Cri) 742, held, distinguished/not applicable

20. Medical Jurisprudence/Evidence

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(a) Age of prosecutrix or accused

See also 'B.6. Rape of minor/Statutory rape', above

[9346] — Ss. 375 and 376 — Age — Parameters for determination of — Stated — *On facts, held, as rightly found by courts below prosecutrix was a minor at time of alleged occurrence* (Paras 27 to 30 and 38). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

Modi's Medical Jurisprudence and Toxicology, 23rd Edn., relied on

[9347] — Ss. 375, 376 and 366 — Rape — Age — Victim if minor on date of incident — Inference from date of marriage of parents and birth of siblings — *On facts, held, as per evidence of victim's parents, they got married only 20 years prior to the date of incident — Victim had two elder sisters M and S — Eldest M was born one-and-a-half years after marriage of her parents and S was one-and-a-half years younger to M — Victim was younger to S by about one-and-a-half years — Hence, on the date of incident, age of victim was less than 16 years — Being parents of victim, they were the most natural and reliable witnesses on this point — There was no reason to disbelieve them — Also, PW 2 (the doctor) examined victim radiologically (after about one-and-a-half years from abduction and rape) and opined that her age could be between 14 and 17½ years as on the date of examination — Hence, concurrent finding of victim being a minor, upheld* (Paras 5, 7, 11 and 12). *Fateh Chand* v. *State of Haryana*, (2009) 15 SCC 543: AIR 2009 SC 2729: (2009) 81 AIC 216 (SC): 2009 Cri LJ 3942.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 29-5-2009]

[9348] — Ss. 375, 376 and 366 — Rape — Age of prosecutrix — Determination of — *Materials to be relied on — Date of birth as recorded in the birth register of the Municipal Corporation and the register of the hospital where the prosecutrix was born, was 29-11-1964 (in which case the prosecutrix was below sixteen years of age on the date the offence was committed), while the date of birth recorded in the school-leaving certificate was 29-6-1963 (in which case she was above sixteen years on the date the offence was committed) — Submission by accused that since these certificates were capable of two opinions, the one in his favour should be accepted, and since the sexual intercourse was consensual, unless it is established that the prosecutrix was below 16 years of age, he was not liable to be punished in view of definition of "rape" under S. 375 clause sixthly — Held, this submission deserves outright rejection — Date of birth of prosecutrix is no more in controversy in view of the concurrent findings of the trial court and the High Court that it was 29-11-1964, and evidence of her parents which*

20.(a) Age of prosecutrix or accused *(contd.)*

is corroborated by contemporaneous documents produced by the prosecution — In case of determination of birth date, the best evidence is that of parents — Normally, the age recorded in the school certificate is considered to be the correct determination of age, provided the parents furnish correct age of the ward at the time of admission and it is authenticated — But in the instant case, the school-leaving certificate relied on by the accused is not authentic and none had been examined to prove it — Besides, in the cross-examination her father had clarified that the date recorded in school-leaving certificate was incorrect — Very often parents furnish incorrect date of birth to school authorities to make up age in order to secure admission for their children — Moreover, medical opinion of the doctor who conducted ossification test that the prosecutrix was 18-19 years of age not binding as against the ocular evidence — The two unimpeachable documents produced by the prosecution (birth register of the Corporation and register of the hospital where prosecutrix was born), corroborated by statements of her parents in all material particulars, clearly establish that prosecutrix was born on 29-11-1964, and her consent, if any, was immaterial under clause sixthly of S. 375 (Paras 10, 11, 12, 17, 18, 20 and 22). *Vishnu* v. *State of Maharashtra*, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217: AIR 2006 SC 508: (2006) 37 AIC 310 (SC): 2006 Cri LJ 303.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 24-11-2005]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728, relied on

[9349] — S. 375 Sixthly — Rape — Whether prosecutrix was under 16 years of age at the time of the incident — Proof of age of prosecutrix — *School transfer certificate issued by Headmaster of the primary/secondary school produced in support after commencement of trial — Date of birth mentioned therein was as declared by prosecutrix's father but father in his evidence not stating anything about the age — No explanation forthcoming why investigating officer did not obtain the certificate in the course of investigation and why certificate was not produced by her father — Certificate was produced by a clerk in court* (**mujeeb**) *but he could not explain who applied for it and how he came in possession of it — An advocate's clerk also examined to prove the certificate but he too had no knowledge about its issuance nor had he seen it earlier and he had met the Headmaster about 10 or 15 years back — Thus evidence of these two witnesses did not throw any light on the authenticity and genuineness of the certificate — Original birth register was not before the court and the certificate had not come from proper custody — Held, the certificate must be excluded from consideration — On the other hand, assessment of medical officer being that age of the girl was 16-17 years, defence was entitled to rely on higher side of the age and as such the girl would be more than 16 years when the alleged offence had taken place* (Paras 7 to 11). *Deelip Singh* v. *State of Bihar*, (2005) 1 SCC 88: 2005 SCC (Cri) 253: AIR 2005 SC 203: (2005) 2 Mah LJ 147.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 3-11-2004]

[9350] — Ss. 375 Sixthly and 376 — Age of prosecutrix — Determination of — *Medical evidence based on various tests showing that the prosecutrix was of 18 to 20 years — Entry in school register made on the basis of information given by her parents showing her age to be below 16 years — Prosecutrix stating that her age could extend to 16 or 17 years also — Held, evidence regarding age doubtful and not very convincing. State of Karnataka* v. *Sureshbabu Puk Raj Porral*, (1994) 1 SCC 468: 1994 SCC (Cri) 435: AIR 1994 SC 966: 1994 Cri LJ 1216.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 8-10-1993]

[9351] — S. 376 — Age of girl — Proof of — *Court or jury should base its conclusions upon all the facts and circumstance disclosed by the physical features and the oral evidence available*

On the point of the age of the girl the only conclusive piece of evidence may be the birth certificate, but, unfortunately, in this country such a document is not ordinarily available. The court or jury has to base its conclusions upon all the facts and circumstances disclosed on examining all the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. *Sidheswar Ganguly* v. *State of W.B.*, AIR 1958 SC 143: 1958 SCR 749: 1958 Cri LJ 273, 276, 27.

Bench Strength **2**. Coram: **B.P. Sinha** and *J.L. Kapur*, JJ. [Date of decision: 24-10-1957]

[9352] — S. 376 — Age of prosecutrix — Determination of — Determined by a doctor — Adding of two years to — Rule regarding, if any — *Held, there is no such rule, much less an absolute one, that two years have to be added to age determined by a doctor — Herein, doctor, on basis of her x-ray as well as physical examination, opined that prosecutrix* *was of 17 years — Trial court, on consideration of entire evidence, recorded a categorical finding that prosecutrix was about 17½ years of age at time of occurrence — However, High Court conjectured that age of prosecutrix could be even 19 years, done by adding two years to age opined by doctor — Held, view of trial court regarding age of prosecutrix was right — High Court erred in observing as aforesaid. State of U.P.* v. *Chhotey Lal,* (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

State of Karnataka v. Bantara Sudhakara, (2008) 11 SCC 38: (2008) 3 SCC (Cri) 955, relied on

[9353] — S. 376 — Evidence as to age — Entries in school register — *Certified copies from school registers and statements of incumbent and her father regarding date of birth, held, amounted to evidence under Evidence Act — Entries in school registers made ante litem motam. Mohd. Ikram Hussain* v. *State of U.P.*, AIR 1964 SC 1625, 1631: (1964) 5 SCR 86: (1964) 2 Cri LJ 590: (1964) All Cri R 252.

Bench Strength **2**. Coram: **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 9-10-1963]

[9354] — S. 376 — Prosecutrix never subjected to sexual intercourse without her consent — *Age, on reconsideration of the evidence, held not proved to be below 16 years at the material time — Copy of school certificate from a private school not reliable — Medical evidence found contradictory — Prosecutrix herself wrote her age in the panchnama immediately after the occurrence as 19 years — Conviction set aside. Lalta Prasad* v. *State of M.P.*, (1979) 4 SCC 193: 1979 SCC (Cri) 954: AIR 1979 SC 1276: 1979 Cri LJ 867.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 11-1-1979]

[9355] — S. 376 — Rape — Age — When relevant — Determination of age — School certificate — Probative value — *Entry in primary school register not produced and proved — Not possible to ascertain who had given date of birth of prosecutrix as 13-2-1975 at time of initial admission — Prosecutrix cannot be held to be a major — Further held, if prosecution establishes that there was no consent, issue of majority becomes irrelevant* (Paras 26 to 29 and 20 to 25)

The entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case. (Para 28)

There is nothing on record to corroborate the date of birth of the prosecutrix recorded in the school register. It is not possible to ascertain as to who was the person who had given her date of birth as 13-2-1975 at the time of initial admission in the primary school. More so, it cannot be ascertained as who was the person who had recorded her date of birth in the primary school register. More so, the entry in respect of the date of birth of the prosecutrix in the primary school register has not been produced and proved before the trial court. Thus, in view of the above, it cannot be held with certainty that the prosecutrix was a major. Be that as it may, the issue of majority becomes irrelevant if the prosecution successfully establishes that it was not a consent case. (Para 29). *Satpal Singh* v. *State of Haryana*, (2010) 8 SCC 714: (2010) 3 SCC (Cri) 1081: (2010) 93 AIC 50 (SC): 2010 Cri LJ 4283.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-7-2010]

State of Bihar v. Radha Krishna Singh, (1983) 3 SCC 118; Ram Prasad Sharma v. State of Bihar, (1969) 2 SCC 359; Ram Murti v. State of Haryana, (1970) 3 SCC 21: 1970 SCC (Cri) 371; Dayaram v. Dawalatshah, (1971) 1 SCC 358; Harpal Singh v. State of H.P., (1981) 1 SCC 560: 1981 SCC (Cri) 208; Ravinder Singh Gorkhi v. State of U.P., (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632; Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133: (2009) 3 SCC (Cri) 266; Desh Raj v. Bodh Raj, (2008) 2 SCC 186; Ram Suresh Singh v. Prabhat Singh, (2009) 6 SCC 681: (2010) 2 SCC (Cri) 1194; Mohd. Ikram Hussain v. State of U.P., AIR 1964 SC 1625: (1964) 2 Cri LJ 590; Santenu Mitra v. State of W.B., (1998) 5 SCC 697: 1998 SCC (Cri) 1381; Durga Singh v. Tholu, AIR 1963 SC 361; Birad Mal Singhvi v. Anand Purohit, 1988 Supp SCC 604; Brij Mohan Singh v. Priya Brat Narain Sinha, AIR 1965 SC 282; Vishnu v. State of Maharashtra, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217, relied on

[9356] — S. 376 — Rape — Age of minor victim — Doctor on basis of x-rays of victim opining that age of victim appeared to be 13 years with a possible variation of 3 years — *Held, trial court rightly rejected contention of respondent alleging that therefore she was older than 13 years — No reasons could be found to disbelieve victim's evidence* (Para 14). *State of M.P.* v. *Balu*, (2005) 1 SCC 108: 2005 SCC (Cri) 270: AIR 2005 SC 222: 2005 Cri LJ 335: (2005) 25 AIC 369 (SC).

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 5-11-2004]

20.(a) Age of prosecutrix or accused *(contd.)*

[9357] — S. 376 — Rape — Age of prosecutrix — Determination of — Materials that may be relied upon — *In the present case, date of birth certificate of the prosecutrix produced and the person issuing the same examined — Relying on the decision in*Lekhram case, *(2006) 5 SCC 736, held, findings of trial court that victim girl was minor did not warrant interference — Evidence Act, 1872, Ss. 35 and 45* (Paras 11 and 13). *Arjun Singh* v. *State of H.P.*, (2009) 4 SCC 18: (2009) 2 SCC (Cri) 33: AIR 2009 SC 1568: (2009) 75 AIC 19 (SC): 2009 Cri LJ 1332.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-2-2009]

Vishnu v. State of Maharashtra, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217; State of Chhattisgarh v. Lekhram, (2006) 5 SCC 736: (2006) 3 SCC (Cri) 66; Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551, relied on

Halsbury's Statutes of England and Wales, 4th Edn., Vol. 12; Encyclopaedia of Crime and Justice, Vol. 4, p. 1356; Stephen's Criminal Law, 9th Edn., p. 262; 1 Hon. 6, 1a, 9 Edw. 4, 26 a (Hale PC 628), cited

[9358] — S. 376 — Rape — Age of prosecutrix — Proof — *Entry in school register showing date of birth of prosecutrix to be below 16 years of age at the time of the occurrence — Held, such entry admissible in evidence — It may not be conclusive but has evidentiary value — On facts, as the same was amply corroborated by oral testimony of Headmaster and a teacher of the school, and father of the prosecutrix, prosecution proved its case — Hence defence that accused had sexual intercourse with consent of prosecutrix was of no consequence — Trial court rightly convicted accused-respondent under S. 376*

The respondent was working in the house of the father of the prosecutrix. The prosecutrix was married in 1985. After performance of gauna ceremony she came back to her parents' place from her in-laws' house. The respondent was alleged to have induced her to leave the village along with him in the night intervening between February 25 and 26, 1986. A first information report was lodged. On demand of proof of age of the prosecutrix by the officer in-charge of the police station, the father of the prosecutrix filed a certificate as per school register. Before the trial court prosecution adduced evidence showing that as on 25-2-1986, the prosecutrix was a minor. The Headmaster of the Primary Govt. School stated on oath that while taking admission, her mother disclosed about the date of birth on the basis of which the same was recorded in the school register as 25-12-1970. The Assistant Teacher of the school proved that the entries in the school register relating to the date of birth of the prosecutrix had been written by him as certified by her mother. According to the father of the prosecutrix his eldest daughter was born in 1966 and the second daughter was born in 1968 and the prosecutrix was born on 25-12-1970. The prosecutrix admitted that she was the third child of her parents and two of her sisters are elder to her. The trial court found that the entry in the school register showing the date of birth of the prosecutrix to be 25-12-1970 was proved and as such on the date of occurrence she was a minor. The trial court proceeded on the basis that having regard to the age of the prosecutrix the stand of the defence that the accused had sexual intercourse with her with consent was of little importance. It opined that the respondent having not disputed that he had sexual intercourse with the prosecutrix, the charge of rape under Section 376 IPC was proved. However, taking a lenient view of the matter, the respondent was sentenced to undergo 3 years' rigorous imprisonment. In appeal, the High Court reversed the judgment of the trial court on the premise that entries made in a school register was not conclusive evidence as regards the date of birth of the prosecutrix. The sole question before the Supreme Court was whether the State brought enough materials to prove that the prosecutrix was a minor as on the date of the occurrence.

Allowing the State's appeal,

Held :

A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. It may be true that an entry in the school register is not conclusive but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence in this case as the same was recorded on the basis of the statement of the mother of the prosecutrix. (Paras 12 and 13)

Only because the father of the prosecutrix could not state about the date of birth of his other children, the same, by itself, would not mean that he had been deposing falsely. He, in answer to the queries made by the counsel for the parties, categorically stated about the year in which his other children were born. His statement in this behalf appears to be consistent and if the said statements were corroborative of the entries made in the register in the school, there was no reason as to why the High Court should have disbelieved the same. (Para 14)

The prosecutrix took admission in the year 1977. She was, therefore, about 6-7 years old at that time. She was admitted in Class I. Even by the village standard, she took admission in the school a bit late. She was married in the year 1985 when she was evidently a minor. She stayed in her in-laws' place for some time and after the "*gauna*" ceremony, she came back. The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. (Para 13)

It must, therefore, be held that the High Court committed a serious error in passing the impugned judgment. It cannot, therefore, be sustained. It is set aside accordingly. (Para 14). *State of Chhattisgarh* v. *Lekhram*, (2006) 5 SCC 736: (2006) 3 SCC (Cri) 66: AIR 2006 SC 1746: 2006 Cri LJ 2139.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[9359] — S. 376 — Rape — Age of prosecutrix — Proof — Rejection of documentary evidence produced by Headmaster of school (PW 16) by High Court — Consent — Examination of question of, in absence of any plea — Propriety — *A-1 and A-2 alleged to have raped PW 1 and PW 2 respectively when they had gone to collect their blouses from A-2 who was a tailor — Held, so far as the reasonings of the High Court are concerned, for rejecting the documentary evidence they border on absurdity — All types of surmises and conjectures have been arrived at — High Court discarded evidence of PW 16 on the ground that the date of birth may not have been recorded on the basis of any medical certificate or other documentary evidence — It further recorded a finding that the two certificates may not relate to the victims though it specifically recorded that there was no such challenge raised by the accused — High Court's conclusions in this regard are not only fallacious but contrary to the evidence — Additionally, merely because the doctor's evidence showed that the victims belong to the age group of 14 to 16, to conclude that two years' age has to be added to the upper age-limit was without any foundation — Moreover, High Court though accepting that there was sexual intercourse, rejecting the plea of false implication and examining the question of consent in spite of the fact that accused had not taken the stand that there was any consent — On the contrary, they pleaded that they were falsely implicated — Judgment of High Court unsustainable and set aside* (Paras 2, 3, 8, 11, 12 and 13). *State of Karnataka* v. *Bantara Sudhakara*, (2008) 11 SCC 38: (2008) 3 SCC (Cri) 955.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 18-7-2008]

State of H.P. v. Shree Kant Shekari, (2004) 8 SCC 153: 2005 SCC (Cri) 327, considered and relied on

[9360] — Ss. 376, 363 and 366 — Date of birth — Proof — Matters to be considered — *Respondent-accused alleged to have kidnapped the prosecutrix and also to have had sexual intercourse with her at various places he took her to — Her date of birth as recorded in official documents was 4-6-1976 and incident of kidnapping occurring on 21-4-1991 — As such she was aged 14 years 10 months and 17 days at the time of incident — Her father also stating that she was 14 years old — However, High Court acquitting the accused holding that there was consent and the girl was more than 16 years — It doing so by concluding that (i) medical evidence showed that the girl was aged above 14 years but below 16 years with an error margin of one year, and hence official documents were of no consequence; (ii) it rejecting the school records which were stated to be based on horoscope because horoscope was not produced; (iii) it discarding the documentary evidence even when the headmaster of school had deposed and produced the records on ground that entry in the school register was not in the handwriting of headmaster and he could not have deposed about the date of birth — Held, there was no basis for the High Court to conclude that the entry cannot be taken to be above suspicion — High Court abruptly concluded that normally for various reasons the guardians do understate the age of their children at the time of admission in the school without any material or basis for coming to such conclusion — High Court in the absence of any evidence to the contrary should not have come to hold that the date of birth of the prosecutrix was not established and the school leaving certificate and the school register are not conclusive — Moreover, no question was put to the victim in cross-examination about the date of birth — Further, there being no requirement that at the time of admission documents are to be produced as regards the age of the student finding of High Court that no document was produced at the time of admission and a horoscope was purportedly produced, erroneous — Practically, there was no analysis of the evidence on record and abrupt conclusions, mostly based on surmises, were arrived at — Hence, inevitable conclusion is that the judgment of the High Court is unsustainable, deserves to be set aside* (Paras 9 to 14). *State of Maharashtra* v. *Gajanan*, (2008) 8 SCC 38: (2008) 3 SCC (Cri) 418: 2008 Cri LJ 3549.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 9-7-2008]

20.(a) Age of prosecutrix or accused *(contd.)*

[9361] — Ss. 376, 363 and 366-A — Rape, kidnapping and procuration of minor girl — Age of minor — Benefit of doubt — When available — Prosecution failing to prove age of prosecutrix — *Prosecutrix found as being habitual to sex and her secondary sexual characteristics well developed (as per clinical report of PW 1) — Appellant-accused frequently visiting prosecutrix's house — Prosecutrix in love with appellant, never resisting being repeatedly deflowered by him — Allegation that prosecutrix under threat accompanied appellant on a bicycle to another village where she was raped by appellant and then brought back home — Non-performance of tests for proving age of prosecutrix prescribed by the doctor, held, is a serious flaw in prosecution version — In such circumstances, held, a close and careful examination of age of prosecutrix is imperative, which if not proved, accused is entitled to benefit of doubt, as in present case*

The appellant was convicted by the trial court under Sections 363, 366-A and 376 IPC. The appellant belonged to the same caste and gotra of the prosecutrix and he was visiting the house of the prosecutrix frequently. The finding of the High Court is that the prosecutrix fell in love with the appellant. The High Court also found that she did not ever resist her being repeatedly deflowered by the appellant.

The appellant submitted before the court that he was falsely implicated. No defence evidence was adduced on behalf of the appellant. Admittedly, no test identification parade was conducted in this case. The trial court on the basis of evidence on record came to the conclusion that the appellant kidnapped a minor girl and induced her to go to Village Kalka Madlya and committed rape on her and convicted the appellant. The High Court also found that the offences under Sections 363, 366-A and 376 IPC are proved against the appellant. The appellant aggrieved by the impugned judgment preferred this appeal on various grounds.

Allowing the appeal of the accused,

Held :

The short question in this appeal was as to whether the prosecutrix was a minor. It is clearly borne out from the evidence on record that the appellant belonged to the same caste and gotra of the prosecutrix and was a frequent visitor to the house of the prosecutrix. There was a love affair between them and the court also observed that she did not ever resist her being repeatedly deflowered by the appellant. (Paras 24 and 23)

PW 1, who had clinically examined the prosecutrix, found that her secondary sex characters were well developed. PW 1, after clinical examination of the prosecutrix, categorically observed that possibility cannot be ruled out that the prosecutrix was habitual to sex. In her report, PW 1 also stated that keeping in view the clinical examination, the possibility of rape cannot be ruled out. PW 2 made medico-legal examination of the appellant and found that he had the ability to perform sexual intercourse. In this background, close and careful determination of the age of the prosecutrix is imperative. (Paras 24, 7 and 23)

In a criminal case, the conviction of the appellant cannot be based on an approximate date which is not supported by any record. It would be quite unsafe to base conviction on an approximate date. PW 8, the father of the prosecutrix also could not give the correct date of birth of the prosecutrix. PW 8 stated that he was giving an approximate date without any basis or record. (Para 26)

The failure of getting the prosecutrix examined from the dental surgeon or the radiologist despite the fact that she was referred to them by PW 1 is a serious flaw in the prosecution version. It is not a rule that all these tests must be performed in all cases, but in the instant case, in the absence of primary evidence, reports of the dental surgeon and the radiologist would have helped in arriving at the conclusion regarding the age of the prosecutrix. (Para 24)

The prosecution also failed to produce any admission form of the school which would have been primary evidence regarding the age of the prosecutrix. The school leaving certificate produced by the prosecution was also procured six days after the incident and three days after the arrest of the appellant. As per that certificate also, she joined the school in the middle of the session and left the school in the middle of the session. The attendance in the school of 100 days is also not reliable. The prosecutrix was admitted in the school by *A*, her brother. *A* was not examined. The alleged school leaving certificate on the basis of which the age was entered in the school was not produced. (Para 25)

On consideration of the totality of the facts and circumstances of this case, it would be unsafe to convict the appellant when there are so many infirmities, holes and lacunae in the prosecution version. The appellant is clearly entitled to the benefit of doubt and consequently the appeal filed by the appellant deserves to be allowed. The appellant is directed to be released forthwith, if not required in any case. (Para 27). *Sunil* v. *State of Haryana*, (2010) 1 SCC 742.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 4-12-2009]

Modi's Medical Jurisprudence, referred to

[9362] — Ss. 376 & 375 and 366 — Rape — Age of prosecutrix/victim — Medical evidence showing age of girl to be between 17 and 19 yrs — X-ray report giving approximate age to be between 17 and 18 yrs — *Transfer certificate of a government school showing age not having been duly proved by witnesses who signed it — Held, prosecution failed to prove that girl was a minor, at relevant date — There is no satisfactory evidence to indicate that she was a minor — Evidence Act, 1872, Ss. 45 and 35*

The prosecution has failed to prove that the girl was a minor, at the relevant date. The High Court without examining the factual and legal issues unnecessarily rushed to the conclusion that the girl was a minor at the time of the alleged abduction. There is no satisfactory evidence to indicate that she was a minor. (Paras 47 and 49)

The expert evidence does not rule out the possibility of the girl being a major. PW 13 who conducted the medical examination, opined that the age of the victim was between 17 to 19 years. He clearly stated that a medical examination would only point out the age approximately with a variation of two years. (Paras 47, 46 and 8)

PW 8, the x-ray expert (Radiologist) clearly stated that medical evidence can only fix the age approximately and this may vary *from individual to individual*. PW 8 gave the victim's age as above 17 years and below 18 years. (Paras 44, 45 and 8). *Alamelu* v. *State*, (2011) 2 SCC 385.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 18-1-2011]

Jaya Mala v. Govt. of J&K, (1982) 2 SCC 538: 1982 SCC (Cri) 502; Birad Mal Singhvi v. Anand Purohit, 1988 Supp SCC 604; Narbada Devi Gupta v. Birendra Kumar Jaiswal, (2003) 8 SCC 745; Ravinder Singh Gorkhi v. State of U.P., (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632, relied on

[9363] — Ss. 376 & 375 and 366 — Rape — Age of prosecutrix/victim — Transfer certificate of a government school — Evidentiary value, stated — *Evidence Act, 1872, S. 35*

The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. The Headmaster has not been examined at all. (Paras 47, 40 and 44)

The transfer certificate has been issued by a government school and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Evidence Act, 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. (Para 40). *Alamelu* v. *State*, (2011) 2 SCC 385.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 18-1-2011]

[9364] — Ss. 376 and 375 Sixthly — Age of prosecutrix — *Evidence regarding — Certificate of Radiologist, entry in admission register of the school in which she was student and certified copy of entry in birth register showing that she was of 15 years at the time of occurrence, adduced — Entry in the birth register, even in absence of officer/Chowkidar who recorded it, held, admissible under S. 35, Evidence Act as it was made by the concerned official in discharge of his official duties — That the prosecutrix was below 16 years at the time of occurrence, held on facts, established — Evidence Act, 1872, S. 35. Harpal Singh* v. *State of H.P.*, (1981) 1 SCC 560: 1981 SCC (Cri) 208: AIR 1981 SC 361: 1981 Cri LJ 1.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 14-11-1980]

[9365] — Ss. 376 and 506 — Rape — Minor — Age of victim — Proof — School records produced by prosecution — Two documents indicating the age of victim to be 14 years — *Held, High Court was not justified in ignoring the evidentiary value of the said documents merely because there was another document produced by the prosecution which did not relate to victim — Hence, on the date of occurrence (28-5-1993) and even when the FIR was lodged (20-11-1993), the victim was about 14 years of age — High Court erred in holding that her age was more than 16 years* (Para 14). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

(b) DNA test

See also under Criminal Trial in Vol. 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[9366] — Ss. 376 and 302 — Rape trial — DNA test — Expert opinion on DNA profiling — Held, court cannot substitute its own opinion for that of an expert, especially in case of complex subject like DNA profiling — *Further held, opinion of two experts from Centre for Cellular & Molecular Biology (CCMB), Hyderabad could not be rejected by trial court by relying on text books, particularly when questions raised by trial court were not put to experts during their deposition — DNA report must be accepted as scientifically accurate and an exact science — CrPC, 1973, Ss. 53-A and 53 — Evidence Act, 1872, Ss. 45 and 46*

20.(c) Injuries on prosecutrix or absence thereof

The court cannot substitute its own opinion for that of an expert, more particularly in a science such as DNA profiling which is a recent development. Dr. Lalji Singh in his examination-in-chief deposed that he had been involved with the DNA technology ever since the year 1974 and he had returned to India from the UK in 1987 and joined CCMB, Hyderabad and had developed indigenous methods and techniques for DNA fingerprinting which were now being used in this country. The expertise and experience of Dr. Lalji Singh in his field has been recognised by the Supreme Court in *Kamalanantha case*, (2005) 5 SCC 194. CW 1 Dr. G.V. Rao was a scientist of equal repute and he had in fact conducted the tests under the supervision of Dr. Lalji Singh. It was not even disputed before the Supreme Court during the course of arguments that these two scientists were persons of eminence and that the laboratory in question was also held in the highest esteem in India. (Paras 65 and 66)

The statements of Dr. Lalji Singh and Dr. G.V. Rao reveal that the samples had been tested as per the procedure developed by the laboratory, that the samples were sufficient for the purposes of comparison and that there was no possibility of the samples having been contaminated or tampered with. The two scientists gave very comprehensive statements supported by documents that DNA of the semen stains on the swabs and slides and the underwear of the deceased and the blood samples of the appellant was from a single source and that source was the appellant. (Para 67)

Not a single question was put to PW Dr. Lalji Singh as to the accuracy of the methodology or the procedure followed for DNA profiling. The trial court has referred to a large number of textbooks and has given adverse findings on the accuracy of the tests carried out in the present case. These conclusions cannot be accepted as the court has substituted its own opinion ignoring the complexity of the issue on a highly technical subject, more particularly as the questions raised by the trial court had not been put to the expert witnesses. It would be a dangerous doctrine to lay down that the report of an expert witness could be brushed aside by making reference to some text on that subject without such text being put to the expert. The court cannot usurp the function of an expert. (Para 68)

The trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. The DNA report must be accepted as scientifically accurate and an exact science. In arriving at its conclusions, the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the appellant had not been kept in proper custody and had been tampered with. The trial court was in error on this score. (Para 71). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

Bhagwan Das v. State of Rajasthan, AIR 1957 SC 589: 1957 Cri LJ 889; Gambhir v. State of Maharashtra, (1982) 2 SCC 351: 1982 SCC (Cri) 431; Kamti Devi v. Poshi Ram, (2001) 5 SCC 311: 2001 SCC (Cri) 892, relied on

(c) Injuries on prosecutrix or absence thereof

[9367] — S. 375 — Medical evidence — Rape — 10 or 12 years' old virgin girl with hymen intact having been subjected to rape — *Injuries are likely to be on the male organ of the culprit — Absence of any such injuries on the male organs of accused — Circumstance points to their innocence*

If a girl of 10 or 12 years who is a virgin and whose hymen is intact is subjected to rape by a fully developed man, there are likely to be injuries on the male organ of the man. No injury was, however, detected by the doctor on the male organs of any of the two accused. The absence of such injuries on the male organs of the accused would thus point to their innocence. *Rahim Beg* v. *State of U.P.*, (1972) 3 SCC 759: 1972 SCC (Cri) 827: AIR 1973 SC 343: 1972 Cri LJ 1260.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 20-4-1972]

[9368] — S. 375 — Rape — Absence of injury — Victim habituated to sexual intercourse — *High Court's acquittal of the accused based inter alia on the absence of injury on the prosecutrix, disapproved — Matter remanded to be heard afresh*

The medical evidence showed that she was habituated to sexual intercourse and there was no injury on her body. The High Court held the prosecution case highly doubtful and acquitted the accused. The trial court had noticed as to how even in the absence of any external injury an offence could have been committed after analysing the doctor's evidence. The High Court's judgment is practically unreasoned and its approach in dealing with the appeal is rather casual, disclosing non-application of mind. (Paras 8 to 10). *State of U.P.* v. *Pappu*, (2005) 3 SCC 594: 2005 SCC (Cri) 780: AIR 2005 SC 1248: 2005 Cri LJ 331.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-12-2004]

[9369] — Ss. 375 and 376 — Examination of accused — External marks on the body of accused — Age of victim and delay as factors — *Held, such marks need not be present when the victim was a girl of age of 5 years 6 months — Besides, nearly two days had already passed when medico-legal examination was conducted on the accused in the present case*

Examination of the accused revealed the following results:

"The general behaviour of the patient was normal. The mental condition was normal. Bath not taken for the last five days. Urine passed many times. Passing motion normally. No stains were found on the body of the patient, clothing and undergarments. No injury marks were present on genitals. No venereal disease was found. On examination of genitals, pubic hairs were present. Penis normal, prepuce retracted, frenum normal. Testicles were normal. There were following injuries present on his person: Multiple contusions, some of them were pattered on back, buttocks, posteromedial aspect of thigh. Reddish in colour."

The examining doctor also opined that there was nothing to suggest that the accused was not fit to perform sexual intercourse.

Held :

It is true that marks of external injury have not been found on the person of the accused but that by itself does not negate the prosecution case. *Modi* has opined that even in the case of a child victim being ravished by a grown-up person, it is not necessary that there should always be marks of injuries on the penis in such case. Further, it is to be noted that about two days had elapsed between the time of the incident and medical examination of the accused. Minor injuries, even if caused, might have healed up in the meantime. (Para 15). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

Modi's Medical Jurisprudence, 22nd Edn., pp. 502, 509, relied on

Gian Chand v. State of H.P., (1996) 2 Crimes 213 (HP), reversed

[9370] — Ss. 375 and 376 — Examination of victim — External marks on victim's body — Age of victim — *Held, such external marks need not be present on the body of a child who is incapable of offering any resistance*

Absence of external marks of violence on the body of the victim does not necessarily mean that rape did not take place. In case of children who are incapable of offering any resistance external marks of violence may not be found. (Para 15). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

Modi's Medical Jurisprudence, 22nd Edn., pp. 502, 509, relied on

Gian Chand v. State of H.P., (1996) 2 Crimes 213 (HP), reversed

[9371] — Ss. 375 and 376 — Genital examination — "Hymen torn; irregular edges" — *Suggestion made by the defence that such kind of wound could be caused by fall — Rejected on the facts of this case*

Medico-legal examination of the victim revealed the following results — "Local exam — No external injury; On retracting the labia — erythema seen; Hymen torn — irregular edges; Posterior vaginal wall tear about 0.5 cm in length; No blood clot seen; No evidence of healing, no pus seen — foul smell; Tenderness. No sperms were seen."

Held :

The suggestion made in the cross-examination of doctor who examined prosecutrix that injury of the nature found on her hymen, could be caused by a fall, does not lead anywhere. Firstly, no such suggestion was made to prosecutrix or her mother during cross-examination. Secondly, a girl or her mother would not implicate the accused in a rape case if the injury was otherwise caused by a fall. There is nothing to draw such an inference not even a suggestion, to be found on record. (Para 15). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

[9372] — Ss. 375 and 376 — Injuries on a rape victim — Relevance of, when victim, a grown up, aged about 20 to 23 years and mother of two children — *Victim did not suffer from any injury — Doctor opining that for commission of offence of rape, under the circumstances, proof of injury is not mandatory, held, acceptable*

The prosecutrix, a coolie, was gang raped while on her way back from a movie at about 10.00 p.m. on 20-11-1994. Her brother, *P* who was slapped, ran for help and when he returned with other villagers, found her sister lying unconscious and naked. FIR was lodged at about 7.00 p.m. on 21-11-1994 after the victim regained her consciousness.

20.(c) Injuries on prosecutrix or absence thereof *(contd.)*

The conviction of six accused persons under Section 376(2)(*g*) IPC was upheld by the High Court.

Allowing the appeal of Accused 4 to 6 and dismissing the appeal of Accused 1 to 3,

Held :

There may be some inconsistency with regard to recovery of the clothes or sending the same for chemical examination, but the findings are sufficient to prove the common intention on the part of Accused 1 to 3. The very fact that they came on cycles and dashed with the cycle of *P* (PW 7), would clearly show that they had a common intention to commit the offence. They not only gathered and obstructed her from proceeding towards her residence with her brother on the bicycle but also deliberately made her and her brother to fall down from the cycle. The prosecutrix was then physically removed to a secluded place and at least three of them took part in committing the offence of rape on her one by one. The evidence of PW 6 to the aforementioned extent is cogent and convincing and has been corroborated by PW 7 who not only is a witness to the events which took place immediately prior to the actual occurrence of rape but also a witness to the scene of occurrence where he found his sister lying naked in an unconscious state. Material objects were found to have semen stains. The accused were also tested as regards proof of potency and the doctors who examined them categorically came to the conclusion that they were not incapable of committing sexual intercourse. (Paras 24 and 23)

Indisputably, the prosecutrix did not suffer any injury. For the purpose of proving commission of the offence of rape, however, the same was not necessary as she was a grown-up girl aged between 20 to 23 years as opined by the doctor. She was, furthermore, mother of two children. (Para 14). *Viswanathan* v. *State*, (2008) 5 SCC 354: (2008) 2 SCC (Cri) 593: AIR 2008 SC 2222.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 29-4-2008]

[9373] — Ss. 375, 376 and 366 — Rape — Consent — Absence of injuries — Inference — Appreciation of evidence — *Victim suffering from throat pain — Appellant-accused, by misrepresenting victim to take her to doctor, instead took her to different places — After it grew dark, appellant took her to a lonely place and committed forcible sexual intercourse with her — Appellant contending that act committed with consent of victim — Tenability — Held, categorical, clear and unequivocal deposition of victim that appellant-accused committed forcible sexual intercourse with her — Circumstances pointed out by accused neither individually nor collectively leading to any plausible inference that sexual intercourse by him was done with victim's tacit consent — Circumstances pointed out by accused neither sufficient nor justify discarding of evidence of victim — Nothing on record creating any doubt/disbelief or suspicion about evidence of victim — Her allegation in cross-examination that accused had threatened her with a dagger not mentioned in FIR or in S. 161 CrPC statement does not render her evidence unreliable — Moreover, in such circumstances, victim not expected to put any resistance lest to endanger her life — Therefore, absence of injuries on person of victim does not lead to an inference that she consented for sexual intercourse with accused — Hence, no interference with the conviction called for*

It admits of no doubt that the accused had sexual intercourse with the prosecutrix on the date and place of occurrence. The core area of debate is whether such act was committed with the consent of the prosecutrix or not. (Para 9)

The prosecutrix in her deposition has been categorical, clear and unequivocal that the accused committed forcible sexual intercourse with her. It is true that in her cross-examination she stated that the accused had threatened her with a dagger before Jablu when she refused to go with him and this aspect was neither stated in her statement under Section 161 CrPC nor in the FIR but does this contradiction make her evidence unreliable. (Para 10)

The circumstances which have been pointed out by the accused neither individually nor collectively lead to any plausible inference that the sexual intercourse with the prosecutrix by the accused was done with her tacit consent and the circumstances pointed out are neither sufficient nor do they justify discarding the evidence of the prosecutrix. There is nothing on record that creates any doubt/disbelief or a suspicion about the evidence of the prosecutrix. In a case, such as this, where the prosecutrix was misrepresented by the accused that he would show her to his cousin (a doctor) as she was suffering from some throat pain and she accompanied him but the accused took her to other places and when it became dark, took her to a lonely place and committed sexual intercourse, the prosecutrix was not expected to put any resistance lest her life would have been in danger. In the facts and circumstances, the absence of injuries on the person of the prosecutrix does not lead to an inference that she consented for sexual intercourse with the accused. The young girl became victim of lust of the accused who was more than double her age and yielded to sexual intercourse against her will. (Paras 11 and 20)

The judgment of the High Court affirming the judgment of the trial court convicting the accused under Sections 366 and 376 IPC does not suffer from any legal flaw. The sentence awarded to the appellant does not call for any interference. The appeal having no merit must fail. (Para 21). *Rajinder* v. *State of H.P.*, (2009) 16 SCC 69: (2010) 2 SCC (Cri) 156: AIR 2009 SC 3022: 2009 Cri LJ 4133: (2009) 80 AIC 165 (SC).

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **R.M. Lodha**, JJ. [Date of decision: 7-7-2009]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, followed

Pratap Misra v. State of Orissa, (1977) 3 SCC 41: 1977 SCC (Cri) 447; Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92: (2007) 1 SCC (Cri) 161; Narayan v. State of Rajasthan, (2007) 6 SCC 465: (2007) 3 SCC (Cri) 198; Radhu v. State of M.P., (2007) 12 SCC 57: (2008) 2 SCC (Cri) 207, distinguished

[9374] — Ss. 375, 376 and 366 — Rape — Injuries on victim — Absence of — *Case of taking away victim fraudulently and subjecting her to rape by appellant-accused and forcing her to indulge in prostitution by coercion — On facts, held, issue of not having physical injury marks of any nature on the body of victim is irrelevant and not worth taking into consideration for the simple reason that accused had raped victim immediately after taking her away to J city — She was examined after one-and-a-half years from the date of abduction and rape — She had been forced to indulge in prostitution during this period — Therefore, victim had become habitual to sexual intercourse — In such a fact situation, question of having any physical injury marks would not arise* (Para 15). *Fateh Chand* v. *State of Haryana*, (2009) 15 SCC 543: AIR 2009 SC 2729: (2009) 81 AIC 216 (SC): 2009 Cri LJ 3942.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 29-5-2009]

[9375] — Ss. 375 & 376 and 417 — Rape — Consent — Inference regarding — Prosecutrix admitting absence of a major injury — Effect — Promise of marriage to secure consent before rape — Offence of cheating if made out — Corroboration of testimony of prosecutrix — *Offence committed on three/four different occasions — First forcibly, when prosecutrix declined to marry appellant-accused — Later, on appellant promising to marry prosecutrix — Report by prosecutrix to family members and police only after appellant refused to marry her — On refusal by police to lodge FIR, prosecutrix filing petition under S. 154(3) CrPC — Appellant convicted by trial court under Ss. 376 and 417 IPC — Held, no inference of consent of prosecutrix can be drawn — Consistent version of prosecutrix against accused was acceptable — Evidence of prosecution witnesses had also remained unchallenged — There was no suggestion as to any love affair between the two — Also no reason to falsely implicate appellant — Considering that medical examination of prosecutrix was held six months after the incident and medical officer had confirmed the sexual intercourse, absence of a major injury, held, lost its significance — Appellant's conviction upheld under S. 376 — However, further held, promise of marriage on which prosecutrix had succumbed, did not amount to cheating by itself — Conviction under S. 417, quashed* (Paras 12 to 14, 22, 23 and 26)

The evidence about the cheating is of slipshod nature and not believable. It is also self-effacing. After all, the first act of the sexual intercourse was without the consent and the accused had thereby committed rape. However, the version that he gave a marriage promise would really go against the prosecution whereby it would mean that the subsequent acts were done with the consent of the girl on account of the promise of marriage. But this can not be the approach. If the promise of marriage was given and the girl had succumbed on that account, this by itself may not amount to cheating. Besides this, the girl has very specifically stated that even subsequently she was ravished against her wishes. Therefore, the theory of promise of marriage and the consent for sexual intercourse will wither away. The accused is therefore acquitted of the offence under Section 417 IPC. (Para 26). *Zindar Ali Sheikh* v. *State of W.B.*, (2009) 3 SCC 761: (2009) 2 SCC (Cri) 737: AIR 2009 SC 1467: 2009 Cri LJ 1324: (2009) 2 CHN 19 (SC): (2009) 1 ECrN 941 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 6-2-2009]

[9376] — S. 376 — Absence of extensive injuries on person of the prosecutrix — *Version of prosecutrix cannot be described as false on that ground. State of Maharashtra* v. *Priya Sharan Maharaj*, (1997) 4 SCC 393: 1997 SCC (Cri) 584: AIR 1997 SC 2041: 1997 Cri LJ 2248.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 11-3-1997]

Modi: "Medical Jurisprudence and Toxicology", referred to

20.(c) Injuries on prosecutrix or absence thereof *(contd.)*

[9377] — S. 376 — Absence of injuries on the back of the prosecutrix — *Held, not fatal especially when the number of accused attacking her were four in number — Evidence Act, 1872, S. 114-A*

It cannot be said that whenever resistance is offered there must be some injury on the body of the victim. The appellants were four in number and the prosecutrix being a girl of 19/20 years of age, she was not expected to offer such resistance as would cause injuries to her body. It is also not correct to say that there was no injury at all. It has been earlier noticed that as per the medical report she had red abrasions on her right breast. In the circumstances the contention of the appellants is rejected. *Balwant Singh* v. *State of Punjab*, (1987) 2 SCC 27: 1987 SCC (Cri) 249: AIR 1987 SC 1080: 1987 Cri LJ 971.

Bench Strength **2**. Coram: *G.L. Oza* and **M.M. Dutt**, JJ. [Date of decision: 10-2-1987]

[9378] — S. 376 — Age — Determination of — Rape — Medical evidence — *On the basis of physical features, doctor opining that age of prosecutrix must be between 13 and 14 years — Senior Medical Officer (Dental) on examination taking the view that age of prosecutrix was about 13 years — Medical Officer-cum-Radiologist on X-ray examination stating that the probable age of prosecutrix must be within 14 to 16 years — Held, finding of the Sessions Court that prosecutrix was above the age of 16 years was based on faulty reasons and unsupported by evidence*

The verdict of not guilty had been entered by the Sessions Judge mainly based on two grounds that the prosecutrix was aged above sixteen years and if at all there was any sexual act, it must have been with her consent. Both these findings are erroneous and incorrect. (Para 11)

As regards the age of the prosecutrix the opinion of the doctors who had examined her was more strengthened by the family history which showed that she was born in the year 1979. Therefore, in all probability, the age of the prosecutrix at the time of the occurrence was about fourteen years. The certificate of the Medical Officer-cum-Radiologist also gives only the probable age of the prosecutrix. Therefore, the finding of the Sessions Judge that the prosecutrix was above the age of sixteen is based on faulty reasons and is unsupported by evidence. (Para 12). *State of H.P.* v. *Mango Ram*, (2000) 7 SCC 224: 2000 SCC (Cri) 1331: AIR 2000 SC 2798.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **K.G. Balakrishnan**, JJ. [Date of decision: 24-8-2000]

[9379] — S. 376 — Child rape — Appreciation of evidence — Medical evidence — *Doctor PW 11 after examining the prosecutrix externally referring her to Family Incharge Hospital where she was examined internally by a lady doctor — In the injury report, prepared in the handwriting of PW 11, reports of the lady doctor and the pathologist incorporated and PW 11 opining that possibility of doing intercourse cannot be ruled out — Held, though ideally the lady doctor could have been examined or her absence explained but that would not destroy the prosecution case, which otherwise stood proved*

The evidence of the doctor, PW 11 is clear and specific. He was the author of the report. Though ideally the lady doctor could have been examined or her absence explained but that does not destroy the prosecution case, which otherwise stands proved. The High Court was clearly in error in coming to the conclusion that in the absence of evidence of the lady doctor there was no support from any medical evidence. She had reported to PW 11, who categorically stated that in his opinion, on examination, something had been penetrated in the vagina of the prosecutrix and that intercourse was done with the girl i.e. the possibility of doing intercourse cannot be ruled out. For no valid reason the High Court discarded the evidence of the doctor. (Para 16). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

[9380] — S. 376 — Child rape — Rape on child of 8 years — Proof of — *Injuries on the prosecutrix not always essential to prove the charge of rape*

There is no force in the contention that if there was any forcible sexual intercourse, it would have resulted in some injuries upon the prosecutrix. Presence of injuries are not always a sine qua non to prove a charge of rape. It has to be kept in mind that the case under consideration is one of rape on a girl child aged eight years and not on a grown-up woman. (Para 18). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

Joseph v. State of Kerala, (2000) 5 SCC 197: 2000 SCC (Cri) 926, distinguished

[9381] — S. 376 — Consent — Inference of — *Absence of any marks of violence on the body of accused on examination after three days of the incident, held, not conclusive — The same, if any, would* *have been obliterated and not noticeable to the Medical Officer who examined him* (Para 13). *State of H.P.* v. *Mango Ram*, (2000) 7 SCC 224: 2000 SCC (Cri) 1331: AIR 2000 SC 2798.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **K.G. Balakrishnan**, JJ. [Date of decision: 24-8-2000]

[9382] — S. 376 — Doctors not finding injuries on prosecutrix due to one-and-half months delay in medical examination (duly explained) — *Locating injuries of sexual assault after said delay, held, is difficult. Santhosh Moolya* v. *State of Karnataka*, (2010) 5 SCC 445.

Bench Strength **2**. Coram: **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 26-4-2010]

[9383] — S. 376 — Finding by medical examination of torn hymen and bruise around it held, sufficient — *Absence of swelling, redness or inflammation not fatal. Mange* v. *State of Haryana*, (1979) 4 SCC 349: 1979 SCC (Cri) 985: AIR 1979 SC 1194: 1979 Cri LJ 939.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 17-1-1979]

[9384] — S. 376 — Injuries — Absence of — Inference — *Held, would merely suggest want of violent resistance on part of prosecutrix and not consensus — Prosecutrix was forcibly caught, threatened at knife-point and thereafter gang raped — Non-resistance because of fear in such circumstances not unnatural* (Paras 25, 26 and 46). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

Gurcharan Singh v. State of Haryana, (1972) 2 SCC 749: 1972 SCC (Cri) 793; Devinder Singh v. State of H.P., (2003) 11 SCC 488: 2004 SCC (Cri) 185, followed

[9385] — S. 376 — Medical proof of forcible and brutal rape — Microbiological examination — *Presence of spermatozoa, bloodstains in vaginal smear — Both hands of deceased were tied — Laceration of vaginal outlet on the posterior wall establishes and confirms violent sexual intercourse — Marks of injuries present on lips, chest, nostril, breast, elbow and wrist — Abrasions over the front of right shoulder and over the right side at the back of the neck of appellant indicated that the same could have been caused due to resistance and strengthens prosecution case of forced sexual intercourse with victim against her wishes — Held, apart from causing death of the victim, evidence also points to commission of rape of deceased by appellant* (Paras 42, 76 and 77). *B.A. Umesh* v. *State of Karnataka*, (2011) 3 SCC 85.

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 1-2-2011]

[9386] — S. 376 — No injuries on a married woman habituated to sex, reiterated, is not a ground to reverse conviction for rape if otherwise established

The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. (Para 22)

The discrepancies were negligible in nature and rightly rejected by the courts below. It was argued that the doctors PWs 7 and 8 did not notice any injury on the private parts of PWs 1 and 2. It is relevant to note that due to threat from A-1 and A-2, coupled with illiteracy and poverty, the two victims were not taken to the doctor immediately after the incident but they were taken after a month and 14 days. In such circumstances, as rightly observed by the trial court and the High Court, it is unlikely that any sign of sexual intercourse will be visible by examining the private parts of the victims. (Paras 20 and 21)

Added to it, PW 1 happens to be a married woman and having children which indicates that she is accustomed to sexual intercourse and in view of the same, it would be difficult to expect the doctor, who examined after quite sometime, to indicate the sign of sexual intercourse. (Para 22). *Santhosh Moolya* v. *State of Karnataka*, (2010) 5 SCC 445.

Bench Strength **2**. Coram: **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 26-4-2010]

[9387] — S. 376 — Rape — Absence of any injury on private parts of rape victim — Effect on prosecution case, if any — *Held, herein, PW 2 (doctor) found that victim (a married lady) was used to sexual intercourse, hence, absence of injury on her private parts, not significant* (Para 17). *Ram Singh* v. *State of H.P.*, (2010) 2 SCC 445.

Bench Strength **2**. Coram: *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision: 28-1-2010]

[9388] — S. 376 — Rape — Absence of injuries on rape victim — Effect on prosecution case, if any — *Held, much importance cannot be given to absence of injuries on prosecutrix, because it is not the inevitable rule that in absence of injuries, prosecution must necessarily fail to establish its case — Even in absence of any injuries on person of victim, held, with other evidence on record, prosecution is able to establish that offence was committed* (Para 15). *Ram Singh* v. *State of H.P.*, (2010) 2 SCC 445.

Bench Strength **2**. Coram: *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision: 28-1-2010]

20.(c) Injuries on prosecutrix or absence thereof *(contd.)*

[9389] — S. 376 — Rape — Age of minor victim — *Where evidence indicated some discrepancy as regards age of victim and ossification or other pathological test not carried out, finding of Sessions Court on the issue relying on the statement of the mother, not interfered with by Supreme Court — Evidence Act, 1872, S. 45* (Para 16). *Kamal Kishore* v. *State of H.P.*, (2000) 4 SCC 502: 2000 SCC (Cri) 833: AIR 2000 SC 1920: 2000 Cri LJ 2292.

Bench Strength **3**. Coram: **K.T. Thomas**, *Doraiswamy Raju* and *S.N. Variava*, JJ. [Date of decision: 25-4-2000]

[9390] — S. 376 — Rape — Appreciation of sole testimony of prosecutrix — If and when corroboration essential — Absence of injuries on private parts — Effect

Rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely assault — it is often destructive of the whole personality of the victim. The murderer destroys the physical body of his victim. Rapist degrades the very soul of the helpless female. (Para 1)

In the context of Indian culture, a woman — victim of sexual aggression — would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent. (Para 19). *Rajinder* v. *State of H.P.*, (2009) 16 SCC 69.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **R.M. Lodha**, JJ. [Date of decision: 7-7-2009]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Radhu v. State of M.P., (2007) 12 SCC 57: (2008) 2 SCC (Cri) 207; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, followed

[9391] — S. 376 — Rape — Injuries on prosecutrix — Absence of — When not sufficient to discredit her evidence — *Held, although PW 5 (doctor) did not find any injury on external or internal part of body of prosecutrix and opined that prosecutrix was habitual to sexual intercourse, that does not make testimony of prosecutrix unreliable — Herein, prosecutrix was recovered almost after three weeks and obviously signs of forcible intercourse would not persist for that long a period — It is wrong to assume that in all cases of intercourse with women against will or without consent, there would be some injury on external or internal parts of victim — Prosecutrix clearly deposed that she was not in a position to put up any struggle, as she was taken away from her village by two adult males wielding firearm — Absence of injuries on person of prosecutrix is not sufficient to discredit her evidence as she was a helpless victim — She did not and could not inform neighbours, where she was kept, due to fear* (Para 32). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

Prakash Singh v. Union of India, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417, relied on.

[9392] — S. 376 — Rape — Injuries on the prosecutrix — *Absence of injuries on a married woman habituated to sex and having two children, held, cannot rule out rape*

The mere fact that no injuries were found on the private parts of her body cannot be the ground to hold that she was not subjected to any sexual assault. It has to be noted that the victim is a married and grown-up lady and blessed with two children and in such circumstances the absence of injuries on her private parts is not of much significance. PW 8 doctor could not confirm rape because the victim was habituated to sexual intercourse. The entire prosecution story cannot be disbelieved based on that singular assertion. (Para 22). *Utpal Das* v. *State of W.B.*, (2010) 6 SCC 493.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *Aftab Alam*, JJ. [Date of decision: 7-5-2010]

[9393] — S. 376 — Rape — Irregular linear contusion on both the breasts of the prosecutrix being 3 to 4 in number, reddish in colour is suggestive of force being used on her while she was subjected to the sexual assault. *Narayanamma* v. *State of Karnataka*, (1994) 5 SCC 728: 1994 SCC (Cri) 1573.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-8-1994]

[9394] — S. 376 — Rape — Medical examination of victim — Absence of visible injury — Effect — *Victim examined by doctor after about 3 weeks — In such circumstances, held, the effect of the act on the physical form was practically obliterated — Hence, absence of visible injury, held, of no consequence* (Para 12). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, relied on

[9395] — S. 376 — Rape — Non-rupture of hymen or absence of injury on victim's private parts — *Held, does not belie her testimony as she nowhere stated that she bled per vagina and her statement remained virtually unchallenged in cross-examination — To constitute rape penetration, however slight, is sufficient — Prosecutrix subjected to sexual intercourse in a standing posture indicating absence of any injury on her private parts — Opinion of doctor that no rape was committed cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix — Besides such opinion was based on "no reasons" — On facts, corroboration of testimony of prosecutrix by medical evidence was not essential — In any case, her evidence was amply corroborated by her mother and father whom she immediately informed about the occurrence — Evidence Act, 1872, Ss. 45 and 8 Ill. (j). Ranjit Hazarika* v. *State of Assam*, (1998) 8 SCC 635: 1998 SCC (Cri) 1725.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *S.B. Majmudar*, JJ. [Date of decision: 28-2-1996]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, followed

[9396] — S. 376 — Rape — Proof — Medical evidence — State of hymen — Inference from — *Necessary considerations — Injuries on labia majora and elsewhere on the body of victim — Relevance of*

In examination of genital organs, state of hymen offers the most reliable clue. While examining the hymen certain anatomical characteristics should be remembered before assigning any significance to the findings. The shape and the texture of the hymen is variable. This variation sometimes permits penetration without injury. This is possible because of the peculiar shape of the orifice or increased elasticity. On the other hand, sometimes the hymen may be more firm, less elastic and gets stretched and lacerated earlier. Thus a relatively less forceful penetration may not give rise to injuries ordinarily possible with a forceful attempt. The anatomical feature with regard to hymen which merits consideration is its anatomical situation. Next to hymen in positive importance, but more than that in frequency, are the injuries on labia majora. These, viz. labia majora, are the first to be encountered by the male organ. They are subjected to blunt forceful blows, depending on the vigour and force used by the accused and counteracted by the victim. Further, examination of the female for marks of injuries elsewhere on the body forms a very important piece of evidence. (Para 7). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

[9397] — S. 376 — Rape — Proof — Presence of injury on the body of victim, held, is not a sine qua non to prove a charge of rape — *Incident took place on 31-10-1993 — Medical examination on 5-11-1993 — Medical opinion that any abrasion or marks of violence would be visible for twenty-four hours and thereafter the same may disappear — Rupture of hymen of PW 1 which took place about one year prior to the occurrence, held, explained as to why no visible injury was found on her private parts — Victim was made to lay on dried-up cotton plants at the place of occurrence — Hence, absence of any visible injury on her back, held, quite natural — Presence of semen on cloth of victim corroborated her evidence — Plea of false implication not acceptable as motive suggested by defence was imaginative — Prosecution case established — Conviction upheld* (Paras 16, 17, 22, 23, 25, 26, 29, 30 and 33)

Injury on the body of the person of the victim is not a sine qua non to prove a charge of rape. Absence of injury having regard to overwhelming ocular evidence cannot, thus, be the sole criterion for coming to a conclusion that no such offence had taken place. (Para 26). *Dastagir Sab* v. *State of Karnataka*, (2004) 3 SCC 106: 2004 SCC (Cri) 678: (2004) 3 Mah LJ 694: (2004) 3 MPLJ 154.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **S.B. Sinha**, JJ. [Date of decision: 22-1-2004]

Narayanamma (Kum) v. State of Karnataka, (1994) 5 SCC 728: 1994 SCC (Cri) 1573; Rafiq v. State of U.P., (1980) 4 SCC 262: 1980 SCC (Cri) 947: AIR 1981 SC 559; Sk. Zakir v. State of Bihar, (1983) 4 SCC 10: 1983 SCC (Cri) 761: AIR 1983 SC 911; Pramod Mahto v. State of Bihar, 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206: AIR 1989 SC 1475; State of Rajasthan v. Shri Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781: AIR 1992 SC 2004, relied on

20.(c) Injuries on prosecutrix or absence thereof *(contd.)*

[9398] — S. 376 — Rape — Proof — Rape and murder — Injuries absent — Presence of semen and spermatozoa found on examination of vaginal smear — *Held on facts, rape not proved — Semen also detected on one of the underskirts found on the body of the victim — Though accused-appellant found to be potent but no stains of blood or semen found on the dhoti of the appellant — No injuries found on the vagina/private parts of the victim*

If there had been any forcible sexual intercourse, the victim must have made some strong resistance being a grown-up lady and in the process, some injuries would have been found on the vagina/private parts of the body or some other parts indicative of any such use of force and it would be too much to assume that there would have been no injuries whatsoever on the body, on this account. Though injuries on the body is not always a must or sine qua non to prove a charge of rape, having regard to the case of the prosecution that the victim had been subjected to brutal rape and forced sexual intercourse, this aspect of the matter cannot be completely lost sight of. The deceased was stated to be of about 26 years of age, when she died and she is the sister of the wife of the appellant. It is not as though they were shown earlier to be on inimical terms. Anything possible might have happened and the facts found proved do not irresistibly lead to the only conclusion of the guilt of the appellant in respect of an offence under Section 376 IPC. Consequently, appellant can be given benefit of doubt and acquitted of the offence under Section 376 IPC, and the conviction recorded and sentence imposed by the High Court upon the appellant on this account is set aside. (Para 15). *Joseph* v. *State of Kerala*, (2000) 5 SCC 197: 2000 SCC (Cri) 926: AIR 2000 SC 1608: 2000 Cri LJ 2467.

Bench Strength 3. Coram: *K.T. Thomas*, **Doraiswamy Raju** and *S.N. Variava*, JJ. [Date of decision: 27-4-2000]

[9399] — S. 376 — Rape — Proof and corroboration of — Absence of injuries on private parts of prosecutrix — Effect — *Rape of a married woman in the bus by the driver and conductor of the bus, alleged — No reason for the prosecutrix to falsely implicate the accused as they were strangers — Testimony of prosecutrix corroborated by testimonies of two constables (PWs) who were on patrolling duty near the bus stand — PW 1 though declared hostile, part of his testimony corroborating the prosecution version — Though no injuries found on the private parts of the prosecutrix, injuries found on front portion of her body and hands — Held, mere fact that no injuries were found on her private parts, held, cannot be a ground to hold that no rape was committed upon her or that the entire prosecution story is false — Prosecutrix was a married grown-up lady and absence of injuries on her private parts was not of much significance — Appellant rightly convicted under S. 376(2)(g)* (Paras 2, 11 and 13). *Santosh Kumar* v. *State of M.P.*, (2006) 10 SCC 595: (2007) 1 SCC (Cri) 28: AIR 2006 SC 3098: 2006 Cri LJ 4594.

Bench Strength 2. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 25-8-2006]

Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598, relied on

[9400] — S. 376 — Rape and murder — Absence of semen or spermatozoa in vaginal swab collected from dead body of the deceased — *Held, by itself would not disprove sexual molestation when post-mortem report indicated bruising of tissues on right side of vagina 2 x 1 x ½ cm in reddish blue colour and bruising 1 x ½ x ½ cm over the anterior lip of the cervix — This feature is consistent with the victim offering resistance against forcible intercourse. State of T.N.* v. *Suresh*, (1998) 2 SCC 372: AIR 1998 SC 1044.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 5-12-1997]

[9401] — S. 376 — Rape by forcibly laying the prosecutrix on matted jowar crop — *Absence of injuries on the back of the prosecutrix would be of no consequence even if the field was having stones on the surface. Narayanamma* v. *State of Karnataka*, (1994) 5 SCC 728: 1994 SCC (Cri) 1573.

Bench Strength 2. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-8-1994]

[9402] — S. 376 — Rape of a married woman of 45 years, mother of two children of 17 years and 16 years — *Victim sustaining injuries to external genitals and reddish fluid found to be purging through the vagina as a result of laceration on posterior wall of vagina 1½" from cervix measuring 1/3" x ½" mucosal deep with swelling and ante mortem blood clot — According to medical opinion injuries showing sexual assault of a very violent nature by more than one person inasmuch as a woman of 45 years who had given birth to two children being accustomed to sexual intercourse would not suffer such injuries due to simple sexual assault — Blood group of stains of semen found on the bedsheet of the bedroom where the victim was sleeping found to be the same as those of the accused persons and different from that of victim's* *husband — Held, charge under S. 376 against the accused proved by circumstantial evidence and medical evidence — Although in the post-mortem certificate the doctor did not express any opinion about the sexual assault and it was only in the statement given in court that he spoke about the sexual assault but what the doctor had stated in court was on the basis of the notes of the post-mortem and the injuries already noted in the post-mortem certificate and hence this cannot be said to be an afterthought. Ronny* v. *State of Maharashtra*, (1998) 3 SCC 625: 1998 SCC (Cri) 859: AIR 1998 SC 1251.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.S.M. Quadri**, JJ. [Date of decision: 5-3-1998]

[9403] — S. 376 — Rape of a minor girl — Two pin-head abrasions found on the genitals of accused — *Doctor opining that though as a result of forcible sexual intercourse such abrasion could be possible but there was no sign of the accused having sexual intercourse within one hour of his medical examination — That the accused aged 57 years was not used to sexual intercourse or that he had not an intercourse on the day of occurrence with someone else not established — Presence of blood in nail clippings and on the underpants explained by accused — Held, circumstance of abrasions on the genital, though raises suspicion but not conclusive of guilt of the accused when main circumstances of last seen together and recovery of the dead body at the instance of the accused could not be established. Jaharlal Das* v. *State of Orissa*, (1991) 3 SCC 27: 1991 SCC (Cri) 527: AIR 1991 SC 1388: (1991) 2 Crimes 268: (1991) 72 CLT 298.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 12-4-1991]

[9404] — S. 376 — Rape of minor girl aged 7/8 years — Testimony of prosecutrix alone, if reliable, whether sufficient to convict the accused without seeking further corroboration — Injury on male organ of accused if necessary — *On facts, convincing and trustworthy testimony of the prosecutrix corroborated by medical evidence and testimony of other PWs existing — Doctor who examined the prosecutrix finding her hymen ruptured, slight bleeding coming out of the vaginal edges, presence of blood clots and external genitals tender and red and vagina admitting one finger with difficulty which got smeared with blood — Shawl on which, according to the prosecution, she was made to lie while committing the rape, found by the doctor to be having some mud and blood stains — Doctor opining that prosecutrix had been subjected to sexual intercourse — Doctor who examined accused-respondent finding him potent and capable of sexual intercourse — Father of the prosecutrix and other PWs deposing to have seen the respondent running from the place of occurrence carrying with him his underwear — Held, trial court rightly convicted the respondent under S. 376 and High Court erred in acquitting him on the basis of conjectures and surmises — Circumstances such as absence of spermatozoa on the vaginal slide and absence of injuries on the male organ not always fatal to the prosecution case — These circumstances should be considered in the light of the peculiar factual set-up of the case*

There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record. The medical evidence provided sufficient corroboration.

No inference can be drawn against the prosecution from the fact that only two blood stains had been found on the shawl by the Chemical Examiner. The doctor had found the presence of blood stains and mud on the shawl and had opined that the bleeding from the edges of the vagina was slight and that some amount of clotted blood was also present. The prosecutrix was a girl of tender age and on account of the rape committed on her, there was bleeding from her vagina but in the circumstances it cannot be expected that the shawl should have got "drenched with blood" as if the large blood arteries had been cut.

The absence of spermatozoa cannot be a circumstance against the prosecution case. The prosecution case itself was that on being surprised while the respondent was in the act of committing sexual intercourse on the prosecutrix, he ran away carrying his underwear. The absence of spermatozoa under the circumstances could not be said to be a circumstance in favour of the respondent at all.

There is no inflexible axiom of law which lays down that the absence of injuries on the male organ of the accused would always be fatal to the prosecution case and would discredit the evidence of the prosecutrix, otherwise found to be reliable. The presence of injuries on the male organ may lend support to the prosecution case, but their absence is

20.(c) Injuries on prosecutrix or absence thereof *(contd.)*

not always fatal. Every case has to be approached with realistic diversity based on peculiar facts and circumstances of that case. The doctor who had examined the respondent had found him to be capable of sexual intercourse and according to his opinion the absence of injury on his male organ was not suggestive of the fact that he had not indulged in sexual intercourse with the prosecutrix, then of tender years of age. His evidence was not at all challenged on this aspect by the defence.

The judgment of the High Court was based more on surmises and conjectures than on proper appreciation of evidence. Court must be sensitive to the serious crime committed against human dignity. Courts must be wary, circumspect and slow to interfere with reasonable and proper findings based on appreciation of evidence as recorded by the lower courts, before upsetting the same and acquitting an accused involved in the commission of heinous offence of rape of hapless girl child. *State of H.P.* v. *Raghubir Singh*, (1993) 2 SCC 622: 1993 SCC (Cri) 674: 1993 (2) ALT (Cri) 286: (1993) 2 Crimes 887.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 18-2-1993]

Rahim Beg v. State of U.P., (1972) 3 SCC 759: 1972 SCC (Cri) 827, distinguished and limited

[9405] — Ss. 376, 120-B, 342 and 506 — Rape allegedly committed by eight persons twice in the compartment of a running train and thereafter prosecutrix allegedly pushed out of the train — *Absence of injury on the person of the prosecutrix, except a small incised wound and some minor superficial injuries, improbabilising the prosecution version — No shout raised by the prosecutrix — Inconsistency between version given in the FIR and evidence given in the court — Held, in the circumstances of the case, possibility of the prosecutrix going with the accused persons willingly cannot be ruled out — Acquittal upheld. State of Maharashtra* v. *Abdul Hafiz Faroki*, 1998 SCC (Cri) 1481: AIR 1998 SC 2382.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 28-4-1998]

[9406] — S. 376 or S. 354 — Accused charged under S. 376 — Absence of injury on victim — Whether offence committed coming under purview of S. 354 — *Absence of injury on the private parts of the prosecutrix — From a reading of the evidence of the prosecutrix, held, it is clear that the accused outraged the modesty but had not raped her — In her statement she loosely described his act as "fondling" — Offence is one under S. 354 IPC — Sentence reduced to that already undergone*

The prosecutrix filed a report that on the preceding day in the morning, at about 9.00 or 9.30 a.m. when she went to the fields the accused all of a sudden came and caught hold of her and raped her. When she tried to resist, accused *P* gave a blow on her eye and threatened to kill her, if she made any sound. When she again cried for help, her aunt-in-law (PW 2) came and challenged him. Upon this, accused *P* fled away from the place of occurrence. The medical examination of the prosecutrix was conducted by the doctor at 2.00 p.m. The trial court convicted the accused under Section 376 of the Penal Code, 1860 imposing a sentence of 7 years' imprisonment. In appeal a Single Judge of the High Court upheld the conviction under Section 376 IPC.

Disposing the appeal in terms below,

Held :

There was no unexplained delay in lodging the FIR. So far as absence of injury on the private parts of the prosecutrix is concerned, admittedly, she was a married lady. But on a close reading of the evidence of the prosecutrix, it is clear that the accused outraged the modesty but had not raped her. The prosecutrix has not stated specifically about the act, but has loosely described as "fondling". So far as the enmity with the aunt of *L* (PW 4), the husband of the prosecutrix is concerned it is unnatural that a married lady belonging to the rural areas would falsely implicate the accused with whom she or her husband had no enmity. (Para 8)

After careful consideration of the evidence, the trial court and the High Court have found the accused guilty. But the offence is under Section 354 IPC. The conviction of the accused is altered from Section 376 IPC to Section 354 IPC. The accused has undergone nearly two years of sentence. The occurrence is of 1987. Custodial sentence shall be the period already undergone. Directed that the appellant be released forthwith unless required in custody in connection with any other case. (Paras 10 and 11). *Premiya* v. *State of Rajasthan*, (2008) 10 SCC 81: (2008) 70 AIC 45 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 22-9-2008]

State of Punjab v. Major Singh, AIR 1967 SC 63, relied on

[9407] — Ss. 376, 363, 366 and 368 — Age of victim — Prosecutrix abducted and forcibly subjected to sexual intercourse by the accused persons without her consent and against her will — Question of age of the victim not relevant — *However, on facts, evidence of father and mother of* *the victim that she was below 16 years of age on the date of incident is fully corroborated by medical evidence and school leaving certificate. State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

[9408] — Ss. 376 and 375 — Rape — Ingredients — Hymen of victim remaining intact, hence submission that charge of rape under S. 376 as defined in S. 375 not made out — *Held on facts, victim was a very young girl of six years of age and it is quite likely that full penetration did not take place as the accused was a grown-up person of over 20 years of age — However, injuries clearly indicate that rape, as defined in S. 375, did take place* (Paras 15, 16 and 11). *Rajendra Datta Zarekar* v. *State of Goa*, (2007) 14 SCC 560: AIR 2008 SC 572: 2008 Cri LJ 710.

Bench Strength **2**. Coram: **G.P. Mathur** and *G.S. Singhvi*, JJ. [Date of decision: 4-12-2007]

Santosh Kumar v. State of M.P., (2006) 10 SCC 595: (2007) 1 SCC (Cri) 28, considered and relied on

Modi's Medical Jurisprudence and Toxicology, 21st Edn., at p. 369; Parikh's Textbook of Medical Jurisprudence and Toxicology, cited

[9409] — Ss. 376 and 375 — Rape — Proof — Medical evidence — Habituated to sexual intercourse — *Medical evidence showing absence of any injury on the body or any sign of semen on private parts of prosecutrix — Neither were her clothes torn nor was there presence of hair of accused on private parts of prosecutrix — Doctor after examining the prosecutrix deposed that prosecutrix was habituated to sexual intercourse — Held, accused entitled to benefit of doubt. Bibhishan* v. *State of Maharashtra*, (2007) 12 SCC 390: (2008) 3 SCC (Cri) 163: 2008 Cri LJ 721.

Bench Strength **2**. Coram: *A.K. Mathur* and *Markandey Katju*, JJ. [Date of decision: 19-9-2007]

[9410] — Ss. 376 and 376(2)(f) — Rape on a girl of eight years — *Absence of injury on private parts of accused — Held, will not be of much help to accused as he was medically examined four days after the incident in question*

The accused-respondent herein alleged to have committed rape on a girl of eight years. The father of the victim was out of station on the date of occurrence i.e. 6-3-1990. When he came back to home on 7-3-1990, he was told about the incident in question. The father decided that the accused should be first traced and taken to the police station and thereafter they should lodge a complaint. On finding the accused on 10-3-1990 the parents of the victim went to the police station and lodged a complaint in respect of the said incident. The trial court found the accused guilty of the offence charged and sentenced him to undergo RI for 10 years. In appeal, the High Court set aside the said conviction and sentence. The High Court found that the delay in lodging the complaint was fatal to the prosecution case. It held that it was not safe to rely on the evidence of the victim (PW 2) to base a conviction because there was some discrepancy as to the act of penetration while committing rape in the evidence of the victim and the evidence of the doctor. Relying on a reply given by the doctor to a suggestion made by the defence that the injury suffered by a PW 2 could also be suffered by a hard and blunt object, the High Court inferred that the injury on the victim could have been suffered by her by falling on some such hard and blunt object. Since there was no injury on the private parts of the accused, the High Court inferred that the accused could not have committed rape on the minor without hurting himself on his private parts. In regard to the evidence of PW 2, the High Court was of the opinion that she being a child witness, it was possible that she could have been tutored.

Restoring the conviction recorded by the trial court but reducing the sentence,

Held :

It is now well established that if the court is satisfied from the evidence of the victim a conviction can be solely based on such evidence without looking for further corroboration. Same can be done because the prosecutrix is no more treated as an accomplice in the crime. (Para 6)

The doctor stated that the injuries suffered by PW 2 could not have been self-inflicted. There was blood on her private parts, the hymen was torn and medial side of the labia minora was inflamed. This was even after 4 days of the incident. The mere fact that the doctor replied to a suggestion made in the cross-examination that such injuries could be suffered by the victim by falling on a hard and blunt substance, by itself, would not suffice to reject the evidence of PW 2 who had no enmity whatsoever to implicate the respondent. The suggestion which has come in the form of Section 313 CrPC statement merely says that there was some enmity between the parents of the accused and those of the victim. Neither the nature of enmity nor gravity of the same has been stated, therefore, that explanation would be of no assistance to the accused to establish the fact that he has been falsely implicated. The factum of injury suffered by PW 2 and the opinion of the

20.(c) Injuries on prosecutrix or absence thereof *(contd.)*

doctor that such injury could have been caused by sexual intercourse and the victim having not been habituated to earlier sexual intercourse itself goes to show that the injury suffered by the victim was one that could have been caused only by an act of rape as alleged by the prosecution. Even in identification of the accused by the victim there is no doubt because he was known to the victim. (Para 6)

Though there has been some delay in filing the complaint, the same has been explained by the mother of the victim. The fact that the father was out of station on the date of occurrence is not disputed. In such circumstances since it is a minor who was violated, the possibility of there being hesitation on the part of the mother to lodge a complaint cannot be overruled. Even otherwise, the mere factum of delay in filing complaint in regard to an offence of this nature by itself would not be fatal so as to vitiate the prosecution case. (Para 7). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

[9411] — S. 376(2)(g) — Gang rape — Not possible for medical examination to prove the number of persons who committed the rape — *Extent of injuries and medical report can however support the allegation that more than one person was involved*

It was contended on behalf of the appellants that as it does not transpire from the medical report as to the number of persons who had committed rape on the prosecutrix, the conviction of the appellants is illegal and should be set aside.

Held :

On medical examination it is not possible to say about the number of persons committing rape on a girl and, accordingly, in her report the doctor has not expressed any opinion in that regard. The evidence of the prosecutrix that all the appellants had committed rape on her is not inconsistent with the medical report. In the circumstances there is justification for the finding of the High Court that the medical examination and the evidence show the involvement of more than one person in the act of rape. *Balwant Singh* v. *State of Punjab*, (1987) 2 SCC 27: 1987 SCC (Cri) 249: AIR 1987 SC 1080: 1987 Cri LJ 971.

Bench Strength **2**. Coram: *G.L. Oza* and **M.M. Dutt**, JJ. [Date of decision: 10-2-1987]

[9412] — S. 376(2)(g) — Gang rape of married lady — Absence of injuries, held, not consequential when gang rape otherwise established (Para 14). *Sohan Singh* v. *State of Bihar*, (2010) 1 SCC 68.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 9-10-2009]

[9413] — S. 376 r/w Ss. 302 and 511 — Rape and murder alleged — Improbable prosecution case — Unreliable dying declaration — *Both deceased and accused-appellant found lying in a pool of blood in appellant's room having suffered serious injuries — Deceased found totally naked and underclothes of both the deceased and appellant found in the same room — Appellant and deceased had love affair and deceased had gone to appellant's place alone — Deceased taken to hospital by her brother (PW 5) where she was found dead — Complaint given by PW 5 to police which formed the basis of formal FIR — In the complaint PW 5, after stating that deceased had told him that appellant had tried to rape her and on her refusal he had stripped and stabbed her, adding his own assessment that deceased died due to deep head injuries caused by appellant and that appellant had thereafter tried to kill himself — Last words in the complaint that appellant had also tried to commit suicide by stabbing himself in the stomach appeared to have been inserted later — But on the basis of medical evidence serious nature of injuries found on appellant cannot be said to be self-inflicted — Having regard to facts and circumstances of the case, held, the uncorroborated alleged oral dying declaration was unreliable — Prosecution case of rape and murder of deceased by appellant appears to be improbable — Evidence Act, 1872, S. 32*

In the absence of explanation as to the serious nature of injuries sustained by the appellant giving rise to serious doubt as to the very genesis of the incident, the last portion of the statement in the complaint of PW 5 (wherein he had said that the deceased died due to deep head injuries caused by the appellant, who also tried to kill himself by stabbing in the stomach) appears to have been inserted after deliberation and consultation. This insertion probabilises the defence version that the appellant and the deceased were in love. The very fact that the deceased was totally naked and the underclothes of both the deceased and the appellant were found in the same room probabilises the theory of intercourse by consent and negatives the story of rape. The story that the appellant tried to kill himself by jumping from the upper floor cannot also be accepted. That apart, in the earliest version given in the report given to the police by PW 5, there is no mention about the appellant jumping from the upper floor. In view of the injuries found on the deceased and the defence taken by the appellant that she died on the spot and in the absence of any other evidence except the statement of PW 5, it is difficult to accept that the deceased was alive or at any rate she was in a position to make the statement to PW 5 as sought to be made out. The theory that the appellant tried to kill himself does not appear to be probable as both PW 4 and PW 5 admitted that the deceased and the appellant knew each other; the deceased voluntarily went to the house of the appellant to say goodbye, since she was going back to her country. In this background it appears improbable that the appellant forcefully tried to rape the deceased. It appears that both the appellant and the deceased may have been in a compromising position and were surprised and attacked by an assailant. Since the injuries found on the appellant could not be said to be self-inflicted, his defence that he sustained injuries at the hands of an unknown person when he tried to save the deceased, appears to be probable. It was enough to show that the defence was probable in the given circumstances. In this case the defence statement is probabilised by the surrounding circumstances and the evidence brought on record. The so-called dying declaration does not appear to be in the words of the deceased. It does not inspire confidence. There was considerable delay in registering the FIR and the explanation given for the delay is not convincing. Further, except the interested statement of PW 5 there is no other evidence to corroborate the dying declaration. Having regard to all these infirmities, improbabilities and contradictions found in the case, it is unsafe to act upon the said dying declaration. (Paras 7 to 9). *Ronald Kiprono Ramkat* v. *State of Haryana*, (2001) 6 SCC 423: 2001 SCC (Cri) 1034: AIR 2001 SC 2488.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **Shivaraj V. Patil**, JJ. [Date of decision: 31-7-2001]

(d) Medical/Expert opinion

[9414] — S. 376 r/w S. 34 — Rape — Medical evidence — Doctor's statement that there was profuse bleeding which rendered any definite opinion difficult — Effect of — *Held, was of no consequence in view of the unimpeached evidence of the victim* (Para 9). *Sri Narayan Saha* v. *State of Tripura*, (2004) 7 SCC 775.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 8-9-2004]

(e) Medical examination of prosecutrix

[9415] — S. 376 — Rape — Medical examination after 3 months — Held, cannot be expected to corroborate forcible intercourse (Paras 3 and 8). *Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

(f) Medical examination of accused

[9416] — S. 376 — Examination of the accused — *Examination of smegma loses all importance after 24 hours of the performance of the alleged sexual intercourse. S.P. Kohli (Dr.)* v. *High Court of P&H*, (1979) 1 SCC 212: 1979 SCC (Cri) 252: AIR 1978 SC 1753: 1978 Cri LJ 1804: (1978) 15 ACC 381: 1979 MLJ (Cri) 378.

Bench Strength **3**. Coram: **Jaswant Singh**, *P.S. Kailasam* and *A.D. Koshal*, JJ. [Date of decision: 12-9-1978]

(g) Medico-legal report/Doctor

[9417] — S. 376 — Rape — Medical evidence — Value of — Non-examination of doctor and non-production of doctor's report — Effect — *Held, the same is not fatal to prosecution case if statements of prosecutrix and other prosecution witnesses inspire confidence — Hence, where prosecution evidence was found reliable, High Court totally erred in acquitting the accused by giving him benefit of doubt simply because of non-examination of doctor by prosecution* (Paras 14 and 15). *State of M.P.* v. *Dayal Sahu*, (2005) 8 SCC 122: 2005 SCC (Cri) 1988: AIR 2005 SC 3570: 2005 Cri LJ 4375.

Bench Strength **2**. Coram: **H.K. Sema** and *G.P. Mathur*, JJ. [Date of decision: 29-9-2005]

Sk. Zakir v. State of Bihar, (1983) 4 SCC 10: 1983 SCC (Cri) 761; Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635: 1998 SCC (Cri) 1725, relied on

[9418] — S. 376 — Rape — Refusal of govt. hospital doctors, particularly in rural areas, to conduct medical examination of rape victims unless they are referred by police deprecated

The Supreme Court placed on record its disapproval of the refusal of some government hospital doctors, particularly in rural areas, where hospitals are few and far between, to conduct any medical examination of a rape victim unless the case of rape is referred to them by the police. Such a refusal to conduct the medical examination necessarily results in a delay in the ultimate examination of the victim, by which time the evidence of the rape may have been washed away by the complainant herself or be otherwise lost. It is expected that the appellant State will ensure that such a situation does not recur in future. (Para 18). *State of Karnataka* v. *Manjanna*, (2000) 6 SCC 188: 2000 SCC (Cri) 1031: AIR 2000 SC 2231: 2000 Cri LJ 3471.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *D.P. Wadhwa* and *Ruma Pal*, JJ. [Date of decision: 4-5-2000]

(h) Time of rape

[9419] — S. 376 — Period elapsed after alleged rape, held, cannot be accurately determined by medical examination — *Medical jurisprudence not an exact science. Pratap Misra* v. *State of Orissa*, (1977) 3 SCC 41: 1977 SCC (Cri) 447: AIR 1977 SC 1307: 1977 Cri LJ 817.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 23-2-1977]

[9420] — S. 376 — Rape — Time of alleged occurrence — Medical evidence — Incident alleged to have occurred on 15-3-2000, while prosecutrix was medically examined on 17-3-2000 — *As against suggestion of accused that sexual act would have taken place more than one week prior to 17-3-2000, doctor while accepting the same also stating that there was possibility of recent intercourse i.e. within a week from 17-3-2000 because there was redness on margin of hymen — High Court holding that when the doctor herself was unclear about actual date of alleged rape, medical report could not be relied upon, and hence, acquitting respondent-accused — Held, fact that prosecutrix was subjected to rape on 15-3-2000 was proved and established from testimony of prosecutrix, medical report and the doctor — Doctor had specifically stated that hymenal appearance could not rule out recent coitus — Hence held, it was proved and established beyond reasonable doubt that prosecutrix was subjected to rape on 15-3-2000 as alleged* (Para 13). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

[9421] — Ss. 376 and 342 — Rape of a minor — Appreciation of evidence — Conviction restored — Non-reliance on medical report since time of occurrence not determined — *Doctor who examined prosecutrix finding signs of recent sexual act but also accepting suggestion of accused that intercourse could have taken one week prior to her examination — Prosecutrix telling the doctor that accused had also sexually molested her one year prior to the alleged occurrence — Doctor finding hymen absent but categorically stating that prosecutrix was not habitual to sexual intercourse because her vagina admitted one finger only — Medical report, thus, corroborated by prosecutrix that she was earlier also raped by same accused — High Court acquitting the accused holding that when the doctor herself was unclear about the actual date of alleged rape, medical report could not be relied upon — While doing so, High Court ignoring the fact that doctor had also stated that there was possibility of recent intercourse i.e. within a week of her examination — Held, High Court appreciated the evidence erroneously by ignoring cogent and credible evidence of PWs 3, 4 and 5, which was further corroborated by medical evidence — Hence, impugned judgment acquitting accused set aside, and that of trial court convicting him under Ss. 376 & 342 restored*

Facts:

On 15-3-2000, when parents of the prosecutrix had gone to visit her maternal uncle, her elder sister PW 4 had gone to the jungle to fetch leaves for goats, the accused is alleged to have taken the prosecutrix (minor) to his home, bolted the door of the room from inside, switched on the TV, gagged, and raped her. Thereafter he gave her Rs 5 and some "shakkar". Prosecutrix narrated the incident to PW 4. Her parents were informed about the occurrence on 16-3-2000 on their return. PW 4 also handed over to PW 5 (mother) currency note of Rs 5 given to her by the prosecutrix.

The trial court convicted the accused under Ss. 376 and 342 and sentenced him to RI for 7 years and fine of Rs 2000, and RI for 1 year respectively. The High Court acquitted the accused in appeal filed thereagainst. Hence, the present appeal.

Allowing the appeal, the Supreme Court held as above.

Held :

It was clearly proved and established that prosecutrix was a minor on the date of occurrence. Prosecutrix was examined on 17-3-2000 and she told the doctor that she had been sexually molested by accused about a year back. On examining her the doctor found signs of recent sexual act, as there was small reddened area over the left upper margin of hymen. In the cross-examination, the doctor has categorically stated that the prosecutrix was not habitual to sexual intercourse because her vagina admitted only one finger. The doctor, however, admitted that absence of hymen proves that she had been used to sexual intercourse earlier. (Paras 10 and 11)

The aforesaid medical report of the doctor is corroborated by the statement made by the prosecutrix that she was earlier also raped by the same accused. As against the suggestion of the accused that the sexual intercourse as alleged would have taken place more than one week prior to 17-3-2000, the doctor while accepting the same also stated that there can be a possibility of recent sexual intercourse i.e. within a week from 17-3-2000, which cannot be ruled out because of the redness on the margin of hymen. (Para 12)

The High Court mainly relied upon the opinion of the doctor holding that the doctor herself was unclear about the actual date of the alleged rape, and therefore, the said medical report could not be relied upon. While doing so, the High Court ignored the fact that the doctor had also stated that there can be a possibility of recent sexual intercourse i.e. within a week from 17-3-2000. The alleged rape was in fact committed within a week from 17-3-2000 i.e. on 15-3-2000. The fact that the prosecutrix was subjected to rape on 15-3-2000 is proved and established from the statement of the prosecutrix, medical report and the statement of the doctor (PW 8), who had examined the prosecutrix. The doctor had also stated that hymenal appearance cannot rule out recent coitus. Therefore, it is also proved and established beyond doubt that the prosecutrix was subjected to rape on 15-3-2000. (Para 13)

Further, prosecutrix had categorically stated that it was the accused who had raped her, and her statement was corroborated by PWs 4 and 5. (Para 14)

Submission that there is no other independent witness to support the aforesaid allegation is also baseless. In case of this nature when the prosecutrix, who was a minor girl on the date of incident, has come forward and stated that she was raped by the accused and her testimony could not be shaken in the cross-examination, we have no reason to disbelieve her for no girl would ever lie on a vital issue of this nature. Even her sister and mother also stated as to what was reported by the prosecutrix herself immediately after the alleged occurrence. Besides, there was PW 6 who though turned hostile at one stage of her examination, admitted that PW 5 had come to her house along with her daughter and narrated the incident to her. (Paras 15 and 16)

Submission by the respondent-accused that the prosecutrix was habitual to sexual intercourse since her hymen was absent also liable to be rejected because the prosecutrix has stated that the accused himself had earlier raped her about a year back. It is also disclosed from the medical report that the prosecutrix was not habitual to sexual intercourse as the doctor herself stated that the prosecutrix was not used to sexual intercourse because her vagina admitted only one finger. She has explained that there was redness over the margin of hymen and on the basis of this redness, the possibility of recent sexual intercourse could not be ruled out. As the testimony of the prosecutrix, her sister and mother has not been shaken in the cross-examination, the statement of the doctor appears to be a plausible and convincing version. (Para 17)

Further submission of accused that evidence of PWs 3 and 4 should not be relied upon because they were child witnesses and tutored by their parents and police, is unacceptable. Testimonies of PWs 3 and 4 as regards the alleged occurrence was firm and convincing. There was no reason as to why a child of her age would falsely implicate the accused. Besides, it is settled position in law that conviction under Section 376 on sole testimony of a rape victim can be maintained if her evidence is found credible and convincing. (Paras 18 and 19)

Evidence of PWs 3 and 4 was found cogent, credible and uninfluenced by any tutoring. The High Court erroneously appreciated the evidence by ignoring credible evidence of two child witnesses statement of their mother, which was further corroborated by medical evidence. Hence, judgment of the High Court set aside and that of the trial court restored. (Paras 22 to 24). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210; Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, followed

Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, applied

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210, considered and relied on

(i) Medical evidence of sex/rape

See also 'C.20.(c) Injuries on prosecutrix or absence thereof', above

[9422] — Ss. 375 and 376 — Rape — Appreciation of evidence — Absence of hymen — Whether indicative of habitual intercourse — *Submission by respondent-accused that prosecutrix was habitual to sexual intercourse since her hymen was absent — Held, prosecutrix had stated that accused had raped her about a year back — Besides, the doctor had also stated that prosecutrix was not habitual to intercourse because*

20.(i) Medical evidence of sex/rape *(contd.)*

her vagina admitted only one finger — Hence, submission rejected (Para 17). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

[9423] — Ss. 375 and 376 — Rape — Appreciation of evidence — Medical evidence — *Semen stains on vaginal swabs and salwar — Held, at best, is evidence of commission of sexual intercourse but not of rape* (Para 11). *Tameezuddin* v. *State (NCT of Delhi)*, (2009) 15 SCC 566.

Bench Strength **2**. Coram: *H.S. Bedi* and *Aftab Alam*, JJ. [Date of decision: 26-8-2009]

[9424] — S. 376 — Rape — Appreciation of evidence — Proof of sexual intercourse — *Based on FSL report and the report of serologist PW 8 (doctor) finding presence of semen in vaginal swab of prosecutrix, held, is sufficient proof of recent sexual intercourse*

The medical report cannot be held to be supporting the case of defence. Based on the FSL report and the report of serologist (Ext. 7) PW 8 doctor found that semen was present in the vaginal swab of the victim and there was sufficient proof of recent sexual intercourse. (Para 21). *Utpal Das* v. *State of W.B.*, (2010) 6 SCC 493.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *Aftab Alam*, JJ. [Date of decision: 7-5-2010]

[9425] — S. 376 — Rape — Medical evidence — *Clothes of prosecutrix found to be stained with human blood and semen — Semen group tallied with that of the accused — Absence of semen or spermatozoa in vaginal smear and slides, which the doctor had taken about 24 hours after the incident not fatal — Absence of smegma around the glans penis and frenum tortuous and edematous — Inferences*

The report of the Assistant Chemical Analyser shows that the clothes of the prosecutrix were stained with human blood and semen. The semen found on one of her garments and on the bed-sheet attached from the room was of group A which was the group of the respondent. Of course, the other articles, viz., the mattress and the underwear of the respondent bore no stains. On the contrary the find of semen lends corroboration, if corroboration is at all needed to the version of the prosecutrix. The possibility of the semen stains being of the husband of the prosecutrix is ruled out as his group was found to be 'B' and not 'A'. In the circumstances the absence of semen or spermatozoa in the vaginal smear and slides, cannot cast doubts on the creditworthiness of the prosecutrix. The doctor had the vaginal smear and the slides almost after 24 hours. The witness says that spermatozoa can be found if the woman is examined within 12 hours after intercourse, thereafter they may be found between 48 and 72 hours but in dead form. The prosecutrix may have washed herself by then. Therefore absence of spermatozoa cannot discredit her evidence.

The absence of marks of physical violence on the prosecutrix is not surprising. According to her the respondent had slapped her and threatened her with dire consequences when she tried to resist him. Since she was examined almost 24 hours after the event it would be too much to expect slap marks on her person. While the version of the prosecutrix is that she had tried to resist him, the respondent being a strong man was able to overpower her and take her by force. Besides, he was a man in authority in police uniform. The prosecutrix was alone and helpless. In the circumstances the resistance would be considerably dampened. The evidence of the doctor who examined the respondent reveals that he had noticed (*i*) absence of smegma around the glans penis and (*ii*) the frenum tortuous and edematous, indicative of the respondent having had sexual intercourse within the preceding 24 hours, although the witness could not hazard a definite opinion. Therefore, the non-committal opinion of this witness cannot be said to run counter to the evidence of the prosecutrix. It may be that the evidence as to resistance may have been overstated, a tendency which is generally noticed in such cases arising out of a fear of being misunderstood by the society. That is not to say that she was in any way a consenting party. She was the victim of brute force and the lust of the respondent. *State of Maharashtra* v. *Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550: 1990 SCC (Cri) 210: AIR 1990 SC 658: 1990 Cri LJ 889.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1990]

[9426] — S. 376 — Rape — Medical evidence — Absence of spermatozoa on vaginal smear — Does not falsify the version of the prosecutrix — *Penetration does not necessarily lead to the discovery of spermatozoa — Its absence may be due to various other factors such as faulty taking of smear, its preservation, quality of semen, etc. — On facts, it was not elicited from the prosecutrix of any if the two persons had reached orgasm emitting semen in her private parts*

With regard to the vaginal smear examination the doctor stated that no spermatozoa was seen on it, and the absence of sperms has been viewed against the version of the prosecutrix. It was never elicited from the prosecutrix as to whether the two persons who committed rape on her had reached orgasm emitting semen in her private parts. No presumption can be made that penetration of penis in the private parts of a rape victim must necessarily lead to the discovery of spermatozoa. It is a question of detail and has to be put to test by cross-examination. Otherwise also there may be various other factors which may negative the presence of spermatozoa such as faulty taking of the smear, its preservation, quality of semen etc. The absence of spermatozoa prima facie could not be allowed to tell against the version of the prosecutrix. *Narayanamma* v. *State of Karnataka*, (1994) 5 SCC 728: 1994 SCC (Cri) 1573.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-8-1994]

[9427] — S. 376 — Rape — Medical evidence — Proof — Absence of dead or mobile spermatozoa in the vagina or in the cervix of the prosecutrix, held, not a conclusive proof of her not being subjected to forcible sexual intercourse

The High Court erred in holding that the prosecutrix had not been subjected to forcible sexual intercourse or the prosecution had failed to prove the case against Respondent 1 also. The High Court's conclusion that absence of dead or mobile spermatozoa either in the vagina or in the cervix of the prosecutrix rules out the possibility of the prosecutrix having been subjected to sexual intercourse, is not referable to any evidence on record. The presence of spermatozoa, dead or alive, would differ from person to person and its positive presence depends upon various circumstances. Otherwise also the presence or absence of spermatozoa is ascertained for the purposes of corroboration of the statement of the prosecutrix. If the prosecutrix is believed to be a truthful witness in her deposition, no further corroboration may be insisted upon. Corroboration is admittedly only a rule of prudence. (Paras 5 and 6). *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, followed

[9428] — S. 376 — Rape — Medical evidence — Rape on minor girl aged 14 years — Statement of the doctor that hymen of the prosecutrix was ruptured and admitted two fingers — *Held, this cannot be viewed as if the prosecutrix was habitual to sexual intercourse*

According to the doctor hymen of the prosecutrix was ruptured, admitted two fingers, bled on touch, was reddish in colour, and was painful and tender. On this basis, the doctor opined that these were signs of rape. The ability of admission of two fingers and the hymen being ruptured was viewed by the High Court as if the prosecutrix was habitual to sexual intercourse. When the doctor had opined that the hymen was ruptured, she did not qualify her statement that it stood ruptured as of old or carried an old tear. With clear objective in view, the doctor must be presumed to have noticed the hymen as freshly ruptured, as otherwise, the doctor would not have described it in that fashion to be bleeding, tender and painful. The factum of admission of two fingers could not be held adverse to the prosecutrix for it would depend upon the size of the fingers inserted. When medical experts try to opine about the medical condition of a woman used to sexual intercourse, it is described as admission of two fingers *easily*, but here the doctor qualified her statement by saying that it was painful and bleeding on touch. These conditions obviously related to the hymen. The doctor was thus clear in her opinion that rape had been committed on the prosecutrix. *Narayanamma* v. *State of Karnataka*, (1994) 5 SCC 728: 1994 SCC (Cri) 1573.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-8-1994]

[9429] — S. 376 — Rape — Proof — Rape and murder — Injuries absent — Presence of semen and spermatozoa found on examination of vaginal smear — *Held on facts, rape not proved — Semen also detected on one of the underskirts found on the body of the victim — Though accused-appellant found to be potent but no stains of blood or semen found on the dhoti of the appellant — No injuries found on the vagina/private parts of the victim*

If there had been any forcible sexual intercourse, the victim must have made some strong resistance being a grown-up lady and in the process, some injuries would have been found on the vagina/private parts of the body or some other parts indicative of any such use of force and it would be too much to assume that there would have been no injuries whatsoever on the body, on this account. Though injuries on the body is not always a must or sine qua non to prove a charge of rape, having regard to the case of the prosecution that the victim had been subjected to brutal rape and forced sexual intercourse, this aspect of the matter cannot be completely lost sight of. The deceased was stated to be of about 26 years of age, when she died and she is

20.(i) Medical evidence of sex/rape *(contd.)*

the sister of the wife of the appellant. It is not as though they were shown earlier to be on inimical terms. Anything possible might have happened and the facts found proved do not irresistibly lead to the only conclusion of the guilt of the appellant in respect of an offence under Section 376 IPC. Consequently, appellant can be given benefit of doubt and acquitted of the offence under Section 376 IPC, and the conviction recorded and sentence imposed by the High Court upon the appellant on this account is set aside. (Para 15). *Joseph* v. *State of Kerala*, (2000) 5 SCC 197: 2000 SCC (Cri) 926: AIR 2000 SC 1608: 2000 Cri LJ 2467.

Bench Strength **3**. Coram: *K.T. Thomas*, **Doraiswamy Raju** and *S.N. Variava*, JJ. [Date of decision: 27-4-2000]

[9430] — S. 376 — Rape and murder — Absence of semen or spermatozoa in vaginal swab collected from dead body of the deceased — *Held, by itself would not disprove sexual molestation when post-mortem report indicated bruising of tissues on right side of vagina 2 x 1 x ½ cm in reddish blue colour and bruising 1 x ½ x ½ cm over the anterior lip of the cervix — This feature is consistent with the victim offering resistance against forcible intercourse. State of T.N.* v. *Suresh*, (1998) 2 SCC 372: AIR 1998 SC 1044.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 5-12-1997]

[9431] — S. 376 — Semen stains found on the langot of accused aged 22 — No evidence how old the stains were — *The semen stain could exist for a number of reasons and cannot necessarily connect the accused with the offence of rape. Rahim Beg* v. *State of U.P.*, (1972) 3 SCC 759: 1972 SCC (Cri) 827: AIR 1973 SC 343: 1972 Cri LJ 1260.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 20-4-1972]

[9432] — Ss. 376 and 342 — Rape of a minor — Appreciation of evidence — Conviction restored — Non-reliance on medical report since time of occurrence not determined — *Doctor who examined prosecutrix finding signs of recent sexual act but also accepting suggestion of accused that intercourse could have taken one week prior to her examination — Prosecutrix telling the doctor that accused had also sexually molested her one year prior to the alleged occurrence — Doctor finding hymen absent but categorically stating that prosecutrix was not habitual to sexual intercourse because her vagina admitted one finger only — Medical report, thus, corroborated by prosecutrix that she was earlier also raped by same accused — High Court acquitting the accused holding that when the doctor herself was unclear about the actual date of alleged rape, medical report could not be relied upon — While doing so, High Court ignoring the fact that doctor had also stated that there was possibility of recent intercourse i.e. within a week of her examination — Held, High Court appreciated the evidence erroneously by ignoring cogent and credible evidence of PWs 3, 4 and 5, which was further corroborated by medical evidence — Hence, impugned judgment acquitting accused set aside, and that of trial court convicting him under Ss. 376 & 342 restored*

Facts:

On 15-3-2000, when parents of the prosecutrix had gone to visit her maternal uncle, her elder sister PW 4 had gone to the jungle to fetch leaves for goats, the accused is alleged to have taken the prosecutrix (minor) to his home, bolted the door of the room from inside, switched on the TV, gagged, and raped her. Thereafter he gave her Rs 5 and some "shakkar". Prosecutrix narrated the incident to PW 4. Her parents were informed about the occurrence on 16-3-2000 on their return. PW 4 also handed over to PW 5 (mother) currency note of Rs 5 given to her by the prosecutrix.

The trial court convicted the accused under Ss. 376 and 342 and sentenced him to RI for 7 years and fine of Rs 2000, and RI for 1 year respectively. The High Court acquitted the accused in appeal filed thereagainst. Hence, the present appeal.

Allowing the appeal, the Supreme Court held as above.

Held :

It was clearly proved and established that prosecutrix was a minor on the date of occurrence. Prosecutrix was examined on 17-3-2000 and she told the doctor that she had been sexually molested by accused about a year back. On examining her the doctor found signs of recent sexual act, as there was small reddened area over the left upper margin of hymen. In the cross-examination, the doctor has categorically stated that the prosecutrix was not habitual to sexual intercourse because her vagina admitted only one finger. The doctor, however, admitted that absence of hymen proves that she had been used to sexual intercourse earlier. (Paras 10 and 11)

The aforesaid medical report of the doctor is corroborated by the statement made by the prosecutrix that she was earlier also raped by the same accused. As against the suggestion of the accused that the sexual intercourse as alleged would have taken place more than one week prior to 17-3-2000, the doctor while accepting the same also stated that there can be a possibility of recent sexual intercourse i.e. within a week from 17-3-2000, which cannot be ruled out because of the redness on the margin of hymen. (Para 12)

The High Court mainly relied upon the opinion of the doctor holding that the doctor herself was unclear about the actual date of the alleged rape, and therefore, the said medical report could not be relied upon. While doing so, the High Court ignored the fact that the doctor had also stated that there can be a possibility of recent sexual intercourse i.e. within a week from 17-3-2000. The alleged rape was in fact committed within a week from 17-3-2000 i.e. on 15-3-2000. The fact that the prosecutrix was subjected to rape on 15-3-2000 is proved and established from the statement of the prosecutrix, medical report and the statement of the doctor (PW 8), who had examined the prosecutrix. The doctor had also stated that hymenal appearance cannot rule out recent coitus. Therefore, it is also proved and established beyond doubt that the prosecutrix was subjected to rape on 15-3-2000. (Para 13)

Further, prosecutrix had categorically stated that it was the accused who had raped her, and her statement was corroborated by PWs 4 and 5. (Para 14)

Submission that there is no other independent witness to support the aforesaid allegation is also baseless. In case of this nature when the prosecutrix, who was a minor girl on the date of incident, has come forward and stated that she was raped by the accused and her testimony could not be shaken in the cross-examination, we have no reason to disbelieve her for no girl would ever lie on a vital issue of this nature. Even her sister and mother also stated as to what was reported by the prosecutrix herself immediately after the alleged occurrence. Besides, there was PW 6 who though turned hostile at one stage of her examination, admitted that PW 5 had come to her house along with her daughter and narrated the incident to her. (Paras 15 and 16)

Submission by the respondent-accused that the prosecutrix was habitual to sexual intercourse since her hymen was absent also liable to be rejected because the prosecutrix has stated that the accused himself had earlier raped her about a year back. It is also disclosed from the medical report that the prosecutrix was not habitual to sexual intercourse as the doctor herself stated that the prosecutrix was not used to sexual intercourse because her vagina admitted only one finger. She has explained that there was redness over the margin of hymen and on the basis of this redness, the possibility of recent sexual intercourse could not be ruled out. As the testimony of the prosecutrix, her sister and mother has not been shaken in the cross-examination, the statement of the doctor appears to be a plausible and convincing version. (Para 17)

Further submission of accused that evidence of PWs 3 and 4 should not be relied upon because they were child witnesses and tutored by their parents and police, is unacceptable. Testimonies of PWs 3 and 4 as regards the alleged occurrence was firm and convincing. There was no reason as to why a child of her age would falsely implicate the accused. Besides, it is settled position in law that conviction under Section 376 on sole testimony of a rape victim can be maintained if her evidence is found credible and convincing. (Paras 18 and 19)

Evidence of PWs 3 and 4 was found cogent, credible and uninfluenced by any tutoring. The High Court erroneously appreciated the evidence by ignoring credible evidence of two child witnesses statement of their mother, which was further corroborated by medical evidence. Hence, judgment of the High Court set aside and that of the trial court restored. (Paras 22 to 24). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210; Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, followed

Mohd. Kalam v. State of Bihar, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27, applied

State of Rajasthan v. Om Prakash, (2002) 5 SCC 745: 2002 SCC (Cri) 1210, considered and relied on

[9433] — Ss. 376 and 354 — Sexual assault or indecent assault — *Victim aged about 5 years — Doctor finding the hymen completely torn, laceration on all sides of vagina and fresh bleeding — Evidence of lady doctor showing that a finger could be easily inserted inside the private part — Held, the victim was subjected to sexual assault and not merely indecent assault — Merely because the injuries found on the private part of the victim could also be caused by an instrument like a piece of glass cannot lead to the conclusion that she was not raped unless there is material to support such a conclusion*

The victim girl was brought to the hospital in a semi-conscious state and her general condition was poor. On external examination of the girl the doctor found that the hymen was completely torn and there was laceration on all sides of vagina. The doctor noticed that there was fresh bleeding in her private part. On internal examination the doctor found that a finger could easily be inserted in her private part

20.(i) Medical evidence of sex/rape *(contd.)*

and bloodstained discharge was coming out. Thus from the medical evidence it is clear that the girl was not only subjected to an indecent assault but there was sexual activity and the girl was subjected to sexual assault, otherwise the doctor would not have found the hymen completely torn, laceration on all sides of the vagina and fresh bleeding. According to the evidence of lady doctor a finger could be easily inserted inside the private part of the victim which otherwise was not possible in the case of a child aged 5 years because according to the *Medical Jurisprudence* by Modi, 21st Edn., p. 376, in a girl under 14 years of age the vaginal orifice is usually so small that it will hardly allow the passage of the little finger through her hymen. In the present case if the girl aged 5 years was not subjected to sexual intercourse the finger could not have been easily inserted in her private part as observed by the lady doctor.

Simply because the injuries found on the private part of the girl could also be caused in several other ways than the sexual assault on the victim cannot lead to the conclusion that the injuries on her private part were not sustained by commission of the rape but by some other instrument in the absence of any material to support such a conclusion. In the present case though the doctor deposed that the injuries could also be caused by instrument like piece of glass but there were neither circumstances nor any material to conclude or even to suggest that the victim had sustained the injuries by any piece of glass. No piece of glass was found at or near the place of occurrence. On the contrary there is positive and convincing evidence showing that there was sexual assault on the girl and the finding that she was subjected to indecent assault is absolutely incorrect. *State of U.P.* v. *Babul Nath*, (1994) 6 SCC 29: 1994 SCC (Cri) 1585.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 12-8-1994]

[9434] — Ss. 376 and 375 — Rape on minor girl (aged 11 to 12 years) — Absence of spermatozoa — Girl profusely bleeding — *Leaves on which blood was wiped and swab, found from place of occurrence, along with blood-stained salwar sent to Chemical Analyzer and Serologist — According to report no spermatozoa found on the materials sent for examination — Held, mere absence of spermatozoa cannot cast a doubt on correctness of prosecution case. Prithi Chand* v. *State of H.P.*, (1989) 1 SCC 432: 1989 SCC (Cri) 206: AIR 1989 SC 702: (1989) 1 SCR 123: 1989 Cri LJ 841.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 17-1-1989]

[9435] — Ss. 376 and 375 — Rape on minor girl (aged 11 or 12 years) — Penetration — Proof of

It was argued that having regard to the girl's age and the fact that her vagina admitted one finger with difficulty, it is not possible to believe that there was penetration.

Held :

In the absence of penetration there would not be absence of hymen with the edges torn and profuse bleeding from the vagina staining the salwar. Merely because the doctor found that the vagina admitted one finger with difficulty, it cannot be inferred that there was no penetration as the muscles must have contracted by then. The accused-appellant, a robust man must have penetrated the vagina. *Prithi Chand* v. *State of H.P.*, (1989) 1 SCC 432: 1989 SCC (Cri) 206: AIR 1989 SC 702: (1989) 1 SCR 123: 1989 Cri LJ 841.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 17-1-1989]

[9436] — Ss. 376 and 511 — Attempt to commit rape — Proof and corroboration — *Presence of semen/human spermatozoa on salwar — Chemical Examiner reporting that chemical and miscroscopical tests of the seized salwar of the prosecutrix revealed the presence of semen/human spermatozoa — Even in absence of proof that the said spermatozoa was that of the accused, such a report, held, a strong corroborative piece of evidence — Evidence Act, 1872, S. 45. Madan Lal* v. *State of J&K*, (1997) 7 SCC 677: 1997 SCC (Cri) 1151: AIR 1998 SC 386.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 6-8-1997]

[9437] — Ss. 376/511 & 323 — Attempt to rape — Medical evidence — Presence of "smegma on the dorsal side of posterior 1/4th glans" of accused — *Negates the case of recent intercourse — Victim's hymen and fourchette found intact, no bleeding or dried blood mark, no discharge, no swelling found — Both accused and victim medically examined within seven hours of the occurrence — On microscopic examination of vaginal smear and urethral smear, no semen or spermatozoa found — Witness deposing that on hearing cries when he went to side of the road he found accused raising his underwear and on seeing him he ran away and the victim said that the accused spoiled her — Held, circumstances attending the case, evidence of PWs coupled with medical evidence established attempt of rape and causing simple hurt — Hence accused liable to be convicted under Ss. 376/511 and 323 and sentenced to 5 years' RI and 4 months' imprisonment*

The offence committed by accused-respondent is only an attempt of rape on the medical evidence which does not clinchingly establish the proof of rape as required by law. The presence of smegma was inconsistent with a recent intercourse. It would take about 24 hours to accumulate if the smegma is rubbed off during intercourse.

On the assessment and evaluation of the evidence, it must, therefore, be held that the respondent has made himself liable to be punished under S. 376 read with S. 511 IPC. Therefore, the respondent is convicted thereunder and is sentenced to undergo rigorous imprisonment for five years. The conviction record by the High Court under S. 323 IPC and the sentence of four months' imprisonment is retained. *State of Karnataka* v. *Mahabaleshwar Gourya Naik*, 1992 Supp (3) SCC 179: 1993 SCC (Cri) 180: AIR 1992 SC 2043: (1992) 2 Crimes 654.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M.M. Punchhi*, JJ. [Date of decision: 15-5-1992]

Parikh's Textbook of Medical Jurisprudence and Toxicology, page 439, relied on

21. Practice and Procedure

[9438] — S. 376 — Rape — Plea of consensual sex raised for the first time under Art. 136, held, not maintainable (Para 23). *Utpal Das* v. *State of W.B.*, (2010) 6 SCC 493.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *Aftab Alam*, JJ. [Date of decision: 7-5-2010]

22. Proof

Synopsis

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(e) Testimony of prosecutrix and also S. 114-A, Evidence Act **662**

(a) Generally

[9439] — Ss. 375 and 376 — Rape — Burden of proof — *Burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them — Evidence Act, 1872, S. 101* (Para 21). *Uday* v. *State of Karnataka*, (2003) 4 SCC 46: 2003 SCC (Cri) 775: AIR 2003 SC 1639: 2003 Cri LJ 1539.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 19-2-2003]

[9440] — S. 375 Thirdly — Rape by a policeman in police station — *Onus on the prosecution to establish ingredients of the offence — Passive consent or submission out of fear by the prosecutrix — Circumstantial evidence regarding — Held, offence not established — Charge against companion policeman under S. 354 for fondling the private parts of the prosecutrix also fails*

The onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It was, therefore, incumbent on it to make out that all the ingredients of S. 375 were present in the case. For the proposition that the requisite consent was lacking in the present case reliance on behalf of the State can be placed only on clause Thirdly so that it would have to be shown that the girl had been put in fear of death or hurt and that that was the reason for her consent. In the absence of such a finding, the alleged fear would not vitiate the consent. Further, for circumstantial evidence to be used in order to prove an ingredient of an offence, it has to be such that it leads to no reasonable inference other than that of guilt. The fear which clause Thirdly of S. 375 speaks of is negatived by the circumstance that the girl is said to have been taken away by the accused policeman right from amongst her near and dear ones at a point of time when they were all leaving the police station together and were crossing the entrance gate. The circumstantial evidence available, therefore, is not only capable of being construed in a way different from that adopted by the High Court but actually derogates in no uncertain measure from the inference drawn by it.

Moreover, no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false. It is further clear that the averments on the part of the girl that she had been shouting loudly for help are untrue.

Thus the sexual intercourse in question is not proved to amount to rape and no offence is brought home to the appellant.

As regards another policeman who was alleged to have fondled the private parts of the girl, the girl's version could not be believed in view of the shifting positions taken by her in this regard. Further the circumstance that this policeman was present at the time of occurrence is not inculpatory and is capable

22.(a) Generally *(contd.)*

of more explanations than one. *Tukaram* v. *State of Maharashtra*, (1979) 2 SCC 143: 1979 SCC (Cri) 381: AIR 1979 SC 185: 1978 Cri LJ 1864: (1979) 16 ACC 7.

Bench Strength **3**. Coram: *Jaswant Singh, P.S. Kailasam* and **A.D. Koshal**, JJ. [Date of decision: 15-9-1978]

See comments at (1974) 4 SCC (Jour) 17

[9441] — S. 376 — Even if factum of rape is established beyond reasonable doubt, the accused cannot be convicted unless there is reliable and acceptable evidence to come to a conclusion that it was the accused who committed the rape. *Prahlad Singh* v. *State of M.P.*, (1997) 8 SCC 515: AIR 1997 SC 3442: 1997 Cri LJ 4078.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 13-8-1997]

[9442] — S. 376 — Rape — Considerations while deciding guilt of accused in rape case — *Held, statement of prosecutrix must be given primary consideration, but, at the same time, broad principle that prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully* (Para 11). *Abbas Ahmad Choudhary* v. *State of Assam*, (2010) 12 SCC 115: 2010 Cri LJ 2060.

Bench Strength **2**. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 25-11-2009]

[9443] — S. 376 — Rape cases — Proof in — *Duty of court to deal with such cases with utmost sensitivity — Minor contradictions or insignificant discrepancies in the statement of the witnesses should not be a ground for throwing out allegations of rape*

The courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection and it must be emphasised that the courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in the totality of the background of the entire case and not in isolation. *State of A.P.* v. *Gangula Satya Murthy*, (1997) 1 SCC 272: 1997 SCC (Cri) 325: AIR 1997 SC 1588: 1997 Cri LJ 774.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 19-11-1996]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

(b) Corroboration

[9444] — Ss. 376, 354 and 342 — Corroboration to the testimony of the victim of sexual offences — When required — *Held, except corroboration by medical evidence, if available, no other corroborating evidence required, if the victim's testimony is otherwise believable — On facts, held, testimony of the prosecutrix (minor girls of 10-12 years age) reliable and hence conviction under Ss. 376 read with 511, 354, and 342 upheld*

If the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. This rule is subject to the qualification that corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation; or when the 'probabilities factor' is found to be out of tune.

Corroboration of the victim of the sexual offence may be considered essential to establish the offence in the backdrop of the social ecology of the western world. But it is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society, and its profile. Rarely will a girl or a woman in India make false allegations of sexual assault due to various psycho-social factors. And when in the face of those factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.

On principle the testimony of a victim of sexual assault stands on par with the testimony of an injured witness. Just like the testimony of the injured witness, that of the victim of sex offence is entitled to great weight. But unlike the case of physical assault, corroboration in the form of eyewitness account of an independent witness cannot be expected in sex offences, having regard to the very nature of the offence. *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat*, (1983) 3 SCC 217: 1983 SCC (Cri) 728: AIR 1983 SC 753: 1983 Cri LJ 1096.

Bench Strength **2**. Coram: *A.P. Sen* and **M.P. Thakkar**, JJ. [Date of decision: 24-5-1983]

(c) Laboratory Test

[9445] — Ss. 376 and 302 — Genuineness of swabs and slides in rape and murder case — Malkhana register — Credibility of entries made therein — Entries relating to vaginal swabs and slides appeared to have been missed initially but subsequently made by incharge of malkhana — There was plausible explanation for omission — *Initially, articles mentioned on first page of post-mortem examination report were entered in the register and then it was noticed that some more articles (swabs and slides) were mentioned on third page of report — Malkhana incharge, in his evidence, denying theory of interpolation — Even otherwise, there was evidence on record that swabs and slides were received in malkhana from hospital in a sealed jar and were delivered in the same condition to Centre for Cellular & Molecular Biology (CCMB), Hyderabad, for DNA profiling of accused — No suggestion made during cross-examination of doctors and police officials that seals of jar were tampered with — Held, genuineness of samples could not be doubted in such circumstances*

PW 47, Constable Rajinder Singh of CBI, who was the incharge of the malkhana on the day in question deposed that there was no mention that swabs and slides were contained in a glass jar, but the fact that the entries had been interpolated has been emphatically denied by him. These items had been taken by Inspector Shekhawat from the malkhana on 31-1-1996 in a sealed condition and in a glass jar and handed over to CCMB, Hyderabad in an identical condition. PW 49, Dr. Lalji Singh from CCMB deposed on oath that all the aforesaid items along with several others had been received in a sealed condition as his organisation did not accept any item which was without a seal. He further stated that along with samples he had received the sample seals which had been affixed on the bundle of clothes and the bottle carrying vaginal swabs and slides. (Para 58)

The vaginal swabs and slides find mention on the third page of the post-mortem report whereas the other items taken from the dead body are on internal p. 1. This raises the possibility that the Head Constable had, at the initial stage, missed the articles on p. 3 and thereafter rectified the mistake. No adverse inference against the prosecution can be drawn with regard to the retention of the items in the malkhana. No suggestion was put either to the doctors or to DSP Ohri or to Sub-Inspector Shekhawat that the seals of the aforesaid articles had been tampered with. (Para 59). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength **2**. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

(d) Recovery of crime/incriminating material/other articles

[9446] — S. 376 — Rape — Evidence of recovery of stained underwear of accused — Held, by itself cannot support case of rape against the accused

Since the identification of accused itself was doubtful, recovery of underwear at their instance becomes meaningless. It is somewhat difficult to believe that the accused had themselves provided the evidence of having committed rape soon after the incident, and even more surprising, that some of them had done so three days after the incident. Besides, recovery of the stained underwear is a factor which, by itself, cannot support a case of rape against the accused. (Para 21). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 3-12-2008]

[9447] — Ss. 376 and 302 — Murder and rape — Recovery of underwear stained with blood (Group B) and semen on information given by accused — But the same not produced and exhibited in court — *Nothing to show that the same was of the accused — No evidence to show as to what was the blood group of the accused and therefore, possibility of blood on the underwear being of the accused himself not ruled out — Number and extent of spread of stains also not known — Held, recovery of stained underwear was not an incriminating circumstance*

In the present case the age of the accused was about 21 years at the time of the incident. On his arrest he was subjected to medical examination and found to be a potent and capable person. Presence of semen stain on underwear, assuming that the underwear belonged to the accused, though there is no evidence adduced in this regard, is not by itself an incriminating piece of evidence connecting the accused with the crime in question. So also the discovery of Group B bloodstain on the underwear cannot be treated as an incriminating piece of evidence against the accused connecting him with the crime because there is no evidence that the underwear belonged to the accused and further the

22.(d) Recovery of crime/incriminating material/ other articles *(contd.)*

possibility of the underwear being stained with the blood of the person to whom it belonged, or the accused if he was wearing it has not been ruled out. (Para 19). *Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35: 1981 SCC (Cri) 315, relied on

[9448] — Ss. 376, 457 and 380 — Recovery of torch at the instance of accused — In the absence of any identifying mark on it, on facts, was doubtful — *Evidence Act, 1872* — S. 27

PW 3 (witness who was examined to prove the seizure of the torch and the disclosure statements) denies the fact that a torch was recovered pursuant to a disclosure statement made by accused-appellant *J*. He asserted that the torch was recovered from the room of the prosecutrix. Moreover, the prosecutrix herself admitted that such torches are sold in the market. In the absence of any identifying mark on the torch, it is difficult to place much reliance on the recovery of the torch. (Para 22). *Devinder Singh* v. *State of H.P.*, (2003) 11 SCC 488: 2004 SCC (Cri) 185: AIR 2003 SC 3365.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 17-9-2003]

[9449] — S. 376(2)(g) — Gang rape — Underwear handed over by the accused to the investigating officer were found by the chemical examiner to be stained with semen — *Underwear produced by some of the accused on the next day of occurrence, while others producing them three days later — Held, it is somewhat difficult to believe that the accused had themselves provided the evidence of having committed rape soon after the incident, and even more surprising, that some of them had done so three days after the incident — Recovery of the stained underwear is a factor which, by itself, cannot support a case of rape against the accused* (Para 21). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 3-12-2008]

Raja Ram v. State of M.P., (1994) 2 SCC 568: 1994 SCC (Cri) 573; Arokia Thomas v. State of T.N., (2006) 10 SCC 542: (2007) 1 SCC (Cri) 140; Suresh Chaudhary v. State of Bihar, (2003) 4 SCC 128: 2003 SCC (Cri) 801, followed

(e) Testimony of prosecutrix and also S. 114-A, Evidence Act

See also C.4.(d) Credibility of prosecutrix/ witness',

'C.8. Conduct of accused, prosecutrix, witnesses, etc.', and

'C.11. Conviction on sole testimony of prosecutrix', above

[9450] — S. 375 — Rape — Evidence — Testimony of prosecutrix — Conviction on the sole basis of — Sustainability

It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement. The courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. Minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. (Paras 5 and 15 to 20). *State of H.P.* v. *Asha Ram*, (2005) 13 SCC 766: (2006) 2 SCC (Cri) 296: AIR 2006 SC 381: 2006 Cri LJ 139.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 17-11-2005]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; Rafiq v. State of U.P., (1980) 4 SCC 262: 1980 SCC (Cri) 947; Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598; Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635: 1998 SCC (Cri) 1725; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, considered and relied on

[9451] — S. 375 — Rape — Evidence — Testimony of prosecutrix — Should be appreciated on the basis of probabilities like testimony of any other witness and conviction can be based solely on such testimony — *But if court finds it difficult to accept her testimony, it may seek assurance to her testimony, which may be short of corroboration, from other evidence*

A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being a criminal charge. However, if the court of facts may find it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would do. (Para 11). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 SCR 377: 1952 Cri LJ 547; Sidheswar Ganguly v. State of W.B., AIR 1958 SC 143: 1958 Cri LJ 273; Madho Ram v. State of U.P., (1973) 1 SCC 533: 1973 SCC (Cri) 417; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598; State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490: 1996 SCC (Cri) 133, relied on

[9452] — Ss. 375 and 376 — Rape — Appreciation of evidence — Evidence of victim appearing probable — Insistence on corroborative evidence by accused — Impermissibility of — *Held, an accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable — Judicial response to human rights cannot be blunted by legal jugglery*

Challenge in this appeal is to the judgment rendered by Single Judge High Court reducing the custodial sentence of respondent to 3½ years instead of 7 years as was imposed by the trial court. The respondent was convicted for an offence punishable under Section 376 IPC. Before the trial court, the prosecution had placed reliance on the evidence of the victim and the medical evidence. The victim (PW 1) was aged less than 12 years at the time of incident. Conviction was reduced to 3½ years, since the High Court felt that in view of certain special reasons the custodial sentence was to be reduced to 3½ years.

In support of the appeal, counsel for the State submitted that in a heinous crime like rape the High Court was not justified in reducing the sentence by referring to certain circumstances which are not only irrelevant but also cannot constitute special reasons warranting reduction in sentence.

Allowing the appeal,

Held :

It needs no emphasis that the physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. (Para 6). *State of Karnataka* v. *Raju*, (2007) 11 SCC 490: AIR 2007 SC 3225: (2007) 58 AIC 39 (SC): 2007 Cri LJ 4700.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 14-9-2007]

[9453] — Ss. 375 and 376 — Rape — Conviction — On the sole basis of testimony of the prosecutrix — Sustainability — *Held, is sustainable where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity — On facts held, the prosecutrix did not appear to be a witness of sterling quality on whose sole testimony a conviction could be sustained — She tried to conceal facts from the court, deviated from the case narrated in the FIR and her explanation about inordinate delay in lodging FIR was unsatisfactory — Hence, appellants entitled to benefit of doubt* (Paras 23 and 25). *Ramdas* v. *State of Maharashtra*, (2007) 2 SCC 170: (2007) 1 SCC (Cri) 546: AIR 2007 SC 155: (2007) 49 AIC 418 (SC).

Bench Strength **2**. Coram: **B.P. Singh** and *Tarun Chatterjee*, JJ. [Date of decision: 7-11-2006]

[9454] — Ss. 375 and 376 — Rape — Corroboration of evidence of prosecutrix — Whether mandatory — Rape of minor aged 12 years — *Taking judicial note of (1) social repercussions, (2) backward looking Indian society (3) dangers of being ostracised and survival difficulties, and (4) the resultant psychology of an Indian girl or woman (especially an unmarried girl) to admit rape without rape actually having been committed, held, evidence of prosecutrix stands on equal footing with that of injured witness and if her evidence inspires confidence, corroboration is not necessary*

In a case of rape, the testimony of a prosecutrix stands on a par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

appears to be credible. Corroboration is not the sine qua non for conviction in a rape case. No doubt, it is true that the doctor who initially conducted the medical examination of the prosecutrix, did not appear on behalf of the prosecution to depose. But, that alone is not sufficient to discard the prosecution story. (Paras 18 and 16)

In Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked at by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracised by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward-looking as the western countries are. (Para 17)

Looking from any angle, the appeal has no merit nor substance. It is proved beyond any shadow of doubt that the appellant had committed offence of rape on the minor girl and had completely ravished her. Even without the examination of the doctor, the evidence of the prosecutrix stands fully corroborated by the evidence of PW 3 Sub-Inspector of the police station who had virtually caught the appellant red-handed during commission of rape. Thus, even if the doctor had not been examined it would not throw or completely discard the prosecution story. The evidence of the prosecution witnesses is fully trustworthy and there is no reason to doubt genuineness thereof. (Paras 25 and 18)

In the present case, there is consistency in the evidence of the prosecutrix, which stands corroborated by the evidence of PW 3. He had no axe to grind against the appellant. In this case, the version of the prosecutrix right from lodging of the FIR, till her examination by the doctor and till she deposed in court, had been absolutely consistent. Not only this, to corroborate further, the evidence of PW 3 is also on record who had caught the appellant red-handed which fully establishes that it was the appellant who had committed offence of rape. (Para 24)

PW 1 prosecutrix had initially not supported the prosecution case and was declared hostile. But later when confronted with her statement recorded under Section 161 CrPC, she categorically deposed that the appellant removed her underwear, laid on her, put his male organ into her private part and was moving up and down. According to her, he committed bad act with her. PW 1 also proved her FIR recorded on 14-10-1988. When PW 1 was sent for medical examination, she again narrated rape on her by the appellant before the medical officer which finds place in her medical report. (Paras 9 and 12)

Whatever little lacunae was there in the prosecution story, have been cured in his cross-examination of PW 3 (IO). PW 3 (IO) corroborating the statement of PW 1 deposed that the accused and the prosecutrix were found to be in a compromising position and were naked below the waist, that the appellant was lying on the prosecutrix and was indulging in sexual intercourse and he had seen the incident in the light of the vehicle in which he was travelling and that thereafter they put on their clothes, were brought to police station and FIR was lodged. According to PW 3, the autorickshaw of the accused in which he had kidnapped PW 1 was seized on the same day and he was apprehended on the next day. (Paras 10 to 12)

Even the slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial. It was contended on behalf of the appellant that since hymen of the prosecutrix was found to be intact, it cannot be said that an offence of rape was committed on her by the appellant. This contention cannot be accepted as the offence of rape has been defined in Section 375 IPC. The medical report recorded that the hymen of the prosecutrix was intact, that her private part admitted only the tip of little finger with difficulty and that no intercourse was done with her. (Paras 19 to 22 and 8). *Wahid Khan* v. *State of M.P.*, (2010) 2 SCC 9.

Bench Strength **2**. Coram: *J.M. Panchal* and **Deepak Verma**, JJ. [Date of decision: 1-12-2009]

Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547, relied on

Radhu v. State of M.P., (2007) 12 SCC 57: (2008) 2 SCC (Cri) 207, distinguished

Modi: Medical Jurisprudence and Toxicology, 22nd Edn., p. 495; Parikh: Textbook of Medical Jurisprudence and Toxicology, relied on

[9455] — Ss. 375 and 376 — Rape — Testimony of prosecutrix — *Held, though evidence of prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter — On facts held, some supporting evidence was essential for prosecution's case in* *view of fallacies in prosecution version* (Paras 9 and 10). *Tameezuddin* v. *State (NCT of Delhi)*, (2009) 15 SCC 566.

Bench Strength **2**. Coram: *H.S. Bedi* and *Aftab Alam*, JJ. [Date of decision: 26-8-2009]

[9456] — Ss. 375 and 376 — Rape — Testimony of prosecutrix — Corroboration of — *Appellant alleged to have raped the complainant (PW 2) when she was alone in the house and later assaulted her husband who went to appellant's house to protest — Prosecutrix was an illiterate woman belonging to the lowest rung of society — Her testimony found credible by the trial court and the High Court — Held, there was no reason for her to make false allegations against the appellant — Despite lodging a complaint of "rape and assault", no action was taken by the police (as well as by the SP to whom a separate report was made) as regards offence of rape — Hence, there is substance in the complaint of the complainant and her husband that the police were siding with the appellant and a serious charge of rape levelled against him was not even recorded by the police constable who came to the hospital — Conviction and sentence upheld* (Paras 6 to 9). *Shrawan* v. *State of Maharashtra*, (2006) 13 SCC 191: (2007) 2 SCC (Cri) 677: (2006) 45 AIC 59 (SC).

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 27-7-2006]

[9457] — Ss. 375 and 376 — Rape trial — Conviction on the basis of sole testimony of prosecutrix — *Held, conviction can be based on prosecutrix's testimony corroborated by medical evidence and other circumstances such as report of chemical examination, if available evidence is otherwise trustworthy*

It is now well-settled that conviction for an offence of rape can be based on the sole testimony of prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc., if the same is found to be natural, trustworthy and worth being relied on. (Para 14). *State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71: 2001 SCC (Cri) 980: AIR 2001 SC 2075.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2001]

[9458] — Ss. 375 & 376 and 366 — Rape — Corroboration of prosecutrix's evidence — Sufficiency of — Conviction confirmed — Medical corroboration, when not mandatory — Lacunae in prosecution case when not material — Rape of minor aged 12 years — *Lacunae in prosecution that: (1) prosecutrix initially turning hostile, (2) doctor examining prosecutrix was not examined (meaning prosecution story not being corroborated by medical examination), and (3) examination report of doctor reporting that hymen of prosecutrix was intact — On the other hand prosecutrix though initially turning hostile giving credible and consistent statement in FIR, in S. 161 CrPC statement, before medical officer and in S. 164 CrPC statement — PW 3, IO catching the accused red-handed during rape and also recovering autorickshaw in which prosecutrix was kidnapped the same day, thereby fully corroborating statement of PW 1 (prosecutrix) — PW 3 having no past enmity with accused — Prosecutrix categorically deposing that appellant-accused removed her underwear, laid on her, put his male organ into her private part and was moving up and down — According to prosecutrix, accused committed "bad act" with her — Effect — On facts, held, offence of rape has been proved from all angles, despite the hymen being found intact — CrPC, 1973, Ss. 161, 154 and 164* (Paras 19 to 22 and 8). *Wahid Khan* v. *State of M.P.*, (2010) 2 SCC 9.

Bench Strength **2**. Coram: *J.M. Panchal* and **Deepak Verma**, JJ. [Date of decision: 1-12-2009]

Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547, relied on

[9459] — Ss. 375, 376 and 366 — Rape — Proof and corroboration of — Testimony of prosecutrix — Conviction on the sole basis of — Permissibility — *Prosecutrix alleging that on the pretext of taking her to the hospital, accused took her to a room inside the hotel and after threatening her, ravished her sexually — Accused though denying the charges not able to explain as to how he had been falsely implicated — Testimony of prosecutrix quite natural, inspiring confidence and meriting acceptance — Held, a clear case of rape, as defined under S. 375 clause thirdly has been established against the accused — Further held, conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence — Bombay Children Act, 1948 (71 of 1948), S. 57* (Para 25). *Vishnu* v. *State of Maharashtra*, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217: AIR 2006 SC 508: (2006) 37 AIC 310 (SC): 2006 Cri LJ 303.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 24-11-2005]

[9460] — Ss. 375, 376 and 450 — Rape — Conviction on (sole) testimony of prosecutrix — Permissibility — *Appellant-accused alleged to have raped the prosecutrix when she was alone in her hut which was situated in a field — It was also alleged that when she was knocked down, bangles*

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

on her right hand had broken — Pieces of broken bangles found at the place of occurrence — Stains found on one of the underwears of accused — Submission that uncorroborated version of prosecutrix should not have been relied upon by trial court as well as High Court to convict accused under S. 450 and S. 376(1) and sentenced accused to five years' and seven years' RI respectively — Reiterating the principles enunciated by Supreme Court in its various decisions as regards sustainability of conviction on the sole testimony of prosecutrix and considering the relevant case law, held, impugned judgment and sentence imposed therein warrants no interference — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(1)(xii) (Paras 2 to 6 and 11 to 14). *Moti Lal* v. *State of M.P.*, (2008) 11 SCC 20: (2008) 3 SCC (Cri) 950: 2008 Cri LJ 3543.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 15-7-2008]

[9461] — S. 375 Fifthly — Conviction under, upheld in view of testimony of prosecutrix which stood corroborated by that of her father as well as of the doctor who had examined her — *That after the occurrence the prosecutrix had been living in the house of the accused and had given birth to a child, if established, could be taken into account in fixing quantum of punishment — But in the absence of any evidence in that regard, sentence of five years' RI upheld. Bishnudayal* v. *State of Bihar*, 1980 Supp SCC 358: 1981 SCC (Cri) 283: AIR 1981 SC 39: 1980 Cri LJ 1297.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 1-8-1980]

[9462] — S. 376 — Appreciation of evidence — That conviction can be based on sole testimony of the prosecutrix, reiterated

The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim. However, after carefully scanning and scrutinising the evidence of the parents of the prosecutrix, her brother, the prosecutrix herself and the doctor (PW 11), the same is found to be trustworthy, convincing and reliable. (Para 15). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of H.P. v. Gian Chand, (2001) 6 SCC 71: 2001 SCC (Cri) 980, relied on

[9463] — S. 376 — Conviction can be based on the sole testimony of an eyewitness though in this case his testimony stood corroborated by the blood-stains on the clothes of dumb and deaf prosecutrix aged 13 and the medical evidence — *Non-examination of prosecutrix hence not fatal. Mange* v. *State of Haryana*, (1979) 4 SCC 349: 1979 SCC (Cri) 985: AIR 1979 SC 1194: 1979 Cri LJ 939.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 17-1-1979]

[9464] — S. 376 — Conviction on (sole) testimony of prosecutrix — Case law considered and discussed (Para 11). *S. Ramakrishna* v. *State*, (2009) 1 SCC 133: (2009) 1 SCC (Cri) 487: AIR 2009 SC 885: (2008) 71 AIC 66 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 20-10-2008]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Narayan Saha v. State of Tripura, (2004) 7 SCC 775: 2005 SCC (Cri) 410, followed

[9465] — S. 376 — Conviction upheld on the ground that testimony of prosecutrix stood corroborated by the medical report and her father's testimony — *Police abandoning case of rape on ground of complaint being not genuine — Report of Chemical Examiner on vaginal swabs for semen withheld by police — Held, in such circumstances, at the trial based on private complaint by the prosecutrix, defence cannot rely on non-prosecution by the police — CrPC, 1973 — Ss. 157(1) Proviso (b), 156 and 169*

It is curious that in spite of the statements of the girl and her father and the medical report, the police was not satisfied even prima facie as to the truth of the allegations against the appellants. The police officers including the Superintendent of Police, did not even consider it their duty to produce before the court the report of examination by the Chemical Examiner of the vaginal swabs of the prosecutrix as to the presence of semen and spermatozoa. There is no explanation why such a very important and vital evidence has been withheld from the court. In the circumstances, no importance whatsoever should be given to the fact that the police was not satisfied about the genuineness of the prosecution case. *Balwant Singh* v. *State of Punjab*, (1987) 2 SCC 27: 1987 SCC (Cri) 249: AIR 1987 SC 1080: 1987 Cri LJ 971.

Bench Strength **2**. Coram: *G.L. Oza* and **M.M. Dutt**, JJ. [Date of decision: 10-2-1987]

[9466] — S. 376 — Evidence of prosecutrix, if corroborated by circumstances of the case, held, would be sufficient to found conviction under, without any further substantial corroboration of her evidence — *Circumstantial factors to be considered*

A girl below 16 years was sleeping in the night out-side her house in the company of her mother and other children when the accused-appellant along with another person carried her away to a nearby godown under intimidation, raped her and then put her back in the cot from where she was removed. In the morning her mother saw blood on the daughter's salwar and on enquiry the victim complainingly narrated the last night's incident. An FIR was lodged which was followed by investigation and charge-sheet and ultimately conviction of the appellant under S. 376, Indian Penal Code.

Held :

The court must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's version. The inherent bashfulness, the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication. The injury on the person of the victim, especially her private parts, has corroborative value. Her complaint to her parents and the presence of blood on her clothes are also testimony which warrant credence. More than all, it baffles belief in human nature that a girl sleeping with her mother and other children in the open will come by blood on her garments and injury in her private parts unless she has been subjected to the torture of rape. To forsake these vital considerations and go by obsolescent demands for substantial corroboration is to sacrifice commonsense in favour of an artificial concoction called 'judicial' probability.

That the trial Court has acquitted the remaining accused is no ground for claiming acquittal of the appellant. *Krishan Lal* v. *State of Haryana*, (1980) 3 SCC 159: 1980 SCC (Cri) 667: AIR 1980 SC 1252: 1980 Cri LJ 926: (1980) 6 ALR 310.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *E.S. Venkataramiah*, JJ. [Date of decision: 1-4-1980]

[9467] — S. 376 — Evidence of rape victim — If a person in authority such as a police officer is accused of rape, evidence of the prosecutrix should be judged in the backdrop of the particular fact situation in which she was placed — *Absence of resistance by prosecutrix to be viewed in the context of the sense of awe attached to the authority and her helplessness — Evidence Act, 1872, S. 114-A*

The infrastructure of our criminal investigation system recognises and protects the right of a woman to decent and dignified treatment at the hands of the investigating agency. This is evident from the proviso to sub-section (2) of S. 47, sub-section (2) of S. 53 and proviso to S. 160 of the Code. If a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behaviour must be judged in the backdrop of the situation in which she was placed. The purpose and setting, the person and his position, the misuse or abuse of office and the despair of the victim which led to her surrender are all relevant factors which must be present in the mind of the court while evaluating the conduct evidence of the prosecutrix. A person in authority, such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his victim. The court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped. A woman who is subjected to sex violence would always be slow and hesitant about disclosing her plight. The court must, therefore, evaluate her evidence in the above background.

In this case though the version of the prosecutrix is that she had tried to resist the accused respondent that the respondent being a strong man was able to overpower her and take her by force. Besides, he was a man in authority in police uniform. The prosecutrix was alone and helpless. In the circumstances the resistance would be considerably dampened. *State of Maharashtra* v. *Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550: 1990 SCC (Cri) 210: AIR 1990 SC 658: 1990 Cri LJ 889.

Bench Strength 2. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1990]

[9468] — S. 376 — Evidence of rape victim — Standard of proof required — *If she does not lack understanding, ordinarily her evidence must be accepted without requiring further corroboration and conviction can be founded on that basis — Her evidence must receive the same weight as attached to an injured witness — Generally an Indian woman would not make false allegation of rape against any person*

A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. She is undoubtedly a competent witness under S. 118. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation. If the Court keeps it in mind that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (*b*) to S. 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. Therefore, ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Ordinarily an Indian woman would be most reluctant to level false accusation of rape involving her own reputation unless she has a very strong bias or reason to do so.

In the present case although the prosecutrix and her husband had reason to be annoyed with the conduct of the accused-respondent of dragging out the prosecutrix at dead of night, the reason was not strong enough for her husband to involve her and soil her reputation nor for her to do so. An Indian woman attaches maximum importance to her chastity and would not easily be a party to any move which would jeopardise her reputation and lower her in the esteem of others. There are, therefore, no such strong circumstances which would make the court view her evidence with suspicion.

Nothing much can be made out from the fact that after the accused-respondent had misbehaved with the prosecutrix in the police station and had molested her she did not complain about the same to other police officers. Ordinarily an Indian woman is ashamed to speak about such violations of her person, more so to total strangers about whose response she is not sure. Also there was no point in her speaking to her parents who had disowned her. *State of Maharashtra* v. *Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550: 1990 SCC (Cri) 210: AIR 1990 SC 658: 1990 Cri LJ 889. Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1990]

Followed in S. Ramakrishna v. State, (2009) 1 SCC 133

[9469] — S. 376 — Need for corroboration of testimony of prosecutrix and presence of injury on her person, held, depends on the facts and circumstances of each case — *Inferences regarding rape can be drawn from circumstantial evidence — Ordinarily conviction can be founded on the basis of testimony of the prosecutrix supported by totality of the facts and circumstances of the case — On facts, special leave refused against the conviction and sentence of seven years' RI*

A middle-aged *bal sewika* in a village welfare organisation was raped by the appellant around 2.30 a.m. when she was sleeping in a girls' school. The next day the victim related the incident to the *mukhya sewika* of the village which ultimately resulted in conviction of the appellant basing substantially on the testimony of the victim. A sentence of seven years' RI was awarded to the appellant by the trial Court. The High Court confirmed the conviction and sentence.

Held :

Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances. Indeed, from place to place, from age to age, from varying life-styles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of precedential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggressed.

When rapists are revelling in their promiscuous pursuits and half of humankind — womankind — is protesting against its hapless lot, when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, the court cannot cling to a fossil formula and insist on corroborative testimony, even if, taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Hardly a sensitized judge who sees the conspectus of circumstances in its totality rejects the testimony of a rape victim unless there are very strong circumstances militating against its veracity. In the absence of any such circumstances confirmation of conviction by courts below must, therefore, be a matter of course.

The 7-year sentence of rigorous imprisonment awarded was justly merited, having regard to the circumstances. Rape for a woman is deathless shame and must be dealt with as the gravest crime against human dignity. *Rafiq* v. *State of U.P.*, (1980) 4 SCC 262: 1980 SCC (Cri) 947: AIR 1981 SC 559: 1980 Cri LJ 1344: 1981 ALJ 139.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *O. Chinnappa Reddy*, JJ. [Date of decision: 14-8-1980]

[9470] — S. 376 — Prosecutrix regarded as accomplice — Rule of corroboration now a rule of law — *Nature and extent of corroboration necessary explained — Previous statement of the prosecutrix in the nature of complaint to another person admissible in corroboration — Evidence Act, 1872, Ss. 8(j), Illustration and 157*

To begin with a woman who has been raped is not an accomplice. If she was ravished she is the victim of an outrage. If she consented there is no offence unless she is a married woman, in which case questions of adultery may arise. But adultery presupposes consent and so is not on the same footing as rape. In the case of a girl who is below the age of consent, her consent will not matter so far as the offence of rape is concerned, but if she consented her testimony will naturally be as suspect as that of an accomplice. So also in the case of unnatural offence. But in all these cases a large volume of case-law has grown up which treats the evidence of the complainant somewhat along the same lines as accomplice evidence though often for widely differing reasons and the position now reached is that the rule about corroboration has hardened into one of law.

As a matter of law conviction without corroboration would not be improper. But in view of the rule of practice prevalent at common law the Judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case.

Hence, the rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, and in jury cases, must find place in the charge, before a conviction without corroboration can be sustained.

Regarding the nature and extent of corroboration necessary, it would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence charged.

The rules are, however, clear to the extent that:

Firstly, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction.

Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identity must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence.

Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal.

Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

The previous statement of the prosecutrix in the nature of complaint made to her mother or someone else is admissible as evidence as indeed provided by the illustration to S. 8*(j)* of the Evidence Act. Such evidence can be used for the purposes of corroboration if it satisfies the conditions of S. 157, Evidence Act, in being contemporaneous to event, etc. The weight to be attached to such evidence is another matter.

Mother of the prosecutrix to whom she complained can be regarded as an 'independent' witness for corroboration. It may be that all mothers may not be sufficiently independent to fulfil the requirements of the corroboration rule but there is no legal bar to exclude them from its operation merely on the ground of their relationship. Independent merely means independent of source which are likely to be tainted. In the absence of enmity against the accused there is no reason why she should implicate him falsely.

On facts, a statement made by a girl of 8 years, four hours after the event to her mother at the first available opportunity is admissible. *Rameshwar* v. *State of Rajasthan*, AIR 1952 SC 54: 1952 SCR 377: 1952 Cri LJ 547, 550.

Bench Strength **2**. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 20-12-1951]

King v. Baskerville, (1916) 2 KB 658, followed

***Followed in** AIR 1958 SC 143: 1958 Cri LJ 273, 276; (1972) 2 SCC 749: 1972 SCC (Cri) 793*

[9471] — S. 376 — Rape — Allegedly committed in bajra field when prosecutrix had gone out to village well at 3 p.m. — Proof — *Primary evidence of prosecutrix corroborated by her grandmother who deposed that she had been attracted to the place of the incident when prosecutrix shouted for help and had also seen the accused running away after having committed the assault — After prosecutrix narrated the incident to her parents on reaching home with bruise and scratch marks all over her body, FIR lodged without delay and she was sent for medical examination — Medical report revealed fresh marks and indications of sexual intercourse which had occurred within 24 hours — Bajra field found to have been trampled upon — Ocular evidence further corroborated by the fact that police officer had picked up a torn piece of underwear from the site which matched with the underwear that the prosecutrix had been wearing — Held, accused rightly convicted under S. 376 by trial court but wrongly acquitted by High Court — But having regard to the plea that the incident had occurred way back in 1994 and some mitigation therefore in the quantum of sentence was called for especially as the High Court had found that no case had been made out against the accused, sentence of 10 years' RI imposed by trial court reduced to 7 years' RI. State of Rajasthan* v. *Munshi*, (2007) 12 SCC 759.

Bench Strength **2**. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 12-10-2007]

[9472] — S. 376 — Rape — Appreciation of sole testimony of prosecutrix — If and when corroboration essential — Absence of injuries on private parts — Effect

Rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely assault-it is often destructive of the whole personality of the victim. The murderer destroys the physical body of his victim. Rapist degrades the very soul of the helpless female. (Para 1)

In the context of Indian culture, a woman-victim of sexual aggression-would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent. (Para 19). *Rajinder* v. *State of H.P.*, (2009) 16 SCC 69.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **R.M. Lodha**, JJ. [Date of decision: 7-7-2009]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Radhu v. State of M.P., (2007) 12 SCC 57: (2008) 2 SCC (Cri) 207; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, followed

[9473] — S. 376 — Rape — Conviction can be based on the sole testimony of the prosecutrix without any corroboration if her testimony is otherwise worthy of credence — *However, corroboration by medical evidence can be insisted upon where such evidence is forthcoming*

Even in cases wherein there is lack of oral corroboration to that of a prosecutrix, a conviction can be safely recorded, provided the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence. As a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. *Madan Gopal Kakkad* v. *Naval Dubey*, (1992) 3 SCC 204: 1992 SCC (Cri) 598.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 29-4-1992]

[9474] — S. 376 — Rape — Conviction on sole testimony of prosecutrix — When sustainable — *In a case of rape, particularly if prosecutrix is illiterate and uneducated, her statements, held, have to be accepted in toto without further corroboration — Further, in present case, cogent, reliable, convincing and trustworthy statements of prosecutrices, held, were acceptable*

The trial Judge convicted A-1 and A-2 under Sections 376 and 506 Part II IPC for allegedly taking the two victim sisters in an auto and raping them after taking them in a wrong direction. The High Court by the impugned order dismissed the appeal against their conviction.

Dismissing the appeal,

Held :

In a case of rape, particularly if the victims are illiterate and uneducated, their statements have to be accepted in toto without further corroboration. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. (Paras 15 and 17)

There is no reason to disbelieve the statement of the victims PWs 1 and 2 (prosecutrices). On the other hand, their oral testimony which is found to be cogent, reliable, convincing and trustworthy has to be accepted. Further, both the courts have rightly accepted the statements of the prosecutrices. (Para 23)

The evidence of prosecutrices cannot be rejected as unacceptable. Though there was a delay of 42 days in lodging the complaint to the police, PWs 1 and 2, in their evidence, explained that all their family members including themselves are uneducated, there are no male members in their family for their assistance and they settled in the present village to eke out their livelihood. They were working in quarry owned by PW 4 and while returning from their workplace by force A-1 and A-2 committed rape of PWs 1 and 2. PW 14 (mother of PWs 1 and 2) also corroborated them about their illiteracy and fear due to the threat call of A-1 and A-2. All these material aspects were duly considered by the trial court and accepted by the High Court. (Paras 15 and 19). *Santhosh Moolya* v. *State of Karnataka*, (2010) 5 SCC 445.

Bench Strength **2**. Coram: **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 26-4-2010]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Rajinder v. Sate of H.P., (2009) 16 SCC 69: (2010) 2 SCC (Cri) 156; Sohan Singh v. State of Bihar, (2010) 1 SCC 68: (2010) 1 SCC (Cri) 452, relied on

[9475] — S. 376 — Rape — Conviction on the basis of the sole testimony of the prosecutrix — *Held, permissible provided the evidence of the prosecutrix inspires confidence and appears to be natural and truthful — In the instant case, the evidence of the prosecutrix was not of such quality — No other evidence on record which could even lend some assurance, short of corroboration that the prosecutrix was making a truthful statement — Hence, the judgment of High Court acquitting the accused, upheld*

The prosecutrix was working as a domestic helper in five flats including the flat of accused-Respondent 1. According to the prosecution, on the date of the incident, when the prosecutrix went into the bedroom of Respondent 1 to sweep the room, Respondent 1 switched off the light of the bedroom and caught hold of her and raped her despite her protests. The trial court convicted Respondent 1 under Sections 376 and 342 IPC. But, the High Court in appeal reversed the judgment passed by the trial court.

Dismissing the appeal,

Held :

The evidence of the prosecutrix does not inspire confidence. The occurrence took place at about 12.30 p.m. on a Sunday. The High Court has observed that on a Sunday, if the prosecutrix had raised an alarm it would have been heard by many persons who would have immediately come to her rescue, particularly in such a society where Respondent 1 resided. On a Sunday most of the residents are at home at about 12.30 p.m. and, therefore, it was surprising that no one heard the

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

cries of the appellant when she was raped by Respondent 1. Thereafter also the conduct of the prosecutrix is rather surprising. She was loitering in the locality till about 2.30 p.m. i.e. for about 2 hours after the incident. She again went to the flat of Respondent 1 on the second floor after having come down immediately after the occurrence. The reason given by her is that she wanted to return the keys to Respondent 1. At one stage she stated that she had decided to hand over the keys to one of the neighbours, but actually she did not hand over the keys to anyone. When she went up to the flat of Respondent 1 she met PW 2 and his wife. But she did not tell them about the incident. She then came back home and went to sleep. In the evening when her husband came she did not report the incident to him. At night, as usual, she cooked food for the family and went to sleep. Next morning she came to the society and attended to her routine work. Admittedly, she worked in four flats on that day but she did not report the matter to anyone. Later in the afternoon she went to the house of her brother. It is there for the first time that she reported the matter to her sister-in-law who has not been examined. Only thereafter they went to the police station and lodged the report at about 3.00 p.m. (Para 18)

So far as the first information report is concerned, the prosecutrix stated that she and her brothers *B* and *S* thought over the incident and thereafter went to lodge the complaint. She first stated that *S* had written down the report, then she changed her version stating that *S* had not written but had signed on the complaint. Again she said that while in the house nothing was written, and *S* had signed in the police *chowki*. Then again she corrected herself by saying, in the police *chowki* no one signed but he had signed on the FIR at Vartaknagar Police Station. (Para 10)

The medical evidence or the report of the Chemical Analyst do not support the case of the prosecution. That obviously is on account of the fact that the clothes had been washed and the appellant had taken a bath twice after the occurrence. In the cross-examination, the prosecutrix asserted that she was determined to lodge a complaint. She also knew that taking a bath would cause disappearance of the evidence of rape, but still she took a bath because she was feeling dirty. (Paras 17 and 20)

The evidence of PW 2, occupant of the neighbouring flat, does not support the case of the prosecution. This witness was declared hostile. Further, PW 5 (constable) was examined to prove that at about 7.00 a.m. on 27-4-1992 Respondent 1 had come to Gandhinagar Police Chowki to find out if any occurrence had been reported. The evidence of this witness is of no significance and also appears to be untrue. It appears that the only fact which was sought to be proved through this witness was not stated by him in his statement recorded in the course of investigation. (Paras 12 and 16)

It is true that the conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, short of corroboration that she is making a truthful statement. Thus, the view taken by the High Court is a possible, reasonable view of the evidence on record and, therefore, warrants no interference. (Para 21). *Vimal Suresh Kamble* v. *Chaluverapinake Apal S.P.*, (2003) 3 SCC 175: 2003 SCC (Cri) 596: AIR 2003 SC 818: 2003 Cri LJ 910.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 8-1-2003]

[9476] — S. 376 — Rape — Conviction on the basis of testimony of prosecutrix — *Held, conviction can be based on the testimony of prosecutrix — If court is not satisfied with her version, it can seek other evidence, direct or circumstantial, by way of assurance*

A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do. (Para 12). *State of U.P.* v. *Pappu*, (2005) 3 SCC 594: 2005 SCC (Cri) 780: AIR 2005 SC 1248: 2005 Cri LJ 331.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-12-2004]

[9477] — S. 376 — Rape — Conviction on the basis of the testimony of the prosecutrix alone — Permissibility — Corroboration of her testimony — Necessity of — *Held, once the statement of the prosecutrix inspires confidence and the same* *is accepted by the court, conviction can be based only on the solitary evidence of the prosecutrix — No corroboration of her testimony is required unless there are compelling reasons which necessitate the same — In this view, where evidence of prosecutrix and other prosecution witnesses was found reliable, held, High Court totally erred in acquitting the accused merely on ground of non-examination of doctor by prosecution* (Paras 14 and 15). *State of M.P.* v. *Dayal Sahu*, (2005) 8 SCC 122: 2005 SCC (Cri) 1988: AIR 2005 SC 3570: 2005 Cri LJ 4375.

Bench Strength **2**. Coram: **H.K. Sema** and *G.P. Mathur*, JJ. [Date of decision: 29-9-2005]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Sk. Zakir v. State of Bihar, (1983) 4 SCC 10: 1983 SCC (Cri) 761; Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635: 1998 SCC (Cri) 1725; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, relied on

[9478] — S. 376 — Rape — Conviction reversed — Sole testimony of prosecutrix — When enough to base conviction — Test for — *Case of appellant that he had gone to house of prosecutrix to recover his cow and in a quarrel that followed, both had received injuries and that he was thereafter falsely implicated in a case of rape — As per prosecutrix, she had caused injuries to appellant during time of rape and thereafter, appellant had caused her three minor injuries as well — However, PWs 2 and 3 (son and relative of prosecutrix, respectively), who had reached place of incident soon after alleged rape, declared hostile and did not support prosecutrix — Even her husband, who accompanied her to police station to lodge report, did not come into witness box — Doctor who conducted her medical examination, also unable to confirm factum of rape — Held, though evidence of prosecutrix is liable to be believed save in exceptional circumstances, but to hold that a prosecutrix must be believed irrespective of improbabilities in her story, is unacceptable — Test always is as to whether the given story prima facie inspires confidence — Present matter is indeed an exceptional one — Herein, story given by prosecutrix does not inspire confidence — Hence, appellant's conviction, reversed* (Paras 9 to 11). *Dinesh Jaiswal* v. *State of M.P.*, (2010) 3 SCC 232.

Bench Strength **2**. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 12-1-2010]

[9479] — S. 376 — Rape — Delay in lodging complaint — Case solely based on evidence of prosecutrix — *Complaint made by prosecutrix seven months after the alleged commission of rape on her by appellant — At the time of filing the complaint prosecutrix was carrying child of seven months — Prosecutrix explained that initially she had not protested in view of appellant's promise to marry her but on appellant's refusal to her proposal for marriage at the stage of her seven months' pregnancy, she filed the complaint — Held, prosecutrix having waited for seven months for filing FIR, in absence of any other supporting evidence it would be unsafe to convict appellant wholly on the basis of testimony of the prosecutrix*

In cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, specially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenceless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix has willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR it will be very hazardous to convict on such sole oral testimony. Moreover, no DNA test was conducted to find out whether the child was born out of the said incident of rape and that the appellant-accused was responsible for the said child. In the face of lack of any other evidence, it is unsafe to convict the accused. Therefore, the view taken by the trial court and the Single Judge of the High Court in convicting the appellant-accused under Section 376 IPC cannot be sustained. (Para 5). *Vijayan* v. *State of Kerala*, (2008) 14 SCC 763: (2009) 3 SCC (Cri) 585.

Bench Strength **2**. Coram: *A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 16-7-2008]

[9480] — S. 376 — Rape — Evidence — Conviction can be based on the testimony of prosecutrix alone, without insisting on corroboration if the same inspires confidence — *Accused having dominion or control over prosecutrix physically, mentally and spiritually and many of them believed him to be God — In the circumstances held, there was no reason why prosecutrix should depose falsely against the accused — On facts, testimony of the prosecutrix reliable and also corroborated by medical and other contemporaneous evidence — Hence conviction rightly based on evidence of the prosecutrix*

The prosecutrix is not an accomplice. The evidence of a victim of sexual assault, if inspires confidence, conviction can be founded on her testimony alone unless there are compelling reasons for seeking corroboration. Her evidence is more reliable than that of an injured witness. In a case of

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

sexual assault corroboration as a condition for judicial reliance is not a requirement of law but a guidance of prudence. (Para 34). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength 2. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

[9481] — S. 376 — Rape — Evidence and proof — Rape of a married woman, a labourer, by another labourer — *Failure of the prosecution to examine independent witnesses who could have corroborated the testimony of the prosecutrix — Recovery of semen-stained chaddi of the accused not proved — Presence of semen stains on the petticoat and in the vagina of the prosecutrix lending assurance to her accusation — Held, in the circumstances of the case, defective investigation by the police cannot be a ground for acquitting the accused — Mere delay in lodging FIR does not raise the inference that the complaint was false — Indian women are slow and hesitant to complain of such assault — Rape having been committed on a pile of sand, absence of injury on her person inconsequential*

The prosecutrix, a labourer, was working in a factory along with another labourer *C*. The appellant and his companion came to the factory premises and asked *C* to fetch tea and on his departure the appellant lifted her bodily and took her inside the machine room and committed rape. After the appellant had satisfied his lust and before his companion could take his turn the prosecutrix ran away and met *R*, a female co-labourer, and narrated to her the incident. Thereafter she searched for her husband, a rickshaw-puller, and lodged the FIR. The witnesses *C* and the female co-labourer were not examined by the prosecution. Recovery or seizure of chaddi of the accused which contained semen stains was also not proved. Both the courts below convicted the appellant. Dismissing the special leave appeal

Held :

In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Any investigating officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the 'chaddi'. But the accused cannot be acquitted solely on that ground. (Para 5)

Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false. The possibility of tutoring is ruled out because the evidence does not show that her husband knew the appellant and his companion before the incident. (Para 7)

In the instant case the prosecutrix, a victim of the crime, had absolutely no reason whatsoever to falsely involve the appellant nor did her husband have any reason to do so or tutor his wife to involve the appellant. The prosecutrix is a poor labourer who was toiling to earn her livelihood to augment the family income. She was working in the factory since the last few days only and the appellant and his companion, taking advantage of the situation, drove away *C* by asking him to fetch tea and after he left the appellant violated her person. The finding of semen stains on the petticoat and in the vagina lend assurance to the story narrated by the prosecutrix. The submission that there was delay in lodging the complaint has to be stated to be rejected for the simple reason that immediately after the incident she had to go in search of her husband who was a rickshaw-puller, narrate to him the incident, go down to the police station and then lodge the complaint. She has explained the absence of injuries by stating that she was laid on minute sand which was lying on the floor and, therefore, there were no marks of injury. Therefore, taking an overall view of the matter it must be held that the courts below rightly placed reliance on the testimony of the prosecutrix and convicted the appellant. (Para 8). *Karnel Singh* v. *State of M.P.*, (1995) 5 SCC 518: 1995 SCC (Cri) 977: AIR 1995 SC 2472.

Bench Strength 2. Coram: **A.M. Ahmadi, C.J.** and *S.C. Sen*, J. [Date of decision: 11-8-1995]

[9482] — S. 376 — Rape — Evidence of prosecutrix corroborated by medical and other evidence — Absence of consent on the part of the prosecutrix — *In the circumstances and on facts, held, accused liable for offence under S. 376*

The accused aged 17 years at the relevant time was the brother-in-law of the prosecutrix's father. According to the prosecution, when on 17-4-1993 the prosecutrix, who was 2-3 years younger to the accused entered her father's house to get the plough, the accused followed her and when she reached the cowshed, she was caught by the accused from behind. The prosecutrix tried to extricate herself from him but she was overpowered by the accused and was made to lie on the floor of the cowshed. The accused then untied the knot of her salwar and pulled it down and thereafter, committed sexual act. According to the prosecutrix, she resisted the accused by scratching him with her nails. There was bleeding from her private parts. The prosecutrix returned home immediately and told her father about the incident. Her father went to the Pradhan of the Gram Panchayat of the area who, in turn, advised him to lodge a complaint with the police. He reported the matter to the police. As the prosecutrix was having severe pain and discomfort, she did not accompany her father to the police station. Police visited the place of occurrence and recovered a bloodstained piece of cloth. The salwar and kameez worn by the prosecutrix at the time of the occurrence were also recovered. The piece of cloth recovered from the place of the occurrence and the kameez worn by the prosecutrix were found to be stained with blood and on serological test found to have blood of A+ve group. Even though there were some bloodstains on the salwar, the grouping could not be made. The undergarments worn by the accused during the relevant time were also recovered and subjected to chemical examination and they neither contained blood nor spermatozoa. In the course of investigation, the police collected a family history book which indicated the age of the prosecutrix and the accused. The prosecutrix was subjected to medical examination. The doctor found no marks of violence over the breasts, nipples, cheeks and lips and on the external genitals, perineum, abdomen, chest, back, limbs, neck and face. The doctor also found no marks of injury over vulva. Hymen was found intact with a small laceration at 6 o'clock position. Clotted blood was seen at vaginal orifice, which admitted tip of the finger with great difficulty. The doctor observed "it was difficult to say whether intercourse has taken place or not. Vaginal swab slide was prepared and got examined microscopically ... under which no dead or alive sperms were seen. Her blood group was A+ve". The doctor after taking note of the physical features stated that the prosecutrix must be of the age between 13 to 14 years. The Senior Medical Officer (Dental) also supported this version. The accused was examined on 20-4-1993. The Sessions Court acquitted the accused taking the view that the prosecutrix must have been above the age of 16 years and the evidence as a whole indicated that there was consent on the part of the prosecutrix to have the sexual act. The High Court did not interfere with the findings of the Sessions Court. Disposing of the appeal,

Held :

The verdict of not guilty had been entered by the Sessions Judge mainly based on two grounds that the prosecutrix was aged above sixteen years and if at all there was any sexual act, it must have been with her consent. Both these findings are erroneous and incorrect. (Para 11)

The medical certificate indicates that there was laceration of the hymen at 6 o'clock position and clotting of blood was seen at the vaginal orifice. This item of medical evidence is to be appreciated in the background of the oral evidence given by the prosecutrix. She deposed that the accused pulled down her salwar and had sexual act with her. It is not known whether these clothes were washed before they were subjected to chemical examination. A piece of cloth which was recovered from the place of occurrence and the wearing apparel worn by the prosecutrix were stained with blood. The Sessions Judge made a casual observation that these bloodstains might have been caused due to the menstruation of the prosecutrix. The doctor stated that she had no history of menstruation and there was no suggestion also on the part of the accused as to whether the prosecutrix sustained injury on account of any other violent act. (Para 15)

In view of the evidence of the prosecutrix, which is corroborated by medical evidence and other items of evidence and in the absence of any consent on the part of the prosecutrix, it is clearly established that the accused had committed rape on the prosecutrix and is liable for the offence punishable under Section 376 IPC. The offence of rape being a serious one, the case should have received careful attention and the Sessions Judge and the High Court should have shown greater sensitivity to these type of cases. The evidence should have been appreciated on broader probabilities and they should not have been carried away by insignificant contradictions. (Para 16). *State of H.P.* v. *Mango Ram*, (2000) 7 SCC 224: 2000 SCC (Cri) 1331: AIR 2000 SC 2798.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **K.G. Balakrishnan**, JJ. [Date of decision: 24-8-2000]

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

[9483] — S. 376 — Rape — Evidence of victim — Corroboration of, held, is not a sine qua non for conviction — *Accused cannot cling to a fossil formula and insist on corroborative evidence even if taken as a whole the case spoken to by the victim strikes a judicial mind as probable*

The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. In the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracised by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sexual offence is entitled to great weight, notwithstanding the absence of corroboration. (Paras 9 and 11). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

Rameshwar v. State of Rajasthan, 1952 SCR 377: AIR 1952 SC 54: 1952 Cri LJ 547, relied on

[9484] — S. 376 — Rape — It is a crime against the entire society — *Plight of the rape victims in the present legal system despite making the rule of corroboration of prosecutrix not always necessary and introduction of S. 114-A in Evidence Act highlighted and reform suggested*

Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, namely, the Right to Life contained in Article 21. "Right to Life" does not merely mean animal existence but means something more, namely, the right to live with human dignity. Right to Life would, therefore, include all those aspects of life which go to make a life meaningful, complete and worth living. *Bodhisattwa Gautam* v. *Subhra Chakraborty*, (1996) 1 SCC 490: 1996 SCC (Cri) 133: AIR 1996 SC 922: (1996) 1 AndhLT (Cri) 252.

Bench Strength **2**. Coram: *Kuldip Singh* and **S. Saghir Ahmad**, JJ. [Date of decision: 15-12-1995]

Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608: 1981 SCC (Cri) 212; State of Maharashtra v. Chandrabhan Tale, (1983) 3 SCC 387: 1983 SCC (Cri) 667: 1983 SCC (L&S) 391; Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545; Delhi Transport Corpn. v. DTC Mazdoor Congress, 1991 Supp (1) SCC 600: 1991 SCC (L&S) 1213, relied on

[9485] — S. 376 — Rape — Proof and corroboration of — Appellant doctor alleged to have raped prosecutrix, a patient visiting his clinic — Sessions Court as well as the High Court convicting the appellant relying on the testimony of prosecutrix — *Held, though in rape cases conviction on the sole testimony of prosecutrix is sustainable (provided it inspires confidence), but in the instant case version given by the prosecutrix is unsupported by medical evidence and the surrounding circumstances belie the case set up by her — There were many persons in the clinic and it is highly improbable that the appellant would have sexually assaulted her when they were present in the near vicinity — It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique — Absence of injuries on the body improbabilise the prosecution version — Moreover, there was absence of spermatozoa in the vaginal swab of the prosecutrix — Presence of semen on the undergarments of the appellant as also on her petticoat and sari not sufficient by itself to prove the offence though may cause some suspicion on the conduct of the appellant — Further, the doctor who examined the appellant on the same day negatived sexual intercourse on the basis of scientific evidence — No injury found on the body or the private parts of the prosecutrix — Doctor who examined her unable to give any opinion about the alleged sexual intercourse — Held, appellant entitled to benefit of doubt — Conviction and sentence set aside*

It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen. (Para 9)

In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbabilise the prosecution version. (Para 10)

Besides the absence of spermatozoa in the vaginal swab of the prosecutrix casts a serious doubt on the prosecution evidence. (Paras 7 and 13)

Moreover, the appellant also was medically examined on the same day by PW 10 who stated that smegma was present around the corona glandis. He further deposed that his examination negatived sexual intercourse and for collection of smegma around corona glandis a period of 24 hours is required. This scientific evidence also does not support the prosecution. Had there been a vigorous sexual act as alleged by the prosecutrix there could not have been the presence of smegma on his private part. (Para 8)

It is true that the petticoat [**Ed.**: of the prosecutrix] and the underwear allegedly worn by the appellant had some semen but that by itself is not sufficient to treat that the appellant had sexual intercourse with the prosecutrix. That would only cause some suspicion on the conduct of the appellant but not sufficient to prove the case, as alleged by the prosecution. (Para 12)

On a consideration of the entire evidence in this case, there is a serious doubt regarding the sexual intercourse allegedly committed by the appellant on the prosecutrix. The appellant is entitled to the benefit of doubt. (Para 14). *Sadashiv Ramrao Hadbe* v. *State of Maharashtra*, (2006) 10 SCC 92: (2007) 1 SCC (Cri) 161.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *R.V. Raveendran*, JJ. [Date of decision: 17-1-2006]

[9486] — S. 376 — Rape — Prosecutrix an unmarried girl coming from weaker section of society — Her words believed by the courts below — *No interference by the Supreme Court called for. Dagdulal* v. *State of M.P.*, 1995 Cri LJ 3639.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 13-12-1994]

[9487] — S. 376 — Rape — Testimony of prosecutrix — Corroborating evidence not essential she is not an accomplice or in the category of a child witness — *Some evidence which lends assurance to her accusation sufficient*

A woman who is a victim of sexual assault is not an accomplice to the crime but is a victim of another person's lust and therefore her evidence need not be tested with the same amount of suspicion as that of an accomplice. She is not in the category of a child witness or an accomplice and therefore the rule of prudence that her evidence must be corroborated in material particulars has no application; at the most the court may look for some evidence which lends assurance. (Para 7). *Karnel Singh* v. *State of M.P.*, (1995) 5 SCC 518: 1995 SCC (Cri) 977: AIR 1995 SC 2472.

Bench Strength **2**. Coram: **A.M. Ahmadi, C.J.** and *S.C. Sen*, J. [Date of decision: 11-8-1995]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210, applied

Followed in S. Ramakrishna v. State, (2009) 1 SCC 133

[9488] — S. 376 — Rape — Testimony of prosecutrix — Credibility — *Prosecutrix being forcibly taken away from PW 6's rickshaw and raped by two appellants — Prosecutrix meticulously narrating same sequence of events as stated in FIR — No reasons suggested for false tutoring of prosecutrix by police — Rather prosecutrix's evidence fully corroborated by PWs 6 and 1 — On facts, such evidence of prosecutrix, held, credible*

In Exhibit P-9 (report) the prosecutrix (PW 14) alleged that at about 8.00 p.m. when she was going in a rickshaw, the appellant-accused surrounded the rickshaw and told the rickshaw-puller (PW 6) to divert the destination and they forcibly took her to a nearby house and raped her one after another. She was prevented from raising her voice as they threatened her to kill with a knife. Thereafter, the accused took her to a nearby tea stall and locked her inside it. That after about 15/20 minutes PWs 1, 2 and others came there and rescued her. Next day morning PW 1, PW 2 and others who rescued her came along with the accused where she identified the appellants as the ones who had committed rape on her.

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

The High Court by the impugned order reversed the acquittal of the appellants and convicted them under Section 376 IPC and sentenced them to suffer rigorous imprisonment for five years and to pay a fine of Rs 2000, in default of payment of fine to further undergo two months' rigorous imprisonment.

Dismissing the appeal,

Held :

There is no reason whatsoever to disbelieve the evidence of prosecutrix who meticulously narrated the sequence of events as to what transpired on that fateful day from 8.00 p.m. onwards till her lodging the first information report on the next day. The prosecutrix more or less reiterated the same facts in her evidence as stated in the FIR. (Paras 17 and 14)

There are no material contradictions in the evidence of prosecutrix (PW 14) and PW 6 (rickshaw-puller) so as to disbelieve their evidence. The version of PW 14 receives complete corroboration from the evidence of PW 6. (Para 20)

There is no reason to disbelieve the statement of PW 6 (rickshaw-puller) who is totally an uninterested witness. PW 6 also deposed that he identified two of the appellant-accused. There is practically nothing suggested to PW 6 in the cross-examination. (Para 19)

There is nothing to disbelieve the version given by PW 1 which supports the prosecution's case. PW 1 in his evidence narrated as to what PW 6 (rickshaw-puller) told him within a short time of the incident on the fateful night. That all of them searched for the girl and ultimately found the girl in a nearby tea stall where she was locked inside. (Para 18)

The only suggestion made to the prosecutrix (PW 14) is that she was tutored by the police at the thana and she had set up a false story to implicate the appellants in the case. However no reasons were suggested for such false implication. (Para 17)

The High Court rightly observed that the victim made no mistake in identifying the two appellants, and that, based on the evidence of PW 1, PW 6 and the victim (PW 14) herself, it is satisfactorily proved that the two appellants were actually the persons who committed rape on the victim on that fateful day on 28-4-1984. (Para 24). *Utpal Das* v. *State of W.B.*, (2010) 6 SCC 493.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *Aftab Alam*, JJ. [Date of decision: 7-5-2010]

[9489] — S. 376 — Rape — Testimony of prosecutrix — Credibility of — *Prosecutrix having no animosity against accused, nor having any reason to falsely implicate the accused, nor deposing at the behest of any person who was inimically disposed towards accused — Part of the testimony of prosecutrix corroborated by other witnesses — Held, at least at the stage of grant of anticipatory bail to accused, evidence of the prosecutrix can be accepted*

A case of this nature should be allowed to be fully investigated. Once a criminal case is set in motion by lodging an information in regard to the commission of the offence in terms of Section 154 CrPC, it may not always be held to be imperative that all the accused persons must be named in the first information report. It has not been denied nor disputed that the prosecutrix does not bear any animosity against the respondents. There is no reason for her to falsely implicate them. It is also not a case that she did so at the behest of some other person, who may be inimically disposed towards the respondents. The prosecution has disclosed the manner in which she was being taken from place to place which finds some corroboration from the testimonies of the other witnesses and, thus, it can safely be concluded that at least at this stage her evidence should not be rejected outrightly. (Para 30). *State of Maharashtra* v. *Mohd. Sajid Husain Mohd. S. Husain*, (2008) 1 SCC 213: (2008) 1 SCC (Cri) 176: AIR 2008 SC 155.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 10-10-2007]

[9490] — S. 376 — Rape — Testimony of prosecutrix — Evidentiary value — *Though believable on a par with that of an injured witness, held, her testimony cannot always be presumed to be gospel truth — Possibility of exaggeration or embellishment or false implication, where several persons are accused, cannot be ruled out — Plausibility of immoral past of prosecutrix, based on evidence, can be considered*

Ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. But at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. To the same effect is the presumption under S. 114-A, Evidence Act, 1872 which is extremely restricted in its applicability. Insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. (Paras 10 to 12). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 3-12-2008]

[9491] — S. 376 — Rape — Testimony of prosecutrix — Evidentiary value of — Corroboration when not required — *Reiterated, a woman who is victim of sexual assault is not an accomplice to the crime — Her evidence cannot be tested with suspicion as that of an accomplice — As a matter of fact, evidence of prosecutrix is similar to evidence of injured complainant or witness — Testimony of prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary — In prosecutions for rape, the law does not require corroboration — Evidence of prosecutrix alone may sustain a conviction — It is only by way of abundant caution that court may look for some corroboration so as to satisfy its conscience and rule out any false accusations — Reasons why a woman in India is unlikely to falsely allege sexual assault against herself, discussed* (Paras 22 to 25 and 26 to 28). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Vijay v. State of M.P., (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639, relied on

[9492] — S. 376 — Rape — Testimony of prosecutrix — Reliability — *Held, can be acted upon without corroboration in material particulars — However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony — Assurance, short of corroboration, as understood in the context of an accomplice would do* (Para 14). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

[9493] — S. 376 — Rape — Testimony of prosecutrix — Reliability

It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scathing her own prestige and honour. (Para 13)

The courts while dealing with such cases should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation. If a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. (Paras 14 and 15)

A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. (Para 15). *Om Prakash* v. *State of U.P.*, (2006) 9 SCC 787: (2006) 3 SCC (Cri) 401: AIR 2006 SC 2214: 2006 Cri LJ 2913: (2006) 4 All LJ 575.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-5-2006]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210, relied on

[9494] — S. 376 — Rape — Testimony of prosecutrix supported by medical evidence and other convincing evidence — *Merely because the prosecutrix was simple enough to repose confidence in accused persons and stayed with them in a room in a hotel it cannot be held that she was a consenting party*

The offence of rape has been established against both the accused persons and the case of the prosecution so far as the offence of rape is concerned should not be disbelieved. If the prosecutrix was little careful in not placing reliance on unknown young persons in staying in a room in a hotel, she would not have suffered the misfortune but simply because she was simple enough to repose confidence in two young men, the prosecution case should not be disbelieved particularly when convincing evidences about the commission of offence of rape were adduced. The medical evidence supports the testimony of the prosecutrix that she was raped in the previous night. The doctor has found that her hymen was ruptured recently and was bleeding. Some injuries on her private parts were also noted by the doctor. Admittedly, the accused and the prosecutrix shared one room and it is nobody's case that besides the prosecutrix and accused persons, any other person stayed in the room. *Raju* v. *State of Karnataka*, (1994) 1 SCC 453: 1994 SCC (Cri) 538: AIR 1994 SC 222: 1994 Cri LJ 248: (1994) 2 BLJR 1059: (1994) 1 Crimes 156: (1994) 31 ACC 152.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 12-10-1993]

[9495] — S. 376 — Rape — Testimony of victim — *Conviction solely on the basis of, without further corroboration — Held, permissible if the court is satisfied from the evidence of the victim* (Para 6). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

[9496] — S. 376 — Rape — Testimony of the victim — Evidentiary value — Corroboration if and when necessary — Explained — *In absence of any ulterior motive for falsely implicating the accused (Respondent 1 herein), the testimony of the victim of rape (prosecutrix), corroborated by medical evidence, held, reliable — That the prosecutrix was a widow aged 55 years having two grown-up children, was a circumstance to be taken note of*

The prosecutrix, a 55-year-old widow who was the mother of two grown-up children, was while coming back to her house after attending the marriage of a relation, criminally assaulted and subjected to forcible intercourse by the respondents. The first information report was submitted by her on the next day against the respondents. She was medically examined and her torn salwar was sent for chemical analysis. On medical examination various injuries were found on her person. The doctor was of the opinion that they reflected the signs of a struggle. The trial court convicted the accused persons under Sections 376(2)(*g*) and 323 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs 5000 each under Section 376 IPC and six months' rigorous imprisonment under Section 323 with a fine of Rs 500 each. The High Court reversed that decision. It acquitted Respondent 2 on the ground that his identity could not be established by the prosecution at the trial. It further held that the case against Respondent 1 was not proved beyond doubt as the medical evidence and the finding showed that no dead or alive spermatozoa was seen. Another circumstance which weighed with the High Court was that the sealing of the salwar was not properly established. Moreover, before the Supreme Court the respondent attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. One of such discrepancies was that the prosecutrix had stated the place of occurrence to be 20 feet away from the road while in the FIR the place of occurrence was mentioned as the road. Upholding the acquittal of Respondent 2 but setting aside the acquittal of Respondent 1 and restoring his conviction by the trial court,

Held:

The identity of Respondent 2 was, admittedly, not established during the investigation and it is not clear as to how the said respondent was put on trial along with Respondent 1. Hence, Respondent 2 could not have been put on trial and held guilty. (Para 4)

However, the High Court erred in holding that the prosecutrix had not been subjected to forcible sexual intercourse or the prosecution had failed to prove the case against Respondent 1 also. The High Court's conclusion that absence of dead or mobile spermatozoa either in the vagina or in the cervix of the prosecutrix rules out the possibility of the prosecutrix having been subjected to sexual intercourse, is not referable to any evidence on record. The presence of spermatozoa, dead or alive, would differ from person to person and its positive presence depends upon various circumstances. Otherwise also the presence or absence of spermatozoa is ascertained for the purposes of corroboration of the statement of the prosecutrix. If the prosecutrix is believed to be a truthful witness in her deposition, no further corroboration may be insisted upon. Corroboration is admittedly only a rule of prudence. (Paras 5 and 6)

It is not denied that the seized salwar had stains of blood and semen on it. The mere fact that some different marks were noted on the sealed packet was by itself no ground to discard the otherwise reliable evidence of the prosecutrix. The High Court has completely ignored the medical evidence specifying the injuries on the person of the prosecutrix which proved and established the struggle and resistance shown by her at the time of commission of the offence of rape. The injuries noted by the doctor were sufficient to lend corroboration to the testimony of the prosecutrix particularly when no motive is attributed to her for falsely involving Respondent 1 in the commission of the crime. The prosecutrix, in her cross-examination, had denied even the suggestion that the injuries sustained by her were sustained while cutting grass in the jungle. She also denied that she was a liquor addict. The fact that the prosecutrix was a widow of about 55 years of age having two grown-up children was a circumstance to be taken note of for the purposes of satisfying the Court that there was no ulterior motive of roping the accused in the commission of crime. (Para 6). *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, followed

[9497] — S. 376 — Rape — Testimony of victim — Reliability — *Held, can be acted upon without corroboration in material particulars — However, if the court of facts finds it difficult to accept the version of the victim on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony — Assurance, short of corroboration, as understood in the context of an accomplice, would suffice* (Para 21). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[9498] — S. 376 — Rape — Woman or girl raped is not an accomplice — *Evidence Act, 1872, S. 133* (Para 11). *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551: AIR 2003 SC 4684.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

[9499] — S. 376 — Rape of a widow — Conviction can be based on the sole testimony of the prosecutrix — *Corroboration from independent source or circumstances can however be sought if considered necessary — Evidence of prosecutrix, a widow and mother of three, in the instant case found reliable and also corroborated by evidence of other witnesses — Fact that High Court upheld conviction of the accused-respondent under S. 450 having found that he had trespassed into the room of the prosecutrix at midnight, itself corroborates version of the prosecutrix — Non-production of medical examiner's report, though may deprive prosecution of corroborative evidence, but held, in such case medical evidence may not significantly improve the case of prosecution or defence particularly when prosecutrix was examined several days after the occurrence — Held, respondent liable to be convicted under S. 376 and sentenced to undergo seven years' rigorous imprisonment and fine of Rs 1000 with default stipulation*

It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

prosecutrix. If the court is satisfied that the evidence of prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the conviction can be recorded. In appropriate cases, the court may look for corroboration from independent source or from the circumstances of the case before recording an order of conviction. In this case evidence of the prosecutrix is free from any blemish. Moreover, the High Court affirmed the finding that in the middle of the night the respondent had trespassed into the room of the prosecutrix and upheld his conviction under Section 450 IPC. That itself strongly supports the case of the prosecution and corroborates the version of the prosecutrix. In a case of this nature, one would not expect the medical evidence to significantly improve the case of prosecution or the defence, particularly when the prosecutrix was examined after several days of the occurrence, and she was the mother of three children. So far as the report of the chemical examiner is concerned, since the prosecution did not produce the report, the prosecution is deprived of any corroborative evidence which the report may have provided. However, the other evidence adduced by the prosecution, in fact, provides the necessary corroboration, even if that was considered necessary. The High Court on a clear misreading of the evidence on record, acquitted the respondent of the charge under Section 376 IPC while upholding his conviction under Section 450 IPC. Therefore, the order of acquittal passed by the High Court is set aside so far as it relates to offence under Section 376 IPC and the respondent is sentenced to undergo seven years' rigorous imprisonment and a fine of Rs 1000, and in default of payment of fine, to undergo one-month rigorous imprisonment. (Paras 15, 14 and 16). *State of Rajasthan* v. *Biram Lal*, (2005) 10 SCC 714: AIR 2005 SC 2327: 2005 Cri LJ 2561.

Bench Strength **2**. Coram: **B.P. Singh** and *S.B. Sinha*, JJ. [Date of decision: 13-4-2005]

[9500] — S. 376 — Rape of minor girl aged 7/8 years — Testimony of prosecutrix alone, if reliable, whether sufficient to convict the accused without seeking further corroboration — Injury on male organ of accused if necessary — *On facts, convincing and trustworthy testimony of the prosecutrix corroborated by medical evidence and testimony of other PWs existing — Doctor who examined the prosecutrix finding her hymen ruptured, slight bleeding coming out of the vaginal edges, presence of blood clots and external genitals tender and red and vagina admitting one finger with difficulty which got smeared with blood — Shawl on which, according to the prosecution, she was made to lie while committing the rape, found by the doctor to be having some mud and blood stains — Doctor opining that prosecutrix had been subjected to sexual intercourse — Doctor who examined accused-respondent finding him potent and capable of sexual intercourse — Father of the prosecutrix and other PWs deposing to have seen the respondent running from the place of occurrence carrying with him his underwear — Held, trial court rightly convicted the respondent under S. 376 and High Court erred in acquitting him on the basis of conjectures and surmises — Circumstances such as absence of spermatozoa on the vaginal slide and absence of injuries on the male organ not always fatal to the prosecution case — These circumstances should be considered in the light of the peculiar factual set-up of the case*

There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record. The medical evidence provided sufficient corroboration.

No inference can be drawn against the prosecution from the fact that only two blood stains had been found on the shawl by the Chemical Examiner. The doctor had found the presence of blood stains and mud on the shawl and had opined that the bleeding from the edges of the vagina was slight and that some amount of clotted blood was also present. The prosecutrix was a girl of tender age and on account of the rape committed on her, there was bleeding from her vagina but in the circumstances it cannot be expected that the shawl should have got "drenched with blood" as if the large blood arteries had been cut.

The absence of spermatozoa cannot be a circumstance against the prosecution case. The prosecution case itself was that on being surprised while the respondent was in the act of committing sexual intercourse on the prosecutrix, he ran away carrying his underwear. The absence of spermatozoa under the circumstances could not be said to be a circumstance in favour of the respondent at all.

There is no inflexible axiom of law which lays down that the absence of injuries on the male organ of the accused would always be fatal to the prosecution case and would discredit the evidence of the prosecutrix, otherwise found to be reliable. The presence of injuries on the male organ may lend support to the prosecution case, but their absence is not always fatal. Every case has to be approached with realistic diversity based on peculiar facts and circumstances of that case. The doctor who had examined the respondent had found him to be capable of sexual intercourse and according to his opinion the absence of injury on his male organ was not suggestive of the fact that he had not indulged in sexual intercourse with the prosecutrix, then of tender years of age. His evidence was not at all challenged on this aspect by the defence.

The judgment of the High Court was based more on surmises and conjectures than on proper appreciation of evidence. Court must be sensitive to the serious crime committed against human dignity. Courts must be wary, circumspect and slow to interfere with reasonable and proper findings based on appreciation of evidence as recorded by the lower courts, before upsetting the same and acquitting an accused involved in the commission of heinous offence of rape of hapless girl child. *State of H.P.* v. *Raghubir Singh*, (1993) 2 SCC 622: 1993 SCC (Cri) 674: 1993 (2) ALT (Cri) 286: (1993) 2 Crimes 887.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 18-2-1993]

Rahim Beg v. State of U.P., (1972) 3 SCC 759: 1972 SCC (Cri) 827, distinguished and limited

[9501] — **S. 376 — Rape on minor girl — Conviction can be based solely on the evidence of prosecutrix if her evidence is reliable and truthful** — *Prosecutrix giving vivid account of how she was subjected to sexual harassment and intercourse on several occasions even in presence of accused's wife — Her testimony corroborated by medical evidence indicating that hymen of the victim was ruptured and she was ravished — Having regard to the testimony of the prosecutrix, and of the neighbour to whom the prosecutrix had narrated the incident whereafter the matter was reported to the police and of the doctor who had examined the prosecutrix and of another doctor who had examined the accused, held, the prosecutrix had truthfully narrated the entire episode and there was no reason why it can be said that she tried to foist a false case on the accused — In the circumstances, the view that it is not possible for a man to commit rape in presence of his wife cannot be accepted — High Court erred in acquitting accused of charge under S. 376* (Para 2). *State of Sikkim* v. *Padam Lall Pradhan*, (2000) 10 SCC 112.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *M.B. Shah*, JJ. [Date of decision: 17-11-1999]

[9502] — **S. 376 — Rape victim — Held, is not treated as an accomplice, but could only be characterised as injured witness** (Para 18). *Sudhansu Sekhar Sahoo* v. *State of Orissa*, (2002) 10 SCC 743: 2003 SCC (Cri) 1484: AIR 2003 SC 2136.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **K.G. Balakrishnan**, JJ. [Date of decision: 18-12-2002]

[9503] — **S. 376 — Rule of corroboration of statement by prosecutrix — Nature** — *Held, a rule of prudence and not of law — Corroboration not absolutely essential — Without corroboration conviction depends on facts and circumstances of each case. Gurcharan Singh* v. *State of Haryana*, (1972) 2 SCC 749: 1972 SCC (Cri) 793: AIR 1972 SC 2661: (1973) 2 SCR 197: 1973 Cri LJ 179.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 13-9-1972]

Explained in 1980 SCC (Cri) 667: (1980) 3 SCC 159

[9504] — **S. 376 — Sole testimony of prosecutrix suffering from infirmity — Reliability of** — *Held, it is well settled that the sole testimony of the prosecutrix could be acted upon and made the basis of conviction without being corroborated in material particulars — However, the rule about the admissibility of corroboration should not be ignored by the courts in sexual offences — In view of the infirmities present in the sole testimony of the prosecutrix, which was contradicted by the medical evidence as well as by the version given by PW 3 (aunt) to whom the prosecutrix narrated the incident soon after the commission of rape, held, implicit reliance could not be placed upon her sole testimony — Evidence Act, 1872, S. 114-A*

It is well settled that the prosecutrix in a sexual offence is not an accomplice and there is no rule of law that her testimony cannot be acted upon and made the basis of conviction unless corroborated in material particulars. However, the rule about the admissibility of corroboration should be present to the mind of the Judge. (Para 12)

In the instant case, the age of the prosecutrix was around 16 years, and therefore, she was not just a child who would have surrendered herself to a forced sexual assault without offering any resistance whatsoever. Hence, on facts of the case, the "probabilities factor" operates against the prosecutrix. (Para 14)

Further, the testimony of the prosecutrix has been contradicted by the medical evidence as well as by the version of her maternal aunt (PW 3) to whom she narrated the entire incident soon after its commission. According to the medical opinion, the prosecutrix was used to sexual intercourse. The presence of bloodstains on the clothes of the prosecutrix, as stated by her, was also not confirmed by the

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

report of the Forensic Science Laboratory or by the doctors who examined her. (Paras 14 and 3)

Thus, the prosecution case rests solely on the testimony of the prosecutrix and the medical evidence given in the case does not lend any positive corroboration to the testimony of the prosecutrix. Therefore, in view of the aforesaid contradictions, it is difficult to accept the truthfulness of the version of the prosecutrix of the sexual assault so as to convict the appellants. (Paras 8 and 14)

On the question of consent, though presumption under Section 114-A, Evidence Act, 1872 was raised, no finding was being recorded that prosecutrix was a willing party. (Para 14)

Hence, the appellants are entitled to be acquitted of the charges framed against them. (Para 15). *Dilip* v. *State of M.P.*, (2001) 9 SCC 452: AIR 2001 SC 3049.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 9-10-2001]

State of H.P. v. Gian Chand, (2001) 6 SCC 71: 2001 SCC (Cri) 980; Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9505] — S. 376 — Statement of a prosecutrix in a case under S. 376, Penal Code — Held, not in the nature of the statement of an accomplice — *Rule of prudence requires that her statement should be corroborated before a conviction can be based on it — Evidence Act, 1872, Ss. 133 and 114, Ill.(b)*

A girl who is a victim of an outrageous act is, generally speaking, not an accomplice though the rule of prudence requires that the evidence of a prosecutrix should be corroborated before a conviction can be based upon it. If the jury had been apprised of the necessity, ordinarily speaking, of corroboration of the evidence of the prosecutrix, it is for the jury to decide whether or not it will convict on the uncorroborated testimony of a prosecutrix in the particular circumstances of the case before it. In other words, insistence on corroboration is advisable but is not compulsory in the eyes of the law. It is well established that the nature and extent of corroboration necessary, vary with the circumstances of the case. The nature of corroborative evidence should be such as to lend assurance that the evidence of the prosecutrix can be safely acted upon. *Sidheswar Ganguly* v. *State of W.B.*, AIR 1958 SC 143: 1958 SCR 749: 1958 Cri LJ 273.

Bench Strength **2**. Coram: **B.P. Sinha** and *J.L. Kapur*, JJ. [Date of decision: 24-10-1957]

[9506] — S. 376 — Testimony of prosecutrix — Imprecision in — Effect — Station/education of prosecutrix — Relevance — *Imprecise allegation as to rape before medical officer, alleging only that she had been "assaulted" — Though factum of rape clearly disclosed elsewhere — Effect* (Para 23). *Zindar Ali Sheikh* v. *State of W.B.*, (2009) 3 SCC 761: (2009) 2 SCC (Cri) 737: AIR 2009 SC 1467: 2009 Cri LJ 1324: (2009) 2 CHN 19 (SC): (2009) 1 ECrN 941 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 6-2-2009]

[9507] — S. 376 — Testimony of prosecutrix, a grown up married woman — Corroboration of factum of rape may be sought from an independent evidence and that of the details may be sought from direct and circumstantial evidence — *Tribal woman labour alleging rape on her by accused-appellant — Incident narrated to husband immediately after the occurrence — Police having refused to record the information, complaint lodged in court by her — Some of the witnesses named in the complaint not supporting prosecution case — Medical examination not done — Even then testimony of the prosecutrix, as corroborated by her husband under S. 157, Evidence Act as also other witnesses, held, sufficient, in the circumstances of the case, to found conviction of the accused under S. 376*

Even though the victim of rape cannot be treated as an accomplice, her evidence is treated almost like that of an accomplice requiring corroboration. The judge trying the case must indicate in the course of the judgment that he had the rule of corroboration in his mind when he prepared the judgment and if in a given case the judge finds that there is no need for such corroboration he should give reasons for dispensing with the necessity for such corroboration. But if a conviction is based on the evidence of a prosecutrix without any corroboration it will not be illegal on that sole ground. In the case of a grown up and married woman it is always safe to insist on such corroboration. Wherever corroboration is necessary it should be from an independent source but it is not necessary that every part of the evidence of the victim should be confirmed in every detail by independent evidence. Such corroboration can be sought from either direct evidence or circumstantial evidence or from both. *Sk. Zakir* v. *State of Bihar*, (1983) 4 SCC 10: 1983 SCC (Cri) 761: AIR 1983 SC 911: 1983 Cri LJ 1285.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *V. Balakrishna Eradi*, JJ. [Date of decision: 2-6-1983]

But see Rafiq v. State of U.P., (1980) 4 SCC 262: 1980 SCC (Cri) 947; Bharwada B. Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 581 and Krishan Lal v. State of Haryana, (1980) 3 SCC 159: 1980 SCC (Cri) 667, where the Court pointed out irrelevance of insisting on corroboration if the testimony of the prosecutrix was otherwise reliable

[9508] — S. 376 — Victim of rape — *Held, is not an accomplice — Evidence Act, 1872, S. 133* (Para 21). *State of H.P.* v. *Shree Kant Shekari*, (2004) 8 SCC 153: AIR 2004 SC 4404.

Bench Strength **2**. Coram: **Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-9-2004]

[9509] — S. 376 — Victim of rape — *Held, is not an accomplice in the crime — Evidence Act, 1872, S. 133* (Para 6). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

[9510] — S. 376 — Victim of rape — Held, is not an accomplice — *Evidence Act, 1872, S. 133*

It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former, it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice would do. (Para 14). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

[9511] — S. 376 — Victim of rape, held, is not an accomplice — *Evidence Act, 1872, S. 133*

A woman or a girl who is raped is not an accomplice. Corroboration is not a sine qua non for conviction in a rape case. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. (Paras 11 and 9). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[9512] — S. 376 — Victim of rape, held, is not an accomplice — *Her testimony can be acted upon without corroboration in material particulars — However, if it is difficult to accept the version of the victim on its face value, the court may search for evidence, direct or circumstantial, which would lend assurance to her testimony — Assurance, short of corroboration as understood in the context of an accomplice, held, would suffice — Evidence Act, 1872, Ss. 133 and 114 Ill. (b)*

It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would suffice. (Para 5). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

[9513] — Ss. 376, 363, 366 and 368 — Case of kidnapping and rape — Minor contradictions and omissions in testimony of prosecutrix — *Prosecutrix being illiterate and rustic young woman — Evidence consistent in material aspects — Held, prosecutrix being illiterate and rustic young woman, some contradictions and omissions were natural, as her recollection, observance, memory and narration of chain of events may not be precise — Conviction restored* (Para 29). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Prakash Singh v. Union of India, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417, relied on

Bench Strength **2**. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

[9514] — Ss. 376, 363, 366 and 368 — Evidence of a victim of sexual assault — Corroboration not necessary — Conviction can be founded on her testimony alone unless there are compelling reasons for seeking corroboration — Court may look for some assurance of her statement to satisfy its judicial conscience — *Her evidence is more reliable than that of an injured witness — She is not an accomplice — On facts, even though no corroboration is required yet there is sufficient corroboration from the medical evidence and report of the chemical examiner*

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

The testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for *corroboration* of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some *assurance* of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable. *State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

[9515] — **Ss. 376 and 375 — Medical evidence not corroborating the alleged forced sexual inter- course — Conviction based solely on oral evidence of prosecutrix and her subsequent conduct, upheld** — *Medical examination of prosecutrix not disclosing evidence of sexual intercourse — No injury marks on accused or prosecutrix — But oral testimony of prosecutrix found to be cogent, reliable, convincing and trustworthy as her evidence stood corroborated by other PWs and narration of events in the FIR — No interference with conviction called for — Appellant alleged to have raped prosecutrix in coffee estate — She unequivocally and clearly stating that while she was returning to worksite carrying meals for her mother the accused had suddenly come from behind, held her body with force and then dragged her to some distance in the coffee estate in spite of her resistance and request to the accused to release her — After committing rape accused fleeing away from place of occurrence — She narrating the incident to her mother and was so traumatised by the event and fear of being disgraced/humiliated, that she jumped into a water tank with intention to commit suicide — However, she was rescued by PWs 4 and 5 to whom she narrated the reason for taking the extreme step — She also narrated the incident to PW 6 who was the Manager of coffee estate, and on his advice lodged an FIR — Testimony of prosecutrix not shaken on material aspect — Suggestion by accused that a false case had been lodged against him because of enmity between his family members and the prosecutrix's family not found acceptable — Further, defence by accused that prosecutrix was a consenting party as she did not resist and no injuries were found on her body or on the accused, was unfounded and baseless and falsified by subsequent conduct of prosecutrix — Evidence of prosecutrix found trustworthy and fully corroborated by other PWs and narration of events in FIR — Though the report of the gynaecologist pertaining to medical examination of prosecutrix disclosed no evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted — Though undergarments of the accused and the victim did not contain any seminal stains, but the same cannot be given any importance because the underwear of the accused was taken into possession by the police on the next day of the incident when he was arrested and no evidence brought on record to show that the accused handed over the same underwear to the police, which he was wearing on the day of incident — Pos-*

sibility of absence of seminal stains on petticoat of the prosecutrix which she was wearing at the time of the incident, could not be ruled out due to the fact that the petticoat got drenched in the water and the seminal stains might have been washed away –- On such independent analysis of the oral and documentary evidence on record by Supreme Court, held, the conviction and sentence of 7 years' RI awarded by the trial court and confirmed by the High Court called for no interference (Paras 2, 11, 12, 13, 17, 18, 19 and 20). *B.C. Deva* v. *State of Karnataka*, (2007) 12 SCC 122: (2008) 2 SCC (Cri) 253.

Bench Strength **2**. Coram: *R.V. Raveendran* and **L.S. Panta**, JJ. [Date of decision: 25-7-2007]

[9516] — Ss. 376 and 375 — Presumption against allegations of consensual sex in case of alleged rape — *Held, whereas Ss. 113-A and 113-B inserted in the Evidence Act by same amendment raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under S. 114-A is extremely restricted in its applicability — As far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth — Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely — On facts, allegations of gang rape made by prosecutrix found not proved and hence, benefit of doubt granted to appellant-accused — Evidence Act, 1872, Ss. 114-A, 113-A and 113-B* (Para 12). *Raju* v. *State of M.P.*, (2008) 15 SCC 133: (2009) 3 SCC (Cri) 751: AIR 2009 SC 858: (2009) 74 AIC 65 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **H.S. Bedi**, JJ. [Date of decision: 3-12-2008]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635: 1998 SCC (Cri) 1725, considered

[9517] — Ss. 376 and 375 — Rape — Testimony of prosecutrix — Credibility and need for corroboration of — *On facts, conviction improper — Prosecution alleging that when prosecutrix was on her way to a shop to purchase some groceries **G** (Accused 1) invited her to her house, and when she entered then **G**'s son **R** (Accused 1) dragged her inside the room, confined her there for the whole night, gagged her mouth with a piece of cloth, and sexually assaulted her by inserting his penis in her vagina twice — In the instant case, evidence of prosecutrix was full of discrepancies and did not inspire confidence — Moreover, glaring discrepancies were also found in the evidence of her mother (PW 4) and father (PW 7) — Two persons who were allegedly informed about the incident not examined and consequently there was no corroboration — Medical evidence also not corroborating case of sexual intercourse or rape — Minor injuries found on her body, by themselves not sufficient to establish rape, wrongful confinement or hurt, where evidence of prosecutrix was not found trustworthy and there was no corroboration — Failure by defence to prove motive for false implication, inconsequential, since prosecution miserably failed to prove the charges — Impugned order set aside and acquittal of accused directed* (Paras 2, 12, 13 and 16). *Radhu* v. *State of M.P.*, (2007) 12 SCC 57: (2008) 2 SCC (Cri) 207: 2007 Cri LJ 4704.

Bench Strength **2**. Coram: **R.V. Raveendran** and *B. Sudershan Reddy*, JJ. [Date of decision: 14-9-2007]

[9518] — Ss. 376 and 375 — Rape of girl of above 16 years age — Whether she was a consenting party — Evidence of the prosecutrix that she was forcibly subjected to sexual intercourse should normally be believed unless there is material leading to an inference of her consent — *Absence of marks of external injuries on the person of the prosecutrix by itself not sufficient to draw an inference of consent of the prosecutrix — Having regard to the fact that the prosecutrix was a teenaged girl while accused was an able-bodied youth along with other facts, held, testimony of the prosecutrix that she was subjected to rape was credible*

The prosecutrix, a teenaged girl was living in a village with her father, mother and a younger sister. The family resided in a lonely hutment situated in a field. On 1-10-1993 at about 12 noon, the prosecutrix was alone in her hut busy washing clothes at a water pump. *NK*, the accused-respondent was known to the prosecutrix since before. He came to her and initially asked for water which she provided in a lota. Then the accused asked for a knife on the pretext that it was needed for peeling cucumber. The accused was gaining time to ascertain if the prosecutrix was alone. No sooner the prosecutrix turned her back unmindful of what lay ahead, her hand was caught hold of by the accused and twisted behind her back. The accused pushed her to a *bhitian*, a secluded place. She was thrown on the ground. The accused put his knee on her chest so as to overpower her. Her shouting was throttled by the accused who placed his palm on her mouth and later covered her mouth by a towel

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

pressed against her lips. She was then raped. Blood oozed out from her private parts. Having finished his act the accused left her alone and took to his heels. The prosecutrix was weeping. She narrated the incident to a woman and to her father in quick succession. The statement of the father of the prosecutrix corroborates her in all material particulars. The victim accompanied by her father wanted to go to the police station and lodge the first information report of the incident but they were prevented from doing so by several village people belonging to the community of the accused who also proposed that the matter be settled within the village by convening a panchayat. However, the report of the incident was lodged on 5-10-1993 at 11.20 a.m. The offence was registered and investigation commenced. According to the doctor, he had found the hymen ruptured in multiple radial tears, the edges of which showed healing at most of the places and mild tenderness. The prosecutrix was not used to sexual intercourse. Pieces of broken bangles were found at the place of the incident and seized. The Forensic Science Laboratory has found (vide report Ex. P-9) presence of human semen on the lehenga seized from the prosecutrix. The trial court found the incident, as alleged, proved. In the opinion of the learned trial Judge the testimony of the prosecutrix inspired confidence. It was corroborated by the medical evidence as also by the testimony of her father. The prosecutrix was held to be 15 years of age on the date of the incident. Though there was delay in lodging the FIR but it was satisfactorily explained. Accordingly, the accused-respondent was found guilty of the offence punishable under Section 376 IPC and sentenced to undergo seven years' rigorous imprisonment with a fine of Rs 2000 and to a further simple imprisonment of one year and nine months in default of payment of fine. The High Court in an appeal preferred by the accused-respondent, held that the prosecutrix was not proved beyond reasonable doubt to be below 16 years of age. In the opinion of the High Court though the factum of the accused-respondent having committed sexual intercourse with the prosecutrix was proved but the absence of injuries on the person of the prosecutrix was a material fact not excluding the possibility of the prosecutrix having been a consenting party. The delay in lodging the FIR was not satisfactorily explained. The delay coupled with the non-examination of the woman to whom the incident was first narrated by the prosecutrix immediately after the occurrence rendered the prosecution case doubtful. Mainly on this reasoning the High Court allowed the appeal and acquitted the accused respondent. The questions arising for consideration before the Supreme Court were: whether the prosecution story, as alleged, inspires confidence of the court on the evidence adduced? Whether the prosecutrix, is a witness worthy of reliance? Whether the testimony of a prosecutrix who has been a victim of rape stands in need of corroboration and, if so, whether such corroboration is available in the facts of the present case? What was the age of the prosecutrix? Whether she was a consenting party to the crime? Whether there was unexplained delay in lodging the FIR? Allowing the appeal,

Held :

For the offence of rape as defined in Section 375 of the Indian Penal Code, the sexual intercourse should have been against the will of the woman or without her consent. Consent is immaterial in certain circumstances covered by clauses thirdly to sixthly, the last one being when the woman is under 16 years of age. If she be of 16 years of age or above, her consent cannot be presumed; an inference as to consent can be drawn if only based on evidence or probabilities of the case. The victim of rape stating on oath that she was forcibly subjected to sexual intercourse or that the act was done without her consent, has to be believed and accepted like any other testimony unless there is material available to draw an inference as to her consent or else the testimony of prosecutrix be such as would be inherently improbable. The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case. (Paras 19 and 18)

In the present case, the prosecutrix had just crossed the age of 16 years. The perpetrator of the crime was an able-bodied youth bustling with energy and determined to fulfil his lust armed with a knife in his hand and having succeeded in forcefully removing the victim to a secluded place where there was none around to help the prosecutrix in her defence. The injuries which the prosecutrix suffered or might have suffered in defending herself and offering resistance to the accused were abrasions or bruises which would heal up in the ordinary course of nature within 2 to 3 days of the incident. The prosecutrix clearly stated that she was subjected to sexual intercourse forcibly by the accused. She was not a consenting party. She offered resistance to the best of her ability but she succumbed and fell victim to the force employed by the accused. (Paras 18 and 19)

The statement of the father of the prosecutrix is admissible in evidence and relevant under Section 157 as her former statement corroborating her testimony as also under Section 8 of the Evidence Act as evidence of her conduct. The testimony of the father of the prosecutrix was trustworthy and unembellished. The prosecutrix and her father had both been subjected to lengthy cross-examination. The trial court found both the witnesses reliable. There is no reason to disbelieve their testimony. A father would not ordinarily subscribe to a false story of sexual assault involving his own daughter and thereby putting at stake the reputation of the family and jeopardizing the married life of the daughter. The testimony of the prosecutrix's father was reliable and lent support to the narration of the incident by the prosecutrix. No reason had been proved, nor even suggested during cross-examination of any of the witnesses why the prosecutrix or any member of her family would falsely implicate the accused roping him in a false charge of rape. It is not possible to draw an inference as to consent against the prosecutrix and to hold that she was a willing party to the sexual assault made by the accused. Upon an evaluation of the evidence available on record it must be held that the prosecutrix is a witness of truth. Her testimony inspires confidence. Other evidence available on record lends assurance to her testimony. The trial court had rightly held that sexual assault amounting to rape was committed on her by the accused-respondent. In spite of her having not been proved to be under 16 years of age the High Court was not justified in holding her to be a consenting party to the sexual assault on her. Therefore, the High Court has committed a clear error of law in interfering with the judgment of the trial court regarding proof of guilt of the accused. (Paras 19 and 20). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 SCR 377: 1952 Cri LJ 547; Sidheswar Ganguly v. State of W.B., AIR 1958 SC 143: 1958 Cri LJ 273; Madho Ram v. State of U.P., (1973) 1 SCC 533: 1973 SCC (Cri) 417; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598; State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490: 1996 SCC (Cri) 133; Sk. Zakir v. State of Bihar, (1983) 4 SCC 10: 1983 SCC (Cri) 76; Balwant Singh v. State of Punjab, (1987) 2 SCC 27: 1987 SCC (Cri) 249; Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977, relied on

[9519] — Ss. 376 & 375 and 366 — Rape — Conviction on sole testimony of prosecutrix — Sustainability — *Even though prosecutrix had several opportunities to protest and raise an alarm, she did not do so — Conviction on sole testimony of prosecutrix, on facts, held, is not sustainable — Her behaviour of not complaining to anybody at any of the stages after being allegedly abducted is wholly unnatural — Therefore, High Court recording conviction on basis of her sole testimony set aside*

It is true that corroboration is not the sine qua non for a conviction in a rape case and conviction can be recorded on the sole, uncorroborated testimony of a victim, but the evidence of the victim must not suffer from any basic infirmities or improbabilities which render it unworthy of credence. However, the evidence of PW 2 (the victim) does not satisfy the test. (Paras 51 and 53)

The High Court erroneously concluded that the victim girl had not willingly gone with A-1. The conclusion could only be recorded by ignoring the entire evidence with regard to the conduct of the girl from the time of the alleged abduction till the time of the alleged recovery. The abducted girl did not make any complain or raise a cry or protest on various occasions when she had the opportunity to do so. Even PW 5, in whose house A-1 and PW 2 stayed thought that they were newly married couple. PW 2 did not complaint to PW 5 or any other residents in the locality. Her behaviour of not complaining to anybody at any of the stages after being allegedly abducted would be wholly unnatural. (Paras 53 and 54). *Alamelu* v. *State*, (2011) 2 SCC 385.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 18-1-2011]

Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547: 1952 SCR 377, distinguished

[9520] — Ss. 376 to 376-D — Sexual offences — Prosecutrix, held, is not an accomplice in such offences (Para 12). *Dilip* v. *State of M.P.*, (2001) 9 SCC 452: AIR 2001 SC 3049.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 9-10-2001]

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

[9521] — Ss. 376 to 376-D — Sexual offence — Sole testimony of the victim — *Held, can be a basis for conviction provided it is safe, reliable and worthy of acceptance reasonable to assume that no woman would falsely implicate a person in sexual offence as the honour and prestige of that woman also would be at stake — However, evidence of the prosecution should be cogent and convincing and if there is any supporting material likely to be available, then the rule of prudence requires that evidence of the victim may be supported by such corroborative material* (Paras 11 and 18). *Sudhansu Sekhar Sahoo* v. *State of Orissa*, (2002) 10 SCC 743: 2003 SCC (Cri) 1484: AIR 2003 SC 2136.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **K.G. Balakrishnan**, JJ. [Date of decision: 18-12-2002]

Balwant Singh v. State of Punjab, (1987) 2 SCC 27: 1987 SCC (Cri) 249; Rafiq v. State of U.P., (1980) 4 SCC 262: 1980 SCC (Cri) 947; Krishan Lal v. State of Haryana, (1980) 3 SCC 159: 1980 SCC (Cri) 667; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; State of H.P. v. Lekh Raj, (2000) 1 SCC 247: 2000 SCC (Cri) 147; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, relied on

[9522] — Ss. 376 and 392 — Rape — Proof and corroboration of — Testimony of prosecutrix — Reliability — *Prosecutrix alleging that while she was selling chillies, accused-appellant came in a tractor and offered to get her chillies sold at his brother's shop in his village and accordingly two sacks of chillies were kept in the trolley "with the help of persons already sitting in the trolley" — However, appellant first raped her near "lambool" trees, then at "seriya", and finally in a shed — He thereafter snatched Rs 1000 and gold tops from her and ran away — She took shelter in PW 6's house at night, and in morning went to PW 7 (Sarpanch), reported the incident and lodged FIR — Persons already sitting in the trolley when prosecutrix first entered therein not examined — PW 6 nowhere stating that prosecutrix revealed anything about the alleged incident to her — She also denied the factum that prosecutrix was weeping at the relevant time — Fact that prosecutrix boarded the tractor even after she was first raped and travelled happily need consideration — Moreover, she never raised any hue or cry while passing through number of villages in the tractor — In FIR she stated that the accused committed rape on her thrice but in the evidence she stated that the accused committed rape on her only twice — Medical evidence showing that no injuries were found either on her body or private parts, and that she was habitual to sexual intercourse — Evidence of prosecutrix found full of contradictions, without corroboration from any witness — Held, though evidence of prosecutrix can alone sustain conviction of the accused, but in the instant case her evidence is so artificial that it cannot be accepted — Conviction and sentences imposed upon the appellant for offences punishable under Ss. 376 and 392 IPC set aside* (Paras 15, 12, 11, 7, 8 and 9). *Narayan* v. *State of Rajasthan*, (2007) 6 SCC 465: (2007) 3 SCC (Cri) 198: 2007 Cri LJ 2733: (2007) 53 AIC 35 (SC).

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 10-4-2007]

[9523] — Ss. 376 and 451 — Rape of young married woman by a relative — Testimony of the prosecutrix, in absence of any strong reason to falsely implicate the accused, acceptable — *Reliable testimony of other natural witnesses and medical evidence corroborating the version of the prosecutrix — Delay of two days in lodging the FIR not a factor casting doubt on prosecution story in view of the generally known fact that the rape victim or her husband would hesitate to approach the police — On facts held, offence of rape made out and High Court erred in reversing trial court's order of conviction and sentence under Ss. 376 and 451 on trivial grounds*

According to the prosecution the husband of the prosecutrix was serving in the Army and had come to the village to celebrate Diwali with his wife and family members. When her husband had gone out and she was preparing to serve fodder to the cattle, the accused came from behind, put one hand on her mouth and the other on her back and tried to push her into the cattle-shed. She resisted him whereupon he threw her on the ground, lifted her ghagra, untied his dhoti and forcibly raped her. The prosecutrix being a strong woman resisted the accused and in the process sustained abrasions on her lumbar region as well as elbow joints. The prosecutrix cried for help and her cries attracted PWs 4 and 7 who saw the accused on the top of the prosecutrix. PW 7 pulled him up with one hand and consoled the prosecutrix who was weeping. She told the PWs that the accused had forcibly violated her person. While the accused was running away PW 5, the husband of the prosecutrix, saw him tying his dhoti from behind. The prosecutrix also narrated the incident to her husband. He was dissuaded by the accused and others from filing a complaint and was threatened with certain consequences if he did so. However, two days later he went with his wife to the police station to lodge the complaint. The doctor who examined the prosecutrix two days after the incident found that her clothes were torn, they carried slightly watery and blood-like discharge stains and there were two teeth marks, on her left breast near the nipple. On internal examination he found both the labia majora and minora and the clitoris swollen and red with slight bleeding discharge and the walls of the vagina tender with slight swelling. He also noticed abrasions on the back at the lumbar region and on both the elbow joints. In his evidence before the court he stated that the vaginal smear on microscopic examination showed 90 per cent of dead sperms and 10 per cent of live sperms. On the basis of these findings he concluded that the duration of the rape could be about 24 to 48 hours. The trial court found the accused guilty under Ss. 376 and 451 IPC and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs 1000, in default to suffer rigorous imprisonment for three months on the first count and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs 5000, in default to undergo rigorous imprisonment for one month on the second count. The substantive sentences were to run concurrently. But on appeal, the High Court reversed the trial court's order of conviction and sentence. Allowing the appeal

Held :

Unless the evidence discloses that the prosecutrix and her husband had strong reasons to falsely implicate the accused, ordinarily the court should have no hesitation in accepting her version regarding the incident. The accused was a distant relative whom the prosecutrix had met for the first time about 5 or 6 years before. Thereafter she had not many occasions to meet him. Her relations with the accused were not strained. The relations of her husband with the accused were also not strained. In the circumstances there was no motive or reason for the prosecutrix or her husband to falsely involve the accused in the commission of a crime which would put her chastity at stake. Her husband had come to celebrate Diwali with his wife and family members and quarrel with anyone, more so a relative, would be farthest from his thought.

The High Court rejected the testimony of the prosecutrix for wholly unacceptable reasons. There is nothing inconceivable about the accused committing rape with the prosecutrix merely because he happens to be a relative of the latter. Merely because the place of occurrence was near a thoroughfare the High Court also erred in doubting that the accused would commit the rape at such place. There is nothing surprising in the conduct of a man who is lust-ridden in behaving in a carefree manner trying to make most of the situation of the prosecutrix being alone and helpless. Moreover PWs 4 and 7 were natural witnesses being neighbours and in the absence of strong reasons to disbelieve their versions, it is not possible to ignore their evidence as has been done by the High Court. Further corroboration is to be found from the evidence of the doctor who examined her. While accepting the High Court's view that the possibility of her having sexual intercourse with her husband cannot be overlooked, it is not possible to believe that when a married woman has sex with her husband in the privacy of their bedroom she would suffer abrasions on her body and the vaginal walls. The abrasions on the vaginal wall and the consequential inflammation of the labia majora as well as minora and the clitoris provide corroborative evidence that someone had forcible sex with her. Maybe the torn clothes were worn once again by the prosecutrix when she and her husband went to lodge the complaint two days later or the police made out such a panchnama. The same can be said about the attachment of the dhoti also. That by itself does not provide strong reason to doubt the prosecution's story regarding the incident. True it is that the complaint was lodged two days later but in Indian society the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and chastity of a married woman. A woman and her relatives have to struggle with several situations before deciding to approach the police, more so when the culprit happens to be related. In such cases, therefore, the delay is understandable and hence merely on that account the prosecution version cannot be doubted. Thus totally wrong approach adopted by the High Court has resulted in miscarriage of justice. Therefore the Supreme Court's interference is called for. *State of Rajasthan* v. *Narayan*, (1992) 3 SCC 615: 1992 SCC (Cri) 781: AIR 1992 SC 2004. Bench Strength **3**. Coram: **A.M. Ahmadi**, *Kuldip Singh* and *B.P. Jeevan Reddy*, JJ. [Date of decision: 30-7-1992]

[9524] — Ss. 376, 457 and 380 — Rape — Evidence of prosecutrix *S* — Conviction on the basis of, if on facts was proper — *Rape alleged to have been committed on S by 5 persons at night in a room where there was no light — FIR lodged 6 days after the incident — For 6 days, S did not narrate the incident to anyone — Four accused, whom S stated to have recognized when they lighted a torch for short duration in her room, named by her in FIR — Out of 5 appellants, only 2 named in FIR — One appellant, though stated by S to be known, not named in FIR — Medical evidence not supporting the prosecution case — Identification for the first time in court — On facts, held, it was incumbent on the prosecution to hold a Test identification parade — Alleged*

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

recovery of torch at the instance of appellant J, also doubtful — Held, it was not safe to rely on the testimony of S — Appellants acquitted (Paras 16 to 23). *Devinder Singh* v. *State of H.P.*, (2003) 11 SCC 488: 2004 SCC (Cri) 185: AIR 2003 SC 3365.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 17-9-2003]

[9525] — Ss. 376 and 506 Pt. II — Conviction reversed — Circumstances in which corroboration of evidence of prosecutrix desirable — *Appellant alleged to have raped the prosecutrix and threatened her, when she had gone along with her husband, PW 2 to the factory of DW 1 to recover money that was due to him — Alleged that PW 2 had very gracefully told the appellant that everything was forgiven and forgotten but had nevertheless lured him to police station — Held, if such statement had indeed been made by PW 2 there would have been no occasion to even go to police station — Even assuming that appellant was naive and unaware that he was being led deceitfully there, once having reached there he could not have failed to realise his predicament as trappings of a police station are familiar and distinctive, and he had been running a kirana shop in that area, and would, thus, have been aware of location of police station — In such circumstances, some supporting evidence was essential for prosecution's case besides the testimony of prosecutrix — Medical evidence also not supporting allegations of rape — Moreover, persons present in the factory premises when the rape was alleged to have been committed not examined as witnesses though their statements recorded during investigation — Significantly also, the semen found was not co-related to appellant as his blood samples not taken — Lastly, DW 1 deposed that there was no occasion for PW 2 to have come to factory as no payment was due to him on any account, which in fact knocked out the foundations of prosecution story — Hence, impugned judgment unsustainable and set aside* (Paras 2, 3, 7 and 10 to 12). *Tameezuddin* v. *State (NCT of Delhi)*, (2009) 15 SCC 566.

Bench Strength **2**. Coram: *H.S. Bedi* and *Aftab Alam*, JJ. [Date of decision: 26-8-2009]

[9526] — Ss. 376 and 511 — Attempt to commit rape — Proof and corroboration of — Evidence of prosecutrix — *Proper mode of assessment of — Veracity of such evidence, held, cannot be examined by picking up one sentence in the cross-examination — The evidence of the prosecutrix in the instant case, read in its entirety, held, rightly accepted by the High Court — More so when there was sufficient corroborative evidence — Hence, conviction under Ss. 376 & 511, upheld*

The High Court had reserved the order of acquittal passed by the trial court and convicted the appellant, who was the Headmaster of a Middle School, for the offence of "attempt to commit rape" under Sections 376/511 IPC of the prosecutrix, Mst *R*, a student of the same school. The prosecutrix had in her statement in cross-examination, made against the appellant allegation of penetration but the doctor, who examined the prosecutrix, stated that there was no mark of violence on any part of the body and on local examination there was no mark of violence on her private parts like the vagina, the hymen was intact and on examination of vaginal smear no living or dead sperm was found on the slide and accordingly she opined that *no definite opinion could be given regarding the attempt to sexual intercourse.* The appellant contended that the prosecution story was unbelievable inasmuch as if the prosecutrix's statement was that there had been a penetration into the vagina to a depth of quarter of one inch or one inch, the prosecutrix being a young girl of 13 years the hymen could not have been intact. Rejecting this contention,

Held :

The prosecutrix's evidence cannot be examined by picking one sentence in the cross-examination to find out whether she is a truthful witness or not. A reading of the entire evidence of the prosecutrix that the accused had rubbed his penis with the vagina of the prosecutrix and tried to penetrate but could not succeed in penetrating and ultimately got himself discharged and the hot semen fell on the thighs of the prosecutrix. The statement made by the prosecutrix on which appellant relied might have been made on account of the inexperience of the young girl who was being subjected to sexual harassment for the first time and the same cannot be read in isolation bereft of what she stated just previous to the aforesaid statement. The High Court rightly held that her evidence was that of a truthful witness, which gave an account of the incident that had happened to a rustic girl who was traumatised on account of sexual harassment meted out to her by none other than her own school Headmaster.

Apart from the trustworthy evidence of the prosecutrix herself there are several circumstances as found by the High Court which corroborate the prosecutrix's evidence and makes her statement wholly reliable. On the evidence on record the irresistible conclusion is that the prosecution has been able to establish the charge of attempt to commit rape beyond all reasonable doubts and consequently the conviction and sentence passed by the

High Court does not call for any interference. *Madan Lal* v. *State of J&K*, (1997) 7 SCC 677: 1997 SCC (Cri) 1151: AIR 1998 SC 386.

Bench Strength 2. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 6-8-1997]

[9527] — Ss. 376 and 511 — Attempts to molest — Judicial enquiry into — Corroboration of the complainant's evidence when not necessary — *Enquiry into the alleged offence conducted by District Judge on the Pondicherry Administration's request as directed by the Supreme Court — When such an enquiry was conducted 17 long years after the offence was committed, held, the complainant's allegation ought not to have been rejected merely for want of corroboration — Constitution of India, Art. 136* (Paras 3, 5 and 6). *Radha Bai* v. *UT, Pondicherry*, (1995) 4 SCC 141: 1995 SCC (L&S) 942: (1995) 30 ATC 196: AIR 1995 SC 1476.

Bench Strength 2. Coram: *Kuldip Singh* and **K.S. Paripoornan**, JJ. [Date of decision: 20-4-1995]

[9528] — Ss. 376 and 511 — Evidence of prosecutrix of easy virtue — *Merely because woman was of easy virtue her evidence cannot be discarded but has to be cautiously appreciated. State of Maharashtra* v. *Madhukar Narayan Mardikar*, (1991) 1 SCC 57: 1991 SCC (Cri) 1: AIR 1991 SC 207: (1991) 1 LLJ 269: (1991) 1 SLJ 164: (1991) 1 SLR 140.

Bench Strength 2. Coram: *K. Jagannatha Shetty* and **A.M. Ahmadi**, JJ. [Date of decision: 23-10-1990]

[9529] — Ss. 376 and 511 — Evidence of prosecutrix of easy virtue — Non-supply of documents — Transcripts supplied instead — *Enquiry against Police Inspector on charge of visiting alone in uniform the house of a woman for ravishing her and preparing false documents and making entries in Station Diary to cover the misdeed — Overwhelming evidence, both direct and circumstantial, tendered to establish the charges — Even though original note book of police constable and log book of the police jeep which reached the spot on being summoned by the delinquent Inspector were missing, transcript thereof prepared earlier supplied to the delinquent and hence in the circumstances mere non supply of the original documents would not efface the evidence against him — Merely because the woman was of easy virtue her evidence cannot be discarded but has to be cautiously appreciated — Held, High Court erred in embarking upon a reappreciation of evidence as if it were sitting in appeal against decision of departmental authorities — Its reappreciation was also unsustainable on merits — Evidence Act, 1872, S. 118. State of Maharashtra* v. *Madhukar Narayan Mardikar*, (1991) 1 SCC 57: 1991 SCC (Cri) 1: AIR 1991 SC 207: (1991) 1 LLJ 269: (1991) 1 SLJ 164: (1991) 1 SLR 140.

Bench Strength 2. Coram: *K. Jagannatha Shetty* and **A.M. Ahmadi**, JJ. [Date of decision: 23-10-1990]

[9530] — Ss. 376(2)(f) and 511 — Applicability — Evidence of child witness (victim of rape herein), in absence of any corroboration — Admissibility — Consideration of — *On facts, appellant allegedly raping victim, aged about 6 years — Trial court and High Court relying on evidence of victim and her mother held appellant guilty of offence punishable under Ss. 376/511 IPC and sentenced him to 10 years' RI and fine with default stipulation — Sustainability — Challenge before Supreme Court that evidence of child witness (victim) should not be accepted particularly in absence of any corroboration and that sentence was harsh — State contending that testimony of child witness, particularly in case of this nature, does not require corroboration, if testimony of victim is credible — Also, that victim had immediately after occurrence told her mother about the incident and, therefore, her evidence was of considerable importance — Held, trial court and High Court found evidence of child witness cogent, credible and having grain of truth — High Court found evidence of victim free from any influence — Therefore, trial court and High Court rightly relied upon evidence of victim — Again, relying on* Rameshwar case, *AIR 1952 SC 54, reiterated that previous statement of accomplice or complainant is to be treated as corroborative — Hence, High Court rightly held appellant guilty — Since age of victim was 6 years at the time of incident, appropriate conviction would have been under S. 376(2)(f) IPC under which permissible sentence is life sentence with minimum of 10 years — Herein, 5 years' custodial sentence with fine imposed by trial court and maintained by High Court would meet the ends of justice — Evidence Act, 1872, Ss. 118 and 157* (Paras 1 to 5, 8 and 9). *Mohd. Kalam* v. *State of Bihar*, (2008) 7 SCC 257: (2008) 3 SCC (Cri) 27: 2008 Cri LJ 3194.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-6-2008]

Panchhi v. State of U.P., (1998) 7 SCC 177: 1998 SCC (Cri) 1561; Rameshwar v. State of Rajasthan, AIR 1952 SC 54, relied on

[9531] — S. 376(2)(g) — Gang rape — Conviction can be founded on evidence of victims

22.(e) Testimony of prosecutrix and also S. 114-A, Evidence Act *(contd.)*

It was contended that the case against the accused-appellants had been foisted due to communal feelings. Rejecting the contentions

Held :

Even if communal feelings had run high, it is inconceivable that an unmarried girl and two married women would go to the extent of staking their reputation and future in order to falsely set up a case of rape on them for the sake of communal interests. *Pramod Mahto* v. *State of Bihar*, 1989 Supp (2) SCC 672: 1990 SCC (Cri) 206: AIR 1989 SC 1475: 1989 Cri LJ 1479.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 21-4-1989]

[9532] — S. 376(2)(g) — Gang rape — Corroboration of evidence of victim not essential — Uncontroverted testimony of the prosecutrix accepted by courts below — Evidence showing that the victim had protested and struggled while she was subjected to forcible sexual assault by accused persons — *Held, this evinces absence of consent on the part of the victim in sexual intercourse, apart from the legal presumption under S. 114-A of Evidence Act — Courts below rightly held that the victim was gang raped by the accused-appellants in the absence of her consent and that the defence case was not substantiated by any cogent evidence — Neither High Court in revision nor Supreme Court in appeal by special leave justified in reappraisal of the evidence in the face of the concurrent findings — Hence conviction under S. 376 and sentence of 3 years' RI upheld — CrPC, 1973, S. 401. Gagan Bihari Samal* v. *State of Orissa*, (1991) 3 SCC 562: 1991 SCC (Cri) 893: (1991) 2 GLH 30: (1991) 72 CLT 322: (1991) 28 ACC 435.

Bench Strength **2**. Coram: **B.C. Ray** and *S.C. Agrawal*, JJ. [Date of decision: 9-7-1991]

[9533] — S. 376(2)(g) r/w S. 34 and S. 114-A, Evidence Act, 1872 — Gang rape — Presumption of non-consensual intercourse — *Prosecutrix consistently stating that she had never consented to intercourse and that she was forcibly caught, threatened at knife-point and thereafter subjected to gang rape — No dispute regarding place or alleged occurrence — FIR lodged promptly and accused arrested immediately — No evidence of false implication since accused were unknown to prosecutrix — Discrepancies found in her testimony insignificant considering that she was illiterate rustic village girl — Non-resistance because of fear, held, not unnatural — Consent by prosecutrix, even if assumed she was a major, not established — Hence, conviction of appellant under Ss. 376/34 and sentence of 10 years' RI along with fine of Rs 500, held proper — Evidence Act, 1872, S. 114-A* (Paras 46, 47, 37 and 38). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; State of U.P. v. Pappu, (2005) 3 SCC 594: 2005 SCC (Cri) 780; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; State of Orissa v. Thakara Besra, (2002) 9 SCC 86: 2003 SCC (Cri) 1080; State of H.P. v. Raghubir Singh, (1993) 2 SCC 622: 1993 SCC (Cri) 674; Wahid Khan v. State of M.P., (2010) 2 SCC 9: (2010) 1 SCC (Cri) 1208; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547, relied on

[9534] — Ss. 376(2)(g)/34 & 366/34 — Kidnapping and gang rape — Conviction can be founded on sole testimony of victim of the rape — Corroboration of her evidence not essential when her evidence otherwise inspires confidence — *Prosecutrix having ample opportunity to see and identify the accused in broad daylight — Being a simple village girl, she cannot be expected to falsely implicate innocent persons leaving her own assailants — However, injuries on her private parts, medical evidence of doctor and FIR providing corroboration — Consent of the prosecutrix cannot be inferred from absence of multiple injuries on her private parts as in case of gang rape at the threat of her life she cannot be expected to have given continuous resistance resulting in sustaining numerous injuries — In the circumstances casual and mechanical approach, without regard to human probabilities, and consequent acquittal by High Court resulted in grave miscarriage of justice — Hence conviction and sentence of 3 years' RI recorded by trial court restored. State of Orissa* v. *Damburu Naiko*, (1992) 2 SCC 522: 1992 SCC (Cri) 400: AIR 1992 SC 1161: 1992 Cri LJ 1537: (1992) 73 CLT 715: (1992) 2 Crimes 77.

Bench Strength **2**. Coram: *Kuldip Singh* and **K. Ramaswamy**, JJ. [Date of decision: 31-3-1992]

[9535] — S. 376 r/w S. 34 — Held, statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration — *Court may convict the accused on the sole testimony of the prosecutrix* (Paras 9 to 14). *Vijay* v. *State of M.P.*, (2010) 8 SCC 191: (2010) 3 SCC (Cri) 639.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-7-2010]

[9536] — S. 376 r/w S. 34 — Rape — Testimony of prosecutrix — Reliability — Conviction on the basis thereof — Permissibility — *Held, prosecutrix is not an accomplice but a victim of the crime — Her evidence must receive the same weight as is attached to an injured witness — It can be accepted without corroboration if the court, keeping in mind that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her, is satisfied that it can act on her evidence — If the court is hesitant to place implicit reliance on the same, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice — Nature of evidence required to lend assurance would depend on the facts and circumstances of each case — Where prosecutrix is an adult and of full understanding, the court is entitled to base conviction on her evidence unless the same is shown to be infirm and not trustworthy — If the victim does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence — Evidence Act, 1872, Ss. 118, 133 and 114 Ill. (b)*

The appellants were convicted under Section 376 read with Section 34 IPC. Before the Supreme Court, they submitted that there was unexplained delay of five days in reporting the matter to the police. Additionally, there was no corroboration to the evidence of the victim. The medical evidence did not lend any assurance to the testimony of the victim.

Dismissing the appeal filed by the accused, the Supreme Court decided as above. *Sri Narayan Saha* v. *State of Tripura*, (2004) 7 SCC 775.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 8-9-2004]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977: AIR 1995 SC 2472; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210, relied on

***Followed in** S. Ramakrishna v. State, (2009) 1 SCC 133*

[9537] — Ss. 376/34 and 342/34 — Rape — Evidence of victim — Corroboration — Requirement of — *Held, corroboration is not the sine qua non for conviction in rape cases — An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes the judicial mind as probable — Thus, plea raised regarding lack of corroboration in the instant case, held, liable to be rejected*

A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance. (Paras 11 and 12). *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551: AIR 2003 SC 4684.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

Rafiq v. State of U.P., (1980) 4 SCC 262: 1980 SCC (Cri) 947; Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210, relied on

23. Revision

[9538] — Ss. 376, 342 and 506 r/w S. 34 — Revision — Suo motu exercise of power by High Court — *Held, does not extend to converting the proceedings initiated in suo motu revision into an appeal against acquittal and convicting the appellants thereunder — High Court should have setting the acquittal aside, sent the matter back for retrial — Setting aside conviction passed by High Court, matter remitted to trial court for disposal in accordance with law — Appellant permitted to apply for bail — CrPC, 1973 — Ss. 397 and 401. Naresh Kumar* v. *Registrar, High Court of P&H*, (2001) 10 SCC 510.

Bench Strength **2**. Coram: *G.T. Nanavati* and *S. Rajendra Babu*, JJ. [Date of decision: 6-11-1998]

[9539] — Ss. 376, 511, 451 and 354 — Revisional powers of High Court — Scope — High Court quashing charges framed against the accused — *Held, revisional powers cannot be exercised in a routine and casual manner — Recourse to such powers for quashing the charges can be taken only if there is a legal bar against the continuance of the criminal proceedings or the framing of charge or where no offence is being made out against the accused considering the entire facts stated in the FIR — In revision, the High Court cannot appreciate the evidence in the manner the trial court and the appellate court are required to do — On facts, it was premature for the High Court to have exercised its revisional powers — Trial court to conduct trial and dispose of the matter on merits — CrPC, 1973 — S. 401. Munna Devi* v. *State of Rajasthan*, (2001) 9 SCC 631: AIR 2002 SC 107.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 6-11-2001]

24. Sentence

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'C.24.(g)(i) Principles for sentencing — Generally', below

[9540] — S. 376 — Imposition of sentence under — Relevance of reformation theory — Reformation theory — Limits of — Rape — Imposition of punishment for — *Held (per Balasubramanyan, J.), in guise of applying said theory courts cannot forget their duty to society and to the victim*

The punishments prescribed by the Penal Code reflect the legislative recognition of the social needs, the gravity of the offence concerned, its impact on the society and what the legislature considers as a punishment suitable for the particular offence. It is necessary for the courts to imbibe that legislative wisdom and to respect it. (Para 12)

The rationale for advocating the award of a punishment commensurate with the gravity of the offence and its impact on society, is to ensure that a civilised society does not revert to the days of "an eye for an eye and a tooth for a tooth". Not awarding a just punishment might provoke the victim or its relatives to retaliate in kind and that is what exactly is sought to be prevented by the criminal justice system we have adopted. Even in the time of Kautilya, the need for awarding just punishment was recognised. According to Kautilya, "Whoever imposes severe punishment becomes repulsive to people, while he who awards mild punishment becomes contemptible. The ruler just with the rod is honoured. When deserved punishment is given, it endows the subjects with spiritual good, material well-being and pleasures of the senses." This philosophy is woven into our statute and our jurisprudence and it is the duty of those who administer the law to bear this in mind. (Paras 13 and 14)

The punishment must fit the crime and it is the duty of the court to impose a proper punishment depending on the degree of criminality and desirability for imposing such punishment. However, the awarding of inadequate punishments by courts is becoming disturbingly frequent. (Paras 15 and 10)

It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, the courts cannot forget their duty to society and to the victim. The court has to consider the plight of the victim in a case involving rape and the social stigma that may follow the victim to the grave and which in most cases, practically ruins all prospects of a normal life for the victim. A court cannot afford to forget these aspects while imposing a punishment on the aggressor. The court has to do justice to society and to the victim on the one hand and to the offender on the other. The proper balance must be taken to have been struck by the legislature. Hence, the legislative wisdom reflected by the statute has to be respected by the court and the permitted departure therefrom made only for compelling and convincing reasons. (Para 17). *State of M.P.* v. *Bala*, (2005) 8 SCC 1: 2005 SCC (Cri) 1947: AIR 2005 SC 3567: 2005 Cri LJ 4371.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.*[1] and **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 3-10-2005]

Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447; Rajendra Prasad v. State of U.P., (1979) 3 SCC 646: 1979 SCC (Cri) 749; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559; V.K. Gupta: Kautilyan Jurisprudence under the head "Nature and Scope of Punishment", relied on

[9541] — S. 376 — Inadequacy of sentence — Who may appeal and before which forum — *Reduction of sentence of rape convict by High Court — Appeal by National Commission for Women (NCW) contending that reasons given by High Court for reducing the sentence not acceptable — State had not filed appeal — Held, said appeal not maintainable under inherent powers of Supreme Court — No appeal lies from a judgment of a criminal court except as provided by CrPC or by any other law — S. 372 proviso CrPC confers a right only on victim and also does not envisage appeal against inadequate sentence — Appeal challenging quantum of sentence maintainable only under S. 377 CrPC — S. 377 CrPC does not authorise appeal to Supreme Court — CrPC, 1973, Ss. 372 and 377 — National Commission for Women Act, 1990, S. 10* (Paras 8 and 10). *National Commission for Women* v. *State of Delhi*, (2010) 12 SCC 599.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 23-7-2010]

Pritam Singh v. State, AIR 1950 SC 169: (1950) 51 Cri LJ 1270; P.S.R. Sadhanantham v. Arunachalam, (1980) 3 SCC 141: 1980 SCC (Cri) 649, followed

[9542] — S. 376 — Rape — Sentence — Leniency in, held, is against public interest — *Rape of a pregnant woman in the presence of her husband — Sentence of 5 years' RI (though minimum prescribed is 7 years) and fine of Rs 2000 imposed by trial court — Age of accused's parents, his dependent sisters, wife and two young children considered for awarding lesser sentence — Sentence further reduced by High Court to the period of imprisonment already undergone i.e. 46 days considering that accused a coolie and agriculturist was aged 22 years and that long time had elapsed since the occurrence and trial and appeal had kept the accused busy in court — Held, reduction of sentence was not based on any adequate and special reasons but on misplaced sympathy and hence not justified*

The High Court was not justified in restricting the sentence to the period already undergone, which is 46 days. The reasons given by the High Court therefor cannot be said to be "adequate and special reasons". There was no scope for awarding sentence lesser than the prescribed minimum and it should have been the highest prescribed. But the trial court awarded sentence of 5 years for reasons, which may not be strictly meeting the requirements of law. Since the State had not questioned the sufficiency of sentence before the High Court, the sentence awarded by the trial court along with the fine imposed is restored. (Paras 15 and 17)

Leniency in matters involving sexual offences is not only undesirable but also against public interest. Such types of offences are to be dealt with severity and with iron hands. Showing leniency in such matters would be really a case of misplaced sympathy. The acts which led to the conviction of the accused are not only shocking but outrageous in their contours. Rape is violation with violence of the private person of the victim, an abominable outrage by all canons. (Paras 15 and 14). *State of Karnataka* v. *Puttaraja*, (2004) 1 SCC 475: 2004 SCC (Cri) 300: AIR 2004 SC 433: 2004 Cri LJ 579.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-11-2003]

State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13: 2003 SCC (Cri) 1935, relied on

[9543] — S. 376 — Rape — Sentence — Recent trend is to prefer deterrent approach than therapeutic or reformative approach

In the matter of punishment for offence committed by a person, there are many approaches to the problem. On the commission of crime, three types of reactions may generate: the traditional reaction of universal nature which is termed as punitive approach. It regards the criminal as a notoriously dangerous person who must be inflicted severe punishment to protect the society from his criminal assaults. The other approach is the therapeutic approach. It regards the criminal as a sick person requiring treatment, while the third is the preventive approach which seeks to eliminate those conditions from the society which were responsible for crime causation. (Para 13)

Under the punitive approach, the rationalisation of punishment is based on retributive and utilitarian theories. Deterrent theory which is also part of the punitive approach proceeds on the basis that the punishment should act as a deterrent not only to the offender but also to others in the community. (Para 14)

The therapeutic approach aims at curing the criminal tendencies which were the product of a diseased psychology. There may be many factors, including family problems. Therapeutic approach has since been treated as an effective method of punishment which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes, the most fundamental of which is that in spite of having committed a crime, maybe a heinous crime, he should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It was under this theory that

24.(a) Generally *(contd.)*

the Supreme Court in a stream of decisions, projected the need for prison reforms, the need to acknowledge the vital fact that the prisoner, after being lodged in jail, does not lose his fundamental rights or basic human rights and that he must be treated with compassion and sympathy. (Para 15)

Sexual offences, however, constitute an altogether different kind of crime which is the result of a perverse mind. The perversity may result in homosexuality or in the commission of rape. Those who commit rape are psychologically sadistic persons exhibiting this tendency in the rape forcibly committed by them. In some States in the U.S.A., therefore, emphasis was laid on psychotherapic treatment of the offender while he was under detention. Here, in India, statutory provision for psychotherapic treatment during the period of incarceration in the jail is not available, but reformist activities are systematically held at many places with the intention of treating the offender psychologically so that he may not repeat the offence in future and may feel repentant of having committed a dastardly crime. (Paras 16 to 18)

In *Phul Singh case* (1979) 4 SCC 413 the Supreme Court observed that in case of long incarceration often the remedy aggravates the malady. In that case it was found that the appellant was a young man of 22 years with no criminal antecedents save the offence of rape committed by him. The court thought that given correctional courses through meditational therapy and other measures, his erotic aberrations may wither away, particularly as the appellant had a reasonable prospect of shaping into a balanced person. But, this theory was not followed in later decisions as it was found that in spite of devices having been employed and adopted within the jail premises so as to reform the offenders, there was negligible improvement in the commission of crime. Crime, instead of declining, had increased and, today, it has assumed dangerous proportions. While one person is reformed and moves out of jail, another offender is born. Consequently, in two recent decisions, in *Krishnappa* and *N.K. cases* the order of acquittal passed by the High Court was set aside and substituted by an order of conviction by the Supreme Court. (Para 19). *T.K. Gopal* v. *State of Karnataka*, (2000) 6 SCC 168: 2000 SCC (Cri) 1037: AIR 2000 SC 1669: 2000 Cri LJ 2286.

Bench Strength **2**. Coram: **S. Saghir Ahmad** and *Doraiswamy Raju*, JJ. [Date of decision: 5-5-2000]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316; Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490: 1996 SCC (Cri) 133, relied on

See also State of M.P. v. Balu, (2005) 1 SCC 108

[9544] — S. 376 — Rape — Sentencing — Quantum of sentence — Relevant factors to be considered — Leniency in sentence — Plea as to — Sustainability — *Held, sentence must depend upon the conduct of the accused, the state and age of the victim and the gravity of the criminal act — Socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations — Crimes of violence upon women need to be severely dealt with — Object of law to protect the society and deter the criminal to be achieved by imposing an appropriate sentence — Court to impose proper sentence commensurate with gravity of crime — In the present case of rape of a minor there are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum — Hence, plea for leniency, held, was wholly misplaced*

The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The courts must hear the loud cry for justice by society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. (Para 12). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[9545] — S. 376 — Sentence — Appropriate punishment — Father raping his daughter — *Physical and emotional trauma of daughter — Shocking and heinous crime and betrayal of trust — When protector becomes violator the offence assumes greater degree of vulnerability, still worse when a father rapes his own daughter — Leniency and sympathy in such cases, held, unwarranted — Sentence of life imprisonment and fine, upheld — CrPC, 1973, S. 386*

No sympathy or leniency is called for. It is an unpardonable act. If the protector becomes the violator, the offence assumes a greater degree of vulnerability. Charged of raping his own daughter under his refuge and fortress is worse than the gamekeeper becoming a poacher and treasury guard becoming a robber. He not only delicts the law but, it is a betrayal of trust. The accused's lustful acts have indelible scar not only physically but also emotionally on the victim. There can never be more shocking, depraved and heinous crime than when the father is charged of having raped his own daughter. (Paras 14, 11 and 2). *Siriya* v. *State of M.P.*, (2008) 8 SCC 72: (2008) 3 SCC (Cri) 422: AIR 2008 SC 2314.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-5-2008]

[9546] — S. 376 — Sentence — Father raping his own daughter — *Trial court on conviction sentencing accused to 5 years' RI and fine of Rs 1000 with default stipulation — Held, ordinarily offence of rape is grave in nature, more so, when perpetrator of the crime is the father against his own daughter and the rarest of the rare case which warrants strong deterrent judicial hand — Hence, while maintaining conviction, sentence of life imprisonment and fine of Rs 25,000 (on realisation to be paid to prosecutrix) imposed*

The trial court on conviction sentenced the respondent to 5 years' rigorous imprisonment and a fine of Rs 1000 and in default rigorous imprisonment for 3 months. In the instant case the crime committed by the respondent not only delicts the law but it has a deleterious effect on civilised society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its nature. More so, when the perpetrator of the crime is the father against his own daughter it is more graver and the rarest of rare case, which warrants a strong deterrent judicial hand. Hence, while maintaining conviction recorded by trial court, sentence of imprisonment for life and fine of Rs 25,000 is imposed. The fine amount if realised shall be paid to the prosecutrix. (Paras 22 and 24). *State of H.P.* v. *Asha Ram*, (2005) 13 SCC 766: (2006) 2 SCC (Cri) 296: AIR 2006 SC 381: 2006 Cri LJ 139.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 17-11-2005]

Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598, followed

[**Ed.**: A news report appearing on the internet website Indlaw News Detail dated December 15, 2005 says:

"The Supreme Court today decided to re-examine its judgment convicting and sentencing a man to life imprisonment for raping his daughter who retracted her allegations after the pronouncement of the verdict on November 17".

It is to be seen in the future what the outcome is of the review petition.]

[9547] — S. 376 — Sentence — Punishment — Object of — Theory of deterrence — Basis and relevance of, to award of sentence — Sexual offences — Rape — *Held, following* Krishnappa case, *(2000) 4 SCC 75, theory of reformation postulated by Krishna Iyer, J. in* Phul Singh case, *(1979) 4 SCC 413, had been rejected by the Supreme Court in a series of recent decisions starting with said* Krishnappa case — *Held, courts are expected to properly operate the sentencing system to impose such sentence for a proved offence, as may serve as a deterrent for commission of like offences by others — Hence sentence of seven years' RI imposed by trial court for commission of rape, which had been reduced by High Court to the period of sentence undergone (ten months), restored — Approach of High Court deprecated in strong terms — Held, sentence of 10 months' imprisonment imposed by High Court is ridiculously low and is not commensurate with the gravity of the rape committed on a minor — High Court exhibited lack of sensitivity towards the victim of rape and society in reducing the substantive sentence in the established facts and circumstances of the case* (Paras 19 and 20). *State of M.P.* v. *Balu*, (2005) 1 SCC 108: 2005 SCC (Cri) 270: AIR 2005 SC 222: 2005 Cri LJ 335: (2005) 25 AIC 369 (SC).

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 5-11-2004]

State of Karnataka v. Krishnappa, (2000) 4 SCC 75: 2000 SCC (Cri) 755; T.K. Gopal v. State of Karnataka, (2000) 6 SCC 168: 2000 SCC (Cri) 1037; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, followed

Phul Singh v. State of Haryana, (1979) 4 SCC 413: 1980 SCC (Cri) 1, held to be not good law

24.(a) Generally *(contd.)*

[9548] — S. 376 — Unpardonable offence — Morally loathsome, deprave and abhorrent criminal act — Appropriate sentence — *Duty of court to protect society from heinous and shocking crimes by passing appropriate sentence, emphasised*

Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. The case at hand is a sad reflection on the present day society where a most platonic relationship has been soiled by the pervert and degrading act of the father. It shows to what bottomless pit of depravation and lust a person can go down. The custodian of the trust has betrayed the same. The sanctity of father and daughter relationship gets polluted. It is not only a loathsome sin, but also abhorrent. (Paras 13 and 11). *Siriya* v. *State of M.P.*, (2008) 8 SCC 72: (2008) 3 SCC (Cri) 422: AIR 2008 SC 2314.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-5-2008]

Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499; State of Karnataka v. Raju, (2007) 11 SCC 490: (2008) 1 SCC (Cri) 787, relied on

Friedman: Law in Changing Society, cited

[9549] — Ss. 376, 302, 304, 120-B, 354, 312, 343, 201, 506, 109 and 34 — Sentence — Deterrence theory — *Offences of committing rape on 13 girls of Ashram by A-1, head of the Ashram, and murder of one person who had dared to disclose the misdeeds of A-1 and systematic abetment by co-accused person — All accused convicted for various offences — Sentences awarded by courts below including life imprisonment — Sentences imposed on A-1 in default of payment of huge fine of Rs 5,10,000 on each count to run separately and consecutively — Having regard to the grave, systematic and organised nature of the offences and its effect on society at large, held, sentences justified — No remission of sentence or amnesty to be allowed*

In this case, Accused 1, 2, 4, 6 and 7 have preferred the appeals before the Supreme Court against their conviction and sentence (see para 1) concurrently recorded by the trial court and the High Court. A-3 served out the sentence and A-5 died during the pendency of the appeal before the High Court and his appeal stood abated. Accused 2 is the Secretary of A-1, A-6 is the younger brother of A-1 and A-7 is the adopted son of A-1. The sentence imposed on A-1 on Charges 2 and 6 (see para 1) are to run consecutively. Total fine on A-1 is Rs 61,30,000 (Rs 61,20,000 + Rs 10,000). Sentences imposed on A-1 in default of payment of fine on each count are to run separately and consecutively apart from the sentences of imprisonments. In default of payment of fine, total further sentence to undergo: 32-½ years + 3 months. The sentences imposed on A-2 on Charges 3 and 6 are to run consecutively. Total fine on A-2 Rs 12,500 (Rs 10,000 + Rs 2500). The sentences imposed on A-2 in default of payment of fine are to run consecutively apart from the sentences of imprisonments. The sentence of imprisonment on Charges 3 and 7 are to run concurrently. Fine amount on A-4: Rs 10,000. The sentence of imprisonment imposed in default of payment of fine is to run separately. The sentence of imprisonment imposed on each of these accused on Charges 3 and 7 are to run concurrently. Total fine is Rs 12,500 each (Rs 12,500 x 2 = Rs 25,000). The sentence of imprisonment imposed in default of payment of fine is to run separately and consecutively. Total fine on A-1 to A-7 was Rs 62,07,500. Out of the payment of fine of Rs 61,30,000 collected from A-1, under Section 357(1) CrPC, a compensation of Rs 5,00,000 is to be paid to each of the victim girls (Rs 5,00,000 x 12 = Rs 60,00,000).

Held :

There is no infirmity in the well-merited findings concurrently recorded by the two courts below, which do not warrant the Supreme Court's interference. (Para 77)

The facts of this case, as revealed by the prosecution, shocked the judicial conscience. It illustrates a classic example as to how the insatiable lust for sex of A-1 Swami Premananda leads to the raping of 13 Ashram girls and murder of one person who had dared to disclose the misdeeds of A-1. The Ashram which is supposed to be God's abode turned out to be a devil's workshop. A-1, whom the inmates of the Ashram regarded as God having divine power turned out to be a monster. It is a classic case of betrayal of fatherly and divinely trust of the inmates of the Ashram girls who were mostly orphans and destitutes brought from Sri Lanka, except PWs 4 and 6. This case has more than one rarest of rare cases. It is rare that A-1, supposed to be the incarnation of God and allegedly having divine powers has been alleged of raping 13 of the Ashram girls systematically and murder of one person. It is rare that out of the 62 prosecution witnesses examined none of them turned hostile. It is rare that in an institution like ashram, IO seized amongst other things two new packets of Nirodh contraceptive. (Paras 3 and 38)

Having regard to the amplitude of the gravity of the offence, perpetrated in an organised and systematic manner, the nature of the offence and its deleterious effects not only against the victims, but the civilised society at large, needs to be curbed by a strong judicial hand. Therefore, the sentence and conviction as recorded by the trial court and confirmed by the High Court are confirmed. (Para 78)

The order of the trial court that any remission of sentence or amnesty on any special occasions announced or to be announced either by the Central or the State Government shall not apply to the sentence and imprisonment imposed on all the accused, is also maintained. (Para 78). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength 2. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

[9550] — Ss. 376 and 375 — Considerations while awarding sentence — Punishment — Concept of, stated — Duty of the court to impose on the person found guilty, the punishment prescribed by law, emphasised — *Factors relevant in determining the quantum of punishment, restated — Further held, cases of sexual crimes against women should be dealt with sternly and severely and a person convicted for rape should be dealt with a heavy hand*

X, a married woman, was living with her husband in the respondent's house situate in a village. One noon when she was washing a drum on the respondent's *tapri*, the respondent caught her from behind and threw her on the ground and committed rape on her. In the evening, she told about the sexual assault to her husband and her mother-in-law. On the next day, *X* and her husband lodged FIR at the police station. After investigation, charge-sheet was submitted under, inter alia, Section 376 IPC. The accused denied the charge and averred that the husband of the prosecutrix had taken advance money from the employer towards labour charges and since he had no intention to return the said amount, the prosecutrix had falsely implicated the accused. The trial court rejected the said defence, and on evidence held that it was proved beyond reasonable doubt that the accused had committed the offence of rape. Rejecting the respondent's plea for grant of probation, the trial court imposed on him the minimum sentence of seven years' rigorous imprisonment in terms of Section 376(1) and also a fine of Rs 2500.

In an appeal to the High Court, without challenging the conviction, the respondent-accused prayed for mercy and leniency in sentence. The High Court accepted the same. Observing that the accused was an "illiterate agriculturist from rural area" and that a fine of Rs 2500 was also imposed on him, the High Court held that on the facts of the case, the imprisonment for two months and three days which the accused had already undergone could be said to be "just and proper". Accordingly it allowed the appeal partly. The State then filed the present appeal by special leave.

Before the Supreme Court, the appellant State contended that in view of the minimum sentence prescribed in Section 376(1), IPC, the High Court erred in reducing the sentence and that too when the accused had undergone imprisonment only for two months and three days. That moreover, no "adequate and special reasons" were recorded by the High Court for reducing the sentence.

On the other hand, the respondent-accused supported the High Court's order.

Allowing the appeal,

Held :

Punishment is the sanction imposed on the offender for the infringement of law committed by him. Once a person is tried for commission of an offence and found guilty by a competent court, it is the duty of the court to impose on him such sentence as is prescribed by law. The award of sentence is consequential on and incidental to conviction. The law does not envisage a person being convicted for an offence without a sentence being imposed therefor. (Para 23)

In the justice-delivery system, sentencing is indeed a difficult and complex question. Every court must be conscious and mindful of proportion between an offence committed and penalty imposed as also its impact on society in general and the victim of the crime in particular. (Para 25)

Sentencing is thus a delicate task which requires skill, talent and consideration of several factors, such as, the nature of offence, circumstances—extenuating or aggravating—in which it was committed, prior criminal record of the offender, if any, age and background of the criminal with reference to education, home life, social adjustment, emotional and mental condition, prospects of his reformation and rehabilitation, etc. All these and similar other considerations can, hopefully and legitimately, tilt the scale on the propriety of sentence. (Para 27)

Moreover, social impact of the crime, particularly where it relates to offences against women, cannot be lost sight of and per se requires exemplary treatment. The courts are, therefore, expected to try and decide cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. Once a person is convicted for an offence of rape, he should be treated with a heavy hand. (Paras 28 to 30). *State of M.P.* v. *Babulal*, (2008) 1 SCC 234: (2008) 1 SCC (Cri) 188: AIR 2008 SC 582: 2008 Cri LJ 714.

Bench Strength **2**. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 3-12-2007]

Halsbury's Laws of England (4th Edn., Vol. 11, Para 482); Salmond on Jurisprudence (2004), p. 94, referred to

B.G. Goswami v. Delhi Admn., (1974) 3 SCC 85: 1973 SCC (Cri) 796; Dinesh v. State of Rajasthan, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1, relied on

(b) Premature release/Probation

[9551] — S. 376(1) — Probation — Refusal to grant probation to the person found guilty of rape — Held, proper — *CrPC, 1973, S. 360 — Probation of Offenders Act, 1958, S. 4* (Para 7). *State of M.P.* v. *Babulal*, (2008) 1 SCC 234: (2008) 1 SCC (Cri) 188: AIR 2008 SC 582: 2008 Cri LJ 714.

Bench Strength **2**. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 3-12-2007]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; State of Rajasthan v. Narayan, (1992) 3 SCC 615: 1992 SCC (Cri) 781, relied on

(c) Compensation to rehabilitation of victim/Suit for damages

[9552] — S. 375 — Gang rape by police of women participating in public rally — Compensation to — Quantum of — Limits on power of High Court when matter at premature stage — *Writ petition by Uttarakhand Sangharsh Samity seeking directions to State authorities in connection with confrontation ensued between the agitators and the administration which resulted in death, injuries and molestation of women — High Court directing the State Govt. to pay huge amounts as compensation to the victims and to make fund allotment (in several crores of rupees) for development of Kumaon and Garhwal regions by way of reparation to the people of those regions — Such directions which resulted in great financial burden on the State at the premature stage and which were made without trial, without consideration of evidence, without having regard to financial capacity, resources of the State and legislative mandates involving State funding, held, were in excess of High Court's jurisdiction under Act. 226 and unwarranted and hence liable to be set aside — Constitution of India, Arts. 226 and 19(1)(a), (b), (c) & (d) and 21*

A public rally was organised for protesting against a State Government notification pertaining to reservation in educational institutions based on regionwise domicile and to press the demand for a separate State of Uttarakhand comprising certain hilly regions of the State of U.P. and some other areas. The administration took stern measures to resist the protestors' march towards the national capital as the officials claimed to have received secret information that the proposed rallyists were carrying lethal weapons in violation of the prohibitory orders issued by the Government and might create serious law and order situation. The confrontation which ensued resulted in a lot of bloodshed including loss of many lives, infliction of injuries on persons belonging to both sides, outraging the modesty of women ranging to ravishments. An association styling itself as Uttarakhand Sangharsh Samity moved a writ petition in the High Court for directions to be issued to the authorities to meet the consequences of the said confrontation. A Division Bench of the High Court issued certain interim directions, one of which was to the CBI to enquire into the allegations of 'human rights violations'. CBI took up investigation pursuant to the directions and laid charge-sheet against certain officers for offences under Sections 109 and 120-B read with Sections 341 and 342 of the Indian Penal Code. Sanction of the State Government was obtained for launching prosecution in respect of those offences. Some of the accused who were arrayed in the said charge-sheet filed writ petitions before the High Court in challenge to the validity of the sanction order issued by the State Government for prosecuting them. The Division Bench disposed of the first-mentioned writ petition filed by the Samity issuing several directions. It ordered the Government to pay Rs 10 lakhs each to the dependants of all the persons who died in police firing. Rs 10 lakhs each were given to the victims of molestation, Rs fifty thousand each to 398 persons who were detained by the police. The Division Bench also issued the following directions regarding fund allotment for development of certain regions: "Damages and compensation for constitutional wrongs committed subjecting injuries to the class of people of Kumaon and Garhwal for their only fault that they were securing their civil rights on the guarantee already given by the legislature, as discussed in the judgment. The reparation to the people of Kumaon and Garhwal Divisions shall stand related to their population (5,926,146: Kumaon — 2,943,199, Garhwal — 2,982,947) in the equation of a rupee per month per person for a plan period of five years and this compensation shall be invested amongst the population of Kumaon and Garhwal earmarked specifically for a programme for the upliftment of the women; 50

paise of this reparation shall come from the State of Uttar Pradesh and the other 50 paise from the Union of India. This would be in addition to the normal plan allocation which this area would receive as what the Court is suggesting is damages beyond the normal allocation." Allowing the appeals,

Held :

The High Court was not justified in fixing such a huge sum as compensation at a premature stage. The High Court while imposing such a heavy liability on the State has not made any attempt to discuss the relevant questions which are to be answered for fixing the liability of compensation and for quantification of the amount of compensation. Therefore, the direction for payment of compensation is clearly unsustainable and is liable to be vacated. (Para 12)

The magnitude of the financial burden for complying with the direction regarding fund allotment has been approximately estimated as amounting to several crores of rupees. The money has to come out of the State coffers. This is not a case where the High Court was ordering compensation to one individual or even to a limited number of persons dehors its legal liability enjoined by statutory provisions. Major revenue of the State Government is through taxation. But no taxation is possible without legislative sanction. The Government must have other resources to meet the direction. The High Court did not take into account the financial capacity of the State Government, nor its resources for making up the said amount nor the priorities to be honoured by the State Government nor even the legislative mandates involving State funding, while ordering the Government to incur such a huge expenditure of a recurring nature. Judicial creativity has, no doubt, expanded to newer dimensions in the recent past, but that is no justification for using judicial power for imposing such an unbearable burden on the State which in turn would be compelled to extract money out of the common man's coffers to meet such a massive financial burden. Suffice it to say that the above direction cannot stand judicial scrutiny and it is hereby set aside. (Paras 14 to 17) . *A.K. Singh* v. *Uttarakhand Jan Morcha*, (1999) 4 SCC 476: 1999 SCC (Cri) 580: AIR 1999 SC 2193.

Bench Strength **3**. Coram: **K.T. Thomas**, *D.P. Mohapatra* and *U.C. Banerjee*, JJ. [Date of decision: 13-5-1999]

[9553] — Ss. 375 and 376 — Moulding of punishment — Reduction of custodial sentence — When warranted — *High Court finding appellant-accused guilty under clause "Fourthly" of S. 375 — However, taking note of the peculiar facts of the case, more particularly, the knowledge of the complainant about the accused being a married man, reducing the custodial sentence from 7 years to 3 years but enhancing the compensation to Rs 1,00,000 from Rs 10,000 with a direction that in case the compensation amount was not paid, the reduction in sentence would not be given effect to — Complainant becoming aware of appellant's first marriage on 6-3-1994 but lodging report on 19-9-1994 — Explanation given therefor that she delivered a child immediately after learning about the incident on 16-4-1994 and hence could not complain earlier and also that she was totally traumatised on learning about the marriage of the appellant-accused — Held, though explanation was really not satisfactory but in view of the position in law that the accused was really guilty of the offence punishable under S. 376 IPC, the delayed approach of the complainant cannot, in any event, wash away the offence — Reduction of sentence and enhancement of compensation by High Court, supported by sufficient and adequate reasons, calls for no interference* (Paras 16 to 18). *Bhupinder Singh* v. *UT, Chandigarh*, (2008) 8 SCC 531: (2008) 3 SCC (Cri) 553: 2008 Cri LJ 3546.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 10-7-2008]

[**Ed.**: An interesting question arises whether on these facts the appellant could have been charged under Sections 493 and 494 IPC, and if so why not.]

[9554] — S. 376 — Compensation — Award of interim compensation during pendency of the proceedings under — Court has jurisdiction to award interim compensation to victim — *Complaint under Ss. 312/420/493/496/498-A IPC filed by respondent-victim against appellant for developing sexual relationship with her on false assurance of marriage and later secretly marrying her before God by putting vermilion on her forehead but after having impregnated her twice, compelling her to undergo abortion on both the occasions and ultimately deserting her — Appellant's petition under S. 482 CrPC for quashing the complaint dismissed by High Court — While dismissing the SLP preferred by appellant, held, Supreme Court has jurisdiction to pass order compelling the accused to pay maintenance to the victim during pendency of the criminal case — Accordingly, on being prima facie satisfied about the allegations, appellant's plea that his service having been terminated he may not be burdened with the liability to pay any maintenance, rejected and appellant directed to pay Rs 1000 per month as interim compensation to respondent during pendency of the criminal case — Constitution of India, Arts. 136, 32, 226, 142 and 21*

24.(c) Compensation to rehabilitation of victim/Suit for damages *(contd.)*

The respondent lodged a complaint against the appellant which was registered under Sections 312/420/493/496/498-A IPC. The complaint revealed that there was initially a period of romance between the parties during which the appellant used to visit the house of respondent and on one occasion he told her that he was in love with her and ultimately succeeded, on the basis of his assurances to marry her, in developing sexual relationship with her with the tragic result that the respondent became pregnant. While in that state, she persuaded the appellant to marry her, but he deferred the proposal on the plea that he had to take his parents' permission. He, however, agreed to marry her secretly. Consequently, the appellant took her before the God he worshipped and put vermilion on her forehead and accepted her as his lawful wife. In spite of the secret marriage, he, through his insistence, succeeded in motivating her for an abortion which took place in a clinic. The respondent became pregnant a second time and at the instance of the appellant she had to undergo abortion again in a nursing home where the appellant signed the consent paper by deliberately mentioning a false name. Ultimately the appellant deserted her. The appellant filed a petition under Section 482 CrPC for quashing the complaint which was dismissed by the High Court. The appellant thereupon approached the Supreme Court by way of SLP. The Supreme Court while dismissing the SLP further took suo motu notice of the facts of the case as narrated in the complaint and issued notice to the appellant as to why he should not be asked to pay reasonable maintenance per month to the respondent during pendency of the prosecution proceedings against him. The appellant put up appearance and filed an affidavit denying the allegations against him and stating that his service having since been terminated and he thus being unemployed no question of burdening him with the liability to pay maintenance could arise. In the circumstances question before the Court was whether any further order could be passed compelling the appellant to pay maintenance to the respondent during the pendency of the criminal case for which the show-cause notice had been issued to him? Disposing of the appeal of the accused

Held :

(1) When the court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation which should also be provided in the scheme for rape victims to be evolved by the Union of India pursuant to directions of the Supreme Court in *Delhi Domestic Working Women's Forum case*. On the basis of the principles set out in that decision the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the courts trying the offences of rape which, is an offence against basic human rights as also the fundamental right of personal liberty and life. Besides, the Supreme Court has the inherent jurisdiction to pass any order it considers fit and proper in the interest of justice or to do complete justice between the parties.

On being prima facie satisfied about the allegations made in the complaint, the matter is disposed of by providing that the appellant shall pay to the respondent a sum of Rs 1000 every month as interim compensation during pendency of the criminal case against him. He shall also be liable to pay arrears of compensation at the same rate from the date on which the complaint was filed till the date of the present decision. However, whatever has been said in this judgment shall not, in any way, affect or prejudice the Magistrate from deciding the complaint on merits on the basis of the evidence as may be tendered before it and in accordance with law.

(2) A woman, in our country, belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, under the Constitution, enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are mother, daughter, sister and wife and not playthings for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by Nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.

(3) In spite of the decision of the Supreme Court that (depending upon the circumstances of the case) corroboration of the prosecutrix was not necessary, the cases continued to end in acquittal on account of mishandling of the crime by the police and the invocation of the theory of 'consent' by the courts who tried the offence of rape. To overcome this diffi-

culty, the legislature introduced Section 114-A in the Evidence Act. The situation, however, has hardly improved. The fear has to be allayed from the minds of women so that if and when this crime is committed, the victim may promptly report the matter to the police and on a charge-sheet being submitted, the trial may proceed speedily without causing any embarrassment to the prosecutrix who may come in the witness-box without fear psychosis.

(4) The Supreme Court, as the highest Court of the country, has a variety of jurisdiction. Under Article 32 of the Constitution, it has the jurisdiction to enforce the fundamental rights by issuing writs. Fundamental rights can be enforced even against private bodies and individuals. Even the right to approach the Supreme Court for the enforcement of the fundamental rights under Article 32 itself is a fundamental right. The jurisdiction enjoyed by the Supreme Court under Article 32 is very wide as the Supreme Court, while considering a petition for the enforcement of any of the fundamental rights, can declare an Act to be ultra vires or beyond the competence of the legislature and has also the power to award compensation for the violation of the fundamental rights. For the exercise of this jurisdiction, it is not necessary that the person who is the victim of violation of his fundamental right should personally approach the court as the court can itself take cognizance of the matter and proceed suo motu or on a petition of any public-spirited individual. The Supreme Court through its various decisions, has already given new dimensions, meaning and purpose to many of the fundamental rights especially the Right to Freedom and Liberty and Right to Life. The Directive Principles of State Policy have also been raised by the Supreme Court from their static and unenforceable concept to a level as high as that of the fundamental rights. *Bodhisattwa Gautam* v. *Subhra Chakraborty*, (1996) 1 SCC 490: 1996 SCC (Cri) 133: AIR 1996 SC 922: (1996) 1 AndhLT (Cri) 252.

Bench Strength **2**. Coram: *Kuldip Singh* and **S. Saghir Ahmad**, JJ. [Date of decision: 15-12-1995]

Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14: 1995 SCC (Cri) 7, followed

State of H.P. v. Raghubir Singh, (1993) 2 SCC 622: 1993 SCC (Cri) 674; State of Karnataka v. Mahabaleshwar Gourya Naik, 1992 Supp (3) SCC 179: 1993 SCC (Cri) 180; Rudul Sah v. State of Bihar, (1983) 4 SCC 141: 1983 SCC (Cri) 798; Peoples' Union for Democratic Rights v. Police Commr., Delhi Police Hqrs., (1989) 4 SCC 730: 1990 SCC (Cri) 75, relied on

[**Ed.**: The present case came by way of an SLP under Article 136.]

[9555] — S. 376 — Compensation to victim of rape — *Investigation against police officials alleged to be involved in incident of rape pending — Victim undergoing a lot of physical and mental suffering — Interim compensation of Rs 20,000 directed to be paid to her by State — Leave granted to her to apply to Supreme Court for further compensation, if any, after criminal trial reaches finality at trial stage — Constitution of India, Arts. 32 and 300. P. Rathinam* v. *Union of India*, 1989 Supp (2) SCC 716: 1991 SCC (Cri) 228.

Bench Strength **2**. Coram: *Ranganath Misra* and *M.N. Venkatachaliah*, JJ. [Date of decision: 28-10-1988]

[9556] — Ss. 376 and 323 — Offence under — Compensation to the victim — *Accused, besides imprisonment, sentenced to pay a fine of Rs 5000 and Rs 500 under Ss. 376 and 323 respectively — In case of the amount being recovered, a sum of Rs 4500 directed to be paid to the victim — CrPC, 1973, S. 357(1)(b)* (Para 12). *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247: 2000 SCC (Cri) 147: AIR 1999 SC 3916: 2000 Cri LJ 44.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **R.P. Sethi**, JJ. [Date of decision: 2-11-1999]

[9557] — S. 376(2)(f) — Award of compensation to victim of offence (rape in this case) to be paid by State — Direction by trial court in respect of — Confirmation of, by High Court in appeal against conviction — Propriety of — *Held, it was not open to State to challenge the said part of High Court's order against it in the appeal filed by accused — Hence, the said challenge rejected as meritless — CrPC, 1973, S. 357* (Para 16). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[9558] — S. 376-B r/w S. 341 — Compensation and rehabilitation of rape victims — Scheme regarding — *Directed to be evolved by National Commission for Women under S. 10 of National Commission for Women Act within six months and thereupon, Union of India directed to examine the same and take necessary steps for its implementation — National Commission for Women Act, 1990, S. 10* (Paras 17 and 18). *Delhi Domestic Working Women's Forum* v. *Union of India*, (1995) 1 SCC 14: 1995 SCC (Cri) 7: (1995) 1 BLJR 1.

Bench Strength **3**. Coram: *M.N. Venkatachaliah*, *C.J.* and **S. Mohan** and *S.B. Majmudar*, JJ. [Date of decision: 19-10-1994]

(d) Death Sentence

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'D.35.(f)(ii)20. Death Sentence — Rape and murder', in Vol. 2

(i) Generally

[9559] — Ss. 376(2)(g), 302/34 and 201 — Rape and murder — Sentence — Death sentence justified — Rarest of rare cases — *Jail officer sending to his quarter a guard and a prisoner to work in the house and in the garden attached thereto, respectively — 16-year-old daughter of the said officer was at that time alone in the quarter and was preparing for her Class 10th examination — Taking advantage of her loneliness, both the guard and the prisoner committing rape on her, strangulating and then stabbing her, removing her cycle and throwing her dead body in septic tank — In such circumstances sentence of death, held, was the only proper punishment — CrPC, 1973, S. 354(3)* (Para 36). *Molai* v. *State of M.P.*, (1999) 9 SCC 581: AIR 2000 SC 177.

Bench Strength **3**. Coram: **S.P. Kurdukar**, *K.T. Thomas* and *N. Santosh Hegde*, JJ. [Date of decision: 26-10-1999]

State of M.P. v. Molai, 1999 Cri LJ 2698 (MP), affirmed

(ii) Death upheld

[9560] — Ss. 376(2) and 302 — Rape and murder of minor aged less than six years — If a "rarest of rare case" — *Held, rape is one of the most depraved acts — Such iniquitous, flagitious act becomes abominable when the victim is a child — The diabolic act reaches the lowest level of humanity when the rape is followed by brutal murder — Hence, Supreme Court has no hesitation in holding that present case falls in the rarest of rare category and death sentence awarded by trial court was appropriate — Guidelines and tests for imposition of death sentence laid down in* — Bachan Singh, *(1980) 2 SCC 684 and* Machhi Singh, *(1983) 3 SCC 470, pp. 471-72 and p. 489, para 38 [set out in para 26 in SCC], applied — Death sentence awarded by trial court restored*

The victim, who was not six years old lost her life on account of bestial acts of the respondent who allegedly raped her and thereafter murdered her. The victim had gone to school and did not return at the usual time. On the next morning her dead body was found in a sugarcane field around 6.00 a.m. She was found lying in a dead condition and blood was oozing from her private parts and there were marks of pressing on her neck. PW 7, the doctor conducted the post-mortem around 2.00 p.m. on the same day and opined that death had occurred within the preceding 24 hours.

Three persons claimed to have seen the accused nearby the place of occurrence between 1.00 p.m. to 2.00 p.m. on the date of occurrence. Two of them, namely, PW 3 and PW 5 claimed to have seen the deceased being carried on a bicycle by the accused who was taking the bicycle with the deceased sitting on the handle-bar thereof. PW 2 stated that he had seen the accused in perplexed state around 2.00 p.m. near the place from where the dead body of the deceased was found. Investigation was undertaken. During such investigation, there was recovery of the accused's underwear as also the undergarment the deceased was wearing.

Allowing the appeals and restoring the death sentence awarded by the trial court,

Held :

Rape is one of the most depraved acts. The iniquitous, flagitious act becomes abominable when the victim is a child. The diabolic act reaches the lowest level of humanity when the rape is followed by brutal murder. The Supreme Court has no hesitation in holding that the case at hand falls in the rarest of rare category and death sentence awarded by the trial court was appropriate. The acquittal of the respondent-accused is clearly unsustainable and is set aside. Guidelines and tests for imposition of death sentence laid down in *Bachan Singh*, (1980) 2 SCC 684 and *Machhi Singh*, (1983) 3 SCC 470, pp. 471-72 and p. 489, para 38 [set out in para 26 in SCC], applied. (Paras 2, 24, 26 and 31). *State of U.P.* v. *Satish*, (2005) 3 SCC 114: 2005 SCC (Cri) 642: AIR 2005 SC 1000: 2005 Cri LJ 1428.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 8-2-2005]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, applied

(2004) 1 All Cri R 760 (All), reversed

[**Ed.**: But in a similar situation (or worse, of abduction as well) other Benches of the Supreme Court in *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127 and *State of Maharashtra* v. *Mansingh*, (2005) 3 SCC 131, have felt defferently and awarded life imprisonment instead. On the other hand, earlier decisions of the Supreme Court in *Laxman Naik* v. *State of Orissa*, (1994) 3 SCC 381: 1994 SCC (Cri) 656; *Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220: 1994 SCC (Cri) 358; *Kamta Tiwari* v. *State of M.P.*, (1999) 9 SCC 581 have held death sentence appropriate where rape and murder of a minor girl was involved. Besides deterrence, retribution still survives as an object of punishment [*Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220: 1994 SCC (Cri) 358 and *Jacabo George (Dr.)* v. *State of Kerala*, (1994) 3 SCC 430: 1994 SCC (Cri) 774] and one may consider looking at the situation intimately from the perspective of John Grisham: A Time to Kill.]

(iii) Commutation to life when warranted

[9561] — Ss. 375 and 300 — Rape and murder of a young girl aged 14 years — Testimony of eye-witnesses suffering from no infirmity — Conviction upheld — Death sentence not justified. *Kumudi Lal* v. *State of U.P.*, (1999) 4 SCC 108: 1999 SCC (Cri) 491: AIR 1999 SC 1699: 1999 All LJ 1262.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 31-3-1999]

[9562] — Ss. 375 and 376 — Death sentence — Mitigating circumstances — *Rape of a child aged 4½ years and causing her death by inflicting cut injuries on her neck — Body put in a gunny bag with hands and legs tied and left in a pit near a stream — Accused-appellant then aged 24 years and alleged to be in drunken state — Even though he had been in custody no report regarding him made by probationary officer or jail authorities — Appellant having no previous criminal record — Held, it cannot be said that he would be a menace to the society in future — In the circumstances, death sentence commuted to sentence of life imprisonment — Penal Code, 1860, Ss. 302, 376(2)(f), 377, 363 & 201* (Paras 2 to 5). *Rahul* v. *State of Maharashtra*, (2005) 10 SCC 322: 2005 SCC (Cri) 1516.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 17-8-2004]

[9563] — S. 376 — Rape resulting in death — If the rarest of rare cases — Death occurring due to brutal manner of rape (of 7/8-year-old child) — Death sentence if warranted — *Brutal rape of a young child aged 7/8 years by the appellant aged 31 years leading to her death due to excessive bleeding — Culpability of the appellant in the heinous crime for all practical purposes established — Death sentence imposed by the trial court, confirmed by the High Court on reference — Death of the victim occurring because of excessive bleeding and not because of any specific overt act on the part of the appellant — Thus, intention of the appellant to kill the deceased not proved — Hence held, imposition of death sentence was not proper — Manner in which the deceased was raped may be brutal but it could have been a momentary lapse on the part of the appellant, seeing a lonely girl at a secluded place — No premeditation for commission of the offence proved — Offence, though, may look heinous, but under no circumstances, can it be said to be the rarest of rare cases — However, considering the brutality with which the offence was committed maximum sentence of RI for life imposed* (Paras 21, 22 and 10). *Amrit Singh* v. *State of Punjab*, (2006) 12 SCC 79: (2007) 2 SCC (Cri) 397: AIR 2007 SC 132: 2007 Cri LJ 298.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-11-2006]

[9564] — Ss. 376 and 302 — Death sentence — When not warranted — No rigid standards and norms can be laid down — *Rape of child aged 1½ years by appellant aged 30 years — In the process of committing rape, injuries inflicted on liver, apart from other injuries which resulting in death of the child — Held, case does not fall within the rarest of the rare category — Hence death sentence not justified — CrPC, 1973, S. 354(3)*

Regarding the question of laying down standards and norms restricting the area of imposition of death penalty, if by "laying down standards", it is meant that "murder" should be categorised beforehand according to the degrees of its culpability and all the aggravating and mitigating circumstances should be exhaustively and rigidly enumerated so as to exclude all free play of discretion, the argument merits rejection. Such standardisation is well-nigh impossible. Firstly, degree of culpability cannot be measured in each case; secondly, criminal cases cannot be categorised, there being infinite, unpredictable and unforeseeable variations; thirdly, on such categorisation, the sentencing process will cease to be judicial; and fourthly, such standardisation or sentencing discretion is a policy-matter belonging to the legislature beyond the court's function. Only broad guidelines consistent with the policy indicated by the legislature in Section 354(3) can be laid down. (Paras 10 and 12)

In the present case the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible. It reveals a dirty and perverted mind of a human being who has no control over his carnal desires. But treating the case on the touchstone of the guidelines laid down in *Bachan Singh*, *Machhi Singh* and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, the case cannot be appropriately called one of the rarest of the rare cases. The appellant cannot be said to be such a dangerous person that to spare his life will endanger the community. It cannot be held that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. The case is one in which a humanist approach should be taken in the matter of awarding punishment. Accordingly, the capital sentence imposed against

24.(d)(iii) Death Sentence - Commutation to life when warranted *(contd.)*

the appellant by the courts below is set aside. Instead the appellant shall suffer rigorous imprisonment for life. (Paras 25 and 26). *Mohd. Chaman* v. *State (NCT of Delhi)*, (2001) 2 SCC 28: 2001 SCC (Cri) 278: 2001 Cri LJ 725.

Bench Strength **2**. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 11-12-2000]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Nirmal Singh v. State of Haryana, (1999) 3 SCC 670: 1999 SCC (Cri) 472; Anshad v. State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204, relied on

[9565] — Ss. 376 and 302 — Rape and murder — Death sentence — Mitigating circumstances — *Considering that (i) the accused was a young man, (ii) he was a student, (iii) there was no record of any previous heinous crime, and (iv) no evidence that he would be a danger to the society if death penalty is not awarded, held, the instant case did not fall in the category of rarest of the rare cases — Sentence of death altered to life imprisonment* (Para 10). *Amit* v. *State of Maharashtra*, (2003) 8 SCC 93: 2003 SCC (Cri) 1959: AIR 2003 SC 3131: 2003 Cri LJ 3873.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *Brijesh Kumar*, JJ. [Date of decision: 6-8-2003]

[9566] — Ss. 376 and 302 — Rape and murder of a girl aged 7-8 years — Conviction — Punishment — Conviction of appellants on basis of circumstantial evidence — Sustainability of death sentence — *Death sentence imposed by the Sessions Judge confirmed by the High Court — Held, if guilt is proved by circumstantial evidence, ordinarily, death penalty would not be awarded — Moreover, Appellant 1 showed his remorse and repentance and accepted his guilt even in his statement under S. 313 CrPC — Hence, instead of extreme death penalty, punishment of RI for life imposed — CrPC, 1973, Ss. 235(2) and 354(3)* (Paras 57 to 65). *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

State of Rajasthan v. Kheraj Ram, (2003) 8 SCC 224: 2003 SCC (Cri) 1979; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559; Sahdeo v. State of U.P., (2004) 10 SCC 682: 2004 SCC (Cri) 1873; Raju v. State of Haryana, (2001) 9 SCC 50: 2002 SCC (Cri) 408; Amrit Singh v. State of Punjab, (2006) 12 SCC 79: (2006) 2 SCC (Cri) 397; Sk. Ishaque v. State of Bihar, (1995) 3 SCC 392: 1995 SCC (Cri) 534; Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

[9567] — Ss. 376 and 302 — Sentence — Rape and murder of 6 year old girl — *On facts held, not a "rarest of the rare" case — Hence sentence of death commuted to that of life imprisonment*

However, in the present case, there is nothing on record to indicate that the appellant was having any criminal record nor can it be said that he will be a grave danger to the society at large. It is true that his act is heinous and requires to be condemned but at the same time it cannot be said that it is the rarest of the rare case where the accused requires to be eliminated from the society. Hence, there is no justifiable reason to impose the death sentence. Therefore, the sentence is modified by commuting the sentence of death to an imprisonment for life. For the offence punishable under Section 376 IPC, he is sentenced to undergo rigorous imprisonment for 10 years. Both the sentences to run concurrently. (Paras 8 and 9). *Bantu* v. *State of M.P.*, (2001) 9 SCC 615: AIR 2002 SC 70.

Bench Strength **2**. Coram: **M.B. Shah** and *Doraiswamy Raju*, JJ. [Date of decision: 17-10-2001]

[9568] — Ss. 376 and 302 — Sentence — Rape and murder of girl aged 11 years — Accused had no intention to commit murder of the deceased — *When deceased said that she would disclose about the commission of rape to her house, accused on the spur of the moment without any premeditation caused injury on her head by hurling brick which resulted in her death — Accused having no criminal record nor can he be said to be a grave danger to the society at large — Held, it was not a rarest of the rare cases and hence imposition of death sentence not justified — Instead life imprisonment proper. Raju* v. *State of Haryana*, (2001) 9 SCC 50: AIR 2001 SC 2043: 2001 Cri LJ 2580.

Bench Strength **2**. Coram: **M.B. Shah** and *Brijesh Kumar*, JJ. [Date of decision: 2-5-2001]

State of Haryana v. Raju, 2000 Cri LJ 2726 (P&H), partly affirmed

[9569] — Ss. 376, 302, 363 & 201 — Child rape — Sentence — *Rape and murder of a 3 year old girl — Trial court imposing death sentence but High Court acquitting the accused-respondent — Held, though this case is perilously near the region of "rarest of the rare cases", but as the accused was once acquitted by High Court the extreme penalty need not be imposed, the lesser option being not unquestionably foreclosed — Hence death sentence altered to that of life imprisonment* (Para 23) . *State of Maharashtra* v. *Bharat Fakira Dhiwar*, (2002) 1 SCC 622: 2002 SCC (Cri) 217: AIR 2002 SC 16: 2002 Cri LJ 218: (2002) 1 CHN (Supp) 7.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 2-11-2001]

[9570] — Ss. 376, 302, 363 and 366 — Rape and murder of child by watchman — Death sentence, held, not warranted in this case — *Appellant-accused aged about 27 years was watchman of building where deceased was residing — Death sentence imposed by trial court affirmed by High Court — Difference of opinion amongst Judges of Division Bench of Supreme Court as regards award of capital punishment in* Rameshbhai (1) case, *(2009) 5 SCC 740 — Possibility of rehabilitation and reformation of young offender — Uncertainty due to nature of circumstantial evidence — Hence held, death sentence cannot be maintained — Considering gravity of offence, behaviour of appellant, and fear and concern such incident generate in ordered society, death sentence commuted to life imprisonment directing that life sentence would extend to full life of appellant subject to any remission/commutation at instance of Government for good and sufficient reasons — CrPC, 1973, Ss. 366, 368, 415, 432 and 433 — Constitution of India, Arts. 72 and 161* (Paras 9 to 12). *Rameshbhai Chandubhai Rathod (2)* v. *State of Gujarat*, (2011) 2 SCC 764.

Bench Strength **3**. Coram: **H.S. Bedi**, *P. Sathasivam* and *C.K. Prasad*, JJ. [Date of decision: 24-1-2011]

Ramraj v. State of Chhattisgarh, (2010) 1 SCC 573: (2010) 1 SCC (Cri) 842; Mulla v. State of U.P., (2010) 3 SCC 508: (2010) 2 SCC (Cri) 1150; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358, distinguished on facts

Opinion of A.K. Ganguly, J. in Rameshbhai Chandubhai Rathod (1) v. State of Gujarat, (2009) 5 SCC 740: (2009) 2 SCC (Cri) 881, affirmed

[9571] — Ss. 376, 363 and 302 — Rape and murder of victim — If a "rarest of rare case" — Award of death penalty by trial court — *Held, case not "rarest of the rare" — In facts and circumstances of case, death penalty not justified — Commuted to sentence of life imprisonment* (Para 8). *State of Maharashtra* v. *Mansingh*, (2005) 3 SCC 131: 2005 SCC (Cri) 657.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 19-8-2004]

[9572] — S. 376(2) and 302 — Sentence — Commutation of death sentence — Accused raping and murdering minor after abducting her in middle of the night, while asleep, from her home (after having had an altercation with her mother, brother and uncle, the mother having refused him sexual favours) and throwing body into a pond — *Appellant aged 36 years at time of occurrence, impecunious, a migrant labourer and there being no evidence that he had been involved in any other criminal case previously — Held, it could not be said that he would be a menace to society in future, and no materials had been placed on record to draw such a conclusion — This is not a "rarest of rare" case — Death penalty was not warranted — Hence death sentence commuted to life imprisonment*

This is not a "rarest of rare case" in which death penalty should be imposed on the appellant. The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had been involved in any other criminal case previously and the appellant was a migrant labourer from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to society in future and no materials have been placed on record to draw such a conclusion. The death penalty was not warranted in this case. The conviction of the appellant is confirmed on all the counts, but the sentence of death penalty imposed on him for the offence under Section 302 IPC is commuted to life imprisonment. (Para 13). *Surendra Pal Shivbalakpal* v. *State of Gujarat*, (2005) 3 SCC 127: 2005 SCC (Cri) 653: AIR 2004 SC 4862: 2004 Cri LJ 4642.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 16-9-2004]

[**Ed.**: It is noted in para 9 that the "previous conduct ... would prove that the appellant was prone to do such crime". In this regard see *State of U.P.* v. *Satish*, (2005) 3 SCC 114, above.]

[9573] — Ss. 376(2)(g), 302 and 201 r/w S. 34 — Gang rape and murder of child aged 7-8 years — Conviction justified — Sentence to be imposed — *Appellants alleged to have lifted the little girl from the waiting room, where she was sleeping along with her parents and younger brother, committed rape and then murdered her — Appellants seen talking in a suspicious manner — No explanation offered by Appellant 2 as regards his stained undergarments/injuries on his face (and which he accepted) — Lock and key of waiting room always in possession of Appellant 1 (chowkidar) — Absence of Appellant 2 from the bus in question, his effort to sleep in another bus leaving his own bus, his absence for about 1 to 1½ hour, and change of his garments during that period, proved — Appellant 1 making voluntary judicial confession wherein the roles played by the appellants were explicitly detailed — Possibility of some other passenger committing the offence ruled out on basis of* *circumstantial evidence — Held, S. 30 Evidence Act, 1872, can be taken aid of to take into consideration the confessional effect of the statements made by Appellant 1 as against Appellant 2 for arriving at an opinion that by reason thereof involvement of both of them amply stood proved — Judicial confession of Appellant 1, statement of Appellant 2 in his examination under CrPC 1973, S. 313 and other circumstantial evidence, prove the guilt of the appellants beyond reasonable doubt — Death sentence reduced to rigorous life imprisonment*

Appellants were charged with and convicted for commission of offences under Sections 376(2)(*g*), 302 and 201 read with Section 34 of the Penal Code, 1860 for rape and murder of one *B* (deceased) aged 7-8 years. Deceased along with her parents and younger brother was travelling to Dimapur (State of Nagaland) in a private transport service known as Network Travels from Dharmanagar (Tripura). They reached Guwahati at around 10.30 p.m. on 12-7-2002. There was no connecting bus to Dimapur at that time. Appellant 1 was a night chowkidar of the waiting room of the said Network Travels. He represented that they could stay there for the night and therefore should not have any apprehension in regard to their safety. Their luggage was carried by Appellant 1 to the waiting room. The waiting room had two openings. It was covered by grills. Only the front gate was open, which was kept under lock and key, the key whereof was with Appellant 1. PW 23 (father of the deceased) and the two children slept. However, PW 22 (mother of the deceased) stayed awake. Appellant 1 insisted to her repeatedly that she should go to sleep stating that as the waiting room would be locked, there was nothing for her to worry about. As she had not been sleeping, Appellant 1, allegedly, scolded her to do so. At that time, a bus bearing No. AS 25C 1476 arrived at the said bus-stop. *P*, Appellant 2 was the "handyman" of the said bus. While the manager, driver and the conductor slept in the said bus, he did not. He was seen talking with Appellant 1.

PW 22 slept for a while and got up when her son cried out. She did not find *B* and raised hue and cry. They requested Appellant 1 to open the gates of the waiting room. He showed his reluctance at the first instance. He was thereafter told about the missing of the girl. On being so informed, he opined that she might be somewhere else within the room. A search was carried out in the three buses, which were at the bus-stop belonging to the travel agency. Nearabout places as also the railway station were searched. The bathroom situated in the said premises was also searched.

The dead body of *B* was found in a septic tank on 14-7-2000. FIR was lodged wherein apart from Appellant 1, suspicion was raised about the involvement of driver, PW 26, conductor, PW 25 and the handyman, *P* Appellant 2 herein of the bus bearing No. AS 25C 1476. The said bus had already left for its destination at about 6.30 in the morning. Even prior thereto, PW 2 was persuaded that the said bus be permitted to leave early for Jorhat, which was declined.

During the course of investigation, Appellant 1 made a confessional statement before the Magistrate under Section 164 CrPC. He gave a vivid description as to how the offence was committed by him and Appellant 2. On basis of circumstantial evidence and judicial confession of Appellant 1, appellants were convicted and sentenced to death by the trial court. Their appeal was dismissed by the High Court. Hence, the present appeal. *Bishnu Prasad Sinha* v. *State of Assam*, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

(e) Fine and Imprisonment in default

[9574] — Ss. 376 and 366 — Rape — Quantum of fine — Financial constraints of the appellant-accused — Relief — Rape of a girl less than twelve years — *For offence under S. 376, punishment of RI for ten years and fine of Rs 50,000 imposed, while for conviction under S. 366 RI for five years and fine of Rs 5000 imposed — Supreme Court considering the financial status of the appellant and his inability to pay the imposed fine, reducing the same to Rs 5000 for offence under S. 376 and to Rs 500 for offence under S. 366, with default stipulation — Further, suo motu, State Govt. directed to pay Rs 20,000 as ex gratia amount to the mother of the victim (since married), and not to the victim herself, in her own interest, considering the facts as disclosed in the affidavit filed by the Additional Superintendent of Police* (Paras 2, 4 and 5). *Shyama* v. *State of Rajasthan*, (2004) 13 SCC 544.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 17-12-2004]

(f) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos

Synopsis

(i) Generally 711
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  (1) Generally 711
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(i) Generally

See also 'C.24.(f)(ii)(1) Adequate and Special reasons — Generally', below

[9575] — **S. 376(2) proviso — Mode of construction** — *Held, it must be considered with relation to the principal matter to which it stands as a proviso, particularly in case of such penal provisions as involved herein [S. 376(2)(f) IPC]* (Para 13). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

(ii) Adequate and Special reasons

(1) Generally

See also C.24.(f)(i) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos — Generally', above, and

'C.24.(f)(ii)(2) Adequate and Special reasons — Reasons that may be considered special and adequate', and

'C.24.(g) Principles for sentencing', below

[9576] — Ss. 375 and 376 — Rape — Sentence — Reduction of, to less than the prescribed minimum — Permissibility — *Held, on facts, not justified — Ingredients of rape, effect on psyche of victim raped, condition precedent when court can exercise the discretion of reducing sentence under Ss. 376(1) and (2), object and function of criminal law, need for imposition of appropriate sentence and duty and role of courts in this regard, effect on justice system and society on awarding of inadequate sentence, extent of adherence to principle of proportionality while sentencing, requirement for delicately balancing the aggravating and mitigating factors and circumstances in which crime committed, restated — High Court while upholding conviction of respondent-accused under S. 376, reducing sentence to the period already undergone on ground that accused was an illiterate labourer and belonged to ST — Sustainability — Appellant State submitting that reasons indicated did not justify reduction — Tenability — Reiterated, in order to exercise the discretion of reducing sentence under Ss. 376(1) and (2), statutory requirement is that court has to record "adequate and special reasons" in the judgment and not fanciful reasons, which would permit court to impose sentence less than the prescribed minimum — Reason has not only to be adequate but also special — What is adequate and special would depend upon several factors and no straitjacket formula can be indicated — What is applicable to trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to High Court — Therefore, relying on position of law, held, order of High Court was clearly indefensible, hence, set aside — Order of trial court, restored* (Paras 5 and 6). *State of M.P.* v. *Basodi*, (2009) 12 SCC 318.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *D.K. Jain* and *Dr. M.K. Sharma*, JJ. [Date of decision: 27-4-2009]

State of M.P. v. Babbu Barkare, (2005) 5 SCC 413: 2005 SCC (Cri) 1335; State of M.P. v. Babulal, (2008) 1 SCC 234: (2008) 1 SCC (Cri) 188, followed

Stephen's Criminal Law, 9th Edn., p. 262; Encyclopaedia of Crime and Justice, Vol. 4, p. 1356; Halsbury's Statutes of England and Wales, 4th Edn., Vol. 12; Friedman: Law in Changing Society, cited

[9577] — S. 376 — Imposition of a lesser sentence — Reasons — Court may for adequate and special reasons, impose a lesser sentence — *Discretion exercised by a superior court, should not be lightly interfered with — Several factors had been taken into account while imposing a lesser sentence — Held, it would be improper to interfere with High Court's discretion on the quantum of sentence except in extraordinary circumstances — No such circumstances found* (Para 16). *National Commission For Women* v. *State of Delhi*, (2010) 12 SCC 599.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 23-7-2010]

[9578] — S. 376 — Less than minimum statutory sentence — *In absence of exceptional circumstances, held, could not be awarded. State of Maharashtra* v. *Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386: AIR 1997 SC 3986.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 11-9-1997]

[9579] — **S. 376 — Rape — Sentence — Discretion of court to award a sentence lesser than the prescribed minimum — Exercise of** — *Held, cannot be exercised without recording "adequate and special reasons" in respect thereof — The reason*

24.(f)(ii)(1) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos - Adequate and Special reasons - Generally *(contd.)*

has not only to be adequate but also special — What is adequate and special would depend upon several factors — No straitjacket formula can be indicated in this regard — On facts, the only reason indicated by the High Court that the accused belonged to rural areas, held, neither adequate nor special — Hence, order of High Court reducing sentence from seven years' RI to period already undergone i.e. 11 months was clearly unsustainable — Matter remitted to High Court for hearing on question relating to sentence

Both in cases of conviction under sub-sections (1) and (2) of Section 376 IPC the court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for "adequate and special reasons". If the court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum. (Para 20)

Thus, in order to exercise the discretion of reducing the sentence the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated. What is applicable to trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court is that the accused belonged to rural areas. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative. (Para 21)

The matter is remitted to the High Court to hear the matter only relating to sentence. The High Court shall consider the factors to be placed for consideration and decide the question of sentence keeping in view the principles indicated herein. (Para 23). *State of M.P.* v. *Babbu Barkare*, (2005) 5 SCC 413: 2005 SCC (Cri) 1335: AIR 2005 SC 2846: 2005 Cri LJ 3117.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-5-2005]

[**Ed.**: See in this regard (2005) 8 SCC 188.]

[9580] — S. 376 — Reduction of sentence below statutory minimum prescribed under, without giving of "adequate and special reasons" — Impermissibility — *High Court while upholding conviction under S. 376, reducing minimum statutory sentence of seven years' RI imposed by trial court to period already undergone, of one year and five months — Impermissibility — Held, Single Judge by cryptic order has reduced the sentence to period already undergone — This order is against the statute, where under S. 376 minimum punishment prescribed is not less than seven years — Matter remanded to High Court for fresh consideration. State of M.P. v. Nandu*, (2006) 9 SCC 573: (2006) 3 SCC (Cri) 111.

Bench Strength **2**. Coram: *H.K. Sema* and *R.V. Raveendran*, JJ. [Date of decision: 12-5-2006]

[**Ed.**: See also *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[9581] — S. 376 proviso — Rape — Adequate and special reasons for imposing sentence less than minimum prescribed (seven years) — *Held, the reasons must be adequate as well as special; they cannot be adequate or special disjunctively — A comprehensive list of such reasons cannot be made as they may differ from case to case — Reasons which are general or common to many cases do not come within scope of "special reasons" — Rape of twelve-year-old girl — Accused aged 25 at time of occurrence — High Court reversing acquittal and convicting him, but using discretion under proviso and not awarding minimum seven-year sentence (imposing three years' RI and fine of Rs 10,000 instead) — Held, High Court rightly convicted the accused, but its reasons that since the offence had taken place ten years ago, the accused might have by then "settled in life" did not amount to "adequate and special" reasons under the proviso — Sentence enhanced to seven years' imprisonment*

A young girl, *S*, found to be aged between 12 and 13 by the Sessions Judge and a student of class IV, on 21-5-1989 finished her evening meal and then left her home with the intention of going to her aunt's house, a short distance away. *S*, daughter of a daily-wage labourer, unfortunately succumbed to the lure of TV and entered the home of the accused to watch a film. While there, the mother of the accused asked *S* to bring some cooking utensils from the flour mill, adjacent to the house. The mill was run by the accused, aged 25. When *S* returned with the utensils, the accused followed her to the kitchen, lifted her up and took her back to the flour mill; he dragged her to a side room and raped her. *S* finally escaped and went to her aunt's home and stayed the night there. *S* returned home the next morning. Her mother noticed bloodstains on her clothes and asked what had happened. The girl told her. That day the father of *S* was out at work. The next day, 23-5-1989, the parents and *S* went to the police station to lodge a complaint. *S* was medically examined on the same day; the medical report clearly indicated serious injuries to *S*'s genitalia and a swab test showed spermatozoa and semen. The examining doctor testified that the injuries were probably sustained 24-48 hours before the examination.

The Sessions Judge, ultimately acquitted the accused. In appeal, the High Court reversed the acquittal and convicted him under Section 376 IPC. Using its discretion under the proviso, however, the High Court did not impose the minimum seven-year sentence and instead awarded three years' RI and a fine of Rs 10,000. The High Court found that since the offence took place ten years ago, the accused "might have settled in life". Dismissing the accused's appeal against conviction and allowing the State's appeal on the question of sentence,

Held:

As Parliament has disfavoured the sentence to plummet below the minimum limit prescribed, it used the expression "shall not be less than" which is peremptory in tone. The court has, normally, no discretion to award a sentence less than the said minimum. Nonetheless Parliament was not oblivious of certain very exceptional situations and hence to meet such extremely rare contingencies it made a departure from the said strict rule by conferring a discretion on the court subject to two conditions. One is that there should be "adequate and special reasons", and the other is that such reasons should be mentioned in the judgment. (Para 21)

The expression "adequate and special reasons" indicates that it is not enough to have special reasons, nor adequate reasons disjunctively. There should be a conjunction of both for enabling the court to invoke the discretion. Reasons which are general or common in many cases cannot be regarded as special reasons. What the Division Bench of the High Court mentioned (i.e. occurrence took place 10 years ago and the accused might have settled in life) are not special to the accused in this case or to the situations in this case. Such reasons can be noticed in many other cases and hence they cannot be regarded as special reasons. No catalogue can be prescribed for adequacy of reasons nor instances can be cited regarding special reasons, as they may differ from case to case. (Para 22)

The long time lag which elapsed subsequent to the date of offence and the fact that the prosecutrix got married and is well settled in life and that she is now mother of children — all these things which happened during the intervening period, may be factors for consideration by the executive or constitutional authorities if they have to decide whether remission of the sentence can be allowed to the accused. It is made clear that the enhanced sentenced has been imposed on the accused without prejudice to any motion he may make for such remission of the sentence before the authorities concerned. (Para 25). *Kamal Kishore* v. *State of H.P.*, (2000) 4 SCC 502: 2000 SCC (Cri) 833: AIR 2000 SC 1920: 2000 Cri LJ 2292.

Bench Strength **3**. Coram: **K.T. Thomas**, *Doraiswamy Raju* and *S.N. Variava*, JJ. [Date of decision: 25-4-2000]

State of Karnataka v. Krishnappa, (2000) 4 SCC 75, followed

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, overruled by implication

[9582] — Ss. 376(1) and 375 (as *subs*. by Act 43 of 1983) — Sentence — Awarding of sentence less than the minimum prescribed under S. 376(1) — Condition precedent for, held, is recording of reasons — Moreover, such reasons must be both, "adequate" and "special" — *Further held, what is "adequate" and "special" would depend on various factors and no straitjacket formula can be laid down for universal application — The mere facts that the accused was an illiterate agriculturist and that a fine of Rs 2500 had been imposed on him could neither be said to be "special" nor "adequate" — High Court erred in taking the said facts into consideration to reduce the minimum statutory sentence awarded by the trial court — Hence, order of trial court restored albeit subject to set-off of the period of sentence already undergone*

The proviso to Section 376(1) IPC enjoins the court if it imposes less than the minimum sentence of seven years' rigorous imprisonment on an offender of rape to record "adequate and special reasons" in the judgment. Recording of reasons is, therefore, sine qua non or condition precedent for imposing sentence less than the minimum required by law. Moreover, such reasons must be both (*i*) "adequate" and (*ii*) "special". What is "adequate" and "special" would depend upon several factors and no straitjacket formula can be laid down as a rule of law of universal application. (Para 33)

The so-called reasons recorded in the present case by the High Court that: (*i*) the respondent was an "illiterate agriculturist from rural area" and (*ii*) fine of Rs 2500 was imposed on him can neither be said to be "special" nor "adequate". On the facts and in the circumstances of the case, the trial court was wholly right and fully justified in awarding

24.(f)(ii)(1) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos - Adequate and Special reasons - Generally *(contd.)*

rigorous imprisonment for seven years as envisaged by Section 376(1) IPC and there was no earthly reason to interfere with the said order by the High Court. However, the period of sentence already undergone by the respondent-accused will be given set-off. (Paras 34 to 36). *State of M.P.* v. *Babulal*, (2008) 1 SCC 234: (2008) 1 SCC (Cri) 188: AIR 2008 SC 582: 2008 Cri LJ 714.

Bench Strength **2**. Coram: **C.K. Thakker** and *Altamas Kabir*, JJ. [Date of decision: 3-12-2007]

The 84th Report of the Law Commission, referred to

[9583] — Ss. 376(1) proviso and 375 — Rape — Sentence — "Adequate and special reasons" — Recording of — Necessity — *High Court without indicating any reasons reducing the sentence passed against respondent-accused to 5 years' RI from 10 years as imposed by trial court — Minimum statutory sentence prescribed is 7 years unless special and adequate reasons are recorded for imposing lesser punishment — Judgment of High Court therefore set aside and 7 years' RI imposed*

The requirement in law as to adequate and special reasons is cumulative. The High Court has not recorded any reason, much less any adequate and special reasons for reducing the sentence. The High Court was, therefore, not justified in reducing the sentence below the prescribed minimum. (Para 11). *State of Rajasthan* v. *Gajendra Singh*, (2008) 12 SCC 720.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 4-8-2008]

Stephen's Criminal Law, 9th Edn., p. 262; Encyclopaedia of Crime and Justice, Vol. 4, p. 1356; Halsbury's Statutes of England and Wales, 4th Edn., Vol. 12; Friedman: Law in Changing Society; Hale PC 628, cited

[9584] — Ss. 376(1) & (2) provisos — Award of sentence below the statutory minimum — Need for recording "adequate and special reasons" — Nature of the requirement — "Adequate and special reasons" — What are — *Held, said requirement of law is cumulative in that the reasons must not only be adequate but also special — What is adequate and special would depend upon several factors and no straitjacket formula can be laid down — If court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum — In present case accused convicted of raping six-year-old girl, under S. 376(2)(f) — Held, reasons given by High Court for reducing sentence from statutory minimum of 10 years' RI to five years' RI, that accused was of young age and belonged to a Scheduled Tribe, can by no stretch of imagination be considered adequate or special — Sentence imposed by trial court of 10 years' RI, restored — Approach of High Court deprecated*

A six-year-old child was subjected to sexual abuse by the respondent. The trial court found the respondent guilty of the offence punishable under Section 372(2)(*f*) IPC. The respondent was sentenced to undergo 10 years' RI with a fine of Rs 500 with default stipulation. In the appeal filed before the High Court the accused did not question the conviction, but prayed for reduction in sentence. The High Court reduced the sentence for the offence punishable under Section 376(2)(*f*) IPC to 5 years, while maintaining the sentence in respect of other offences. The only ground indicated by the High Court to reduce the sentence was the young age of the accused and he being a member of the Scheduled Tribe.

The questions that arose before the Supreme Court were the proper sentence and acceptability of reasons which weighed with the High Court for reducing the sentence.

Allowing the appeal and restoring the minimum mandatory statutory sentence imposed by the trial court, the Supreme Court

Held :

Both, in cases of sub-sections (1) and (2) of Section 376 the court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for "adequate and special reasons". If the court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum. In order to exercise the discretion of reducing the sentence, the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated. (Paras 17 and 18)

What is applicable to the trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court in the present case is the young age of the accused and the fact that he belongs to a Scheduled Tribe. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative. (Para 18)

It is to be noted that the victim in the instant case is a child who was about 6 years of age at the time of commission of offence. Section 376(2) IPC provides for a more stringent punishment when the victim is under 12 years of age. In the instant case, the High Court was clearly in error in reducing the sentence without recording any adequate and special reason in imposing a lesser sentence. (Paras 19 and 20). *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1: (2006) 3 SCC (Cri) 1: AIR 2006 SC 2648.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 14-7-2006]

Mahesh v. State of M.P., (1987) 3 SCC 80: 1987 SCC (Cri) 379; Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971); Jashubha Bharatsinh Gohil v. State of Gujarat, (1994) 4 SCC 353: 1994 SCC (Cri) 1193; Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225; State of M.P. v. Babbu Barkare, (2005) 5 SCC 413: 2005 SCC (Cri) 1335, followed

[**Ed.**: See also *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[9585] — Ss. 376(1) & (2) provisos — Reduction of sentence below the statutory minimum — Need for recording "adequate and special reasons" — Applicability to High Court — *Held, what is applicable to trial courts regarding recording of reasons for a departure from minimum statutory sentence is equally applicable to High Court in reducing the sentence in appeal — CrPC, 1973, Ss. 374(2) and 386*

What is applicable to the trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court in the present case is the young age of the accused and the fact that he belongs to a Scheduled Tribe. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative. (Para 18). *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1: (2006) 3 SCC (Cri) 1: AIR 2006 SC 2648.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 14-7-2006]

[9586] — Ss. 376(1) proviso & (2) proviso — Discretion to impose sentence less than prescribed minimum under — Extent — Requirement of mentioning of "adequate and special reasons" — Mandatory nature of — *Applicability to High Courts — Held, if court does not mention "adequate and special reasons" for prescribing a sentence less than the statutory minimum prescribed in Ss. 376(1) and (2), there is no scope for awarding such a sentence — Requirement is to record "adequate and special reasons", not fanciful reasons — Reason has not only to be adequate, but also special, the requirement being cumulative in nature — What is adequate and special would depend upon several factors and no straitjacket formula can be indicated — These principles are equally applicable to High Courts — Only reasons indicated by High Court for reducing the sentence of imprisonment of seven years' RI imposed by trial court under S. 376(1), to period already undergone (three years and six months in case of one of the co-accused, and two months in case of the other) is the lapse of time and that accused belonged to rural areas — The same can by no stretch of imagination be considered either adequate or special — Hence sentences restored to those imposed by trial court* (Paras 19 to 21). *State of M.P.* v. *Munna Choubey*, (2005) 2 SCC 710: 2005 SCC (Cri) 559: AIR 2005 SC 682: 2005 Cri LJ 913.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 24-1-2005]

Applied in State of Punjab v. Rakesh Kumar, (2008) 12 SCC 33; State of Rajasthan v. Gajendra Singh, (2008) 12 SCC 720

[9587] — Ss. 376(1) and (2) provisos thereto — Rape — Sentence — Heinousness of crime — Minimum sentence to be imposed under Ss. 376(1) and (2) — Power under said provisos when to be exercised — *Held, the minimum sentence under S. 376(1) is seven years' RI and under S. 376(2) is ten years' RI — It cannot be reduced below those periods without assigning of "adequate and special reasons", as provided for in the provisos to Ss. 376(1) and (2) — Hence, while upholding the conviction under either S. 376(1) or (2), High Court was wholly unjustified in reducing the sentence to period already undergone, which in every case was less than five years — Matters remanded to High Court for decision afresh. State of M.P.* v. *Makhmal Khan*, (2005) 8 SCC 8: 2005 SCC (Cri) 1954: 2005 Cri LJ 4363.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-10-2005]

[9588] — S. 376(2) and proviso thereto — Rape — Heinousness of crime — Minimum sentence to be imposed under S. 376(2) — Power under said proviso when to be exercised — *Held (per curiam), the minimum sentence under S. 376(2) is ten years' RI — It cannot be reduced below that period without assigning of "adequate and special reasons", as provided for in S. 376(2) proviso — Hence, High Court was wholly unjustified, while upholding the conviction under S. 376(2)(g), in*

24.(f)(ii)(1) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos - Adequate and Special reasons - Generally *(contd.)*

reducing the sentence to period already undergone, of barely nine-and-a-half months — Held (per Balasubramanyan, J.), to view rape, once it is proved, lightly, is itself an affront to society — Though the award of maximum punishment may depend on circumstances of the case, award of the minimum punishment, generally, is imperative — Power under provisos to Ss. 376(1) & (2) is not to be used indiscriminately or routinely and is to be used sparingly and only in cases where special facts and circumstances justify reduction — The reasons must be relevant to exercise of such discretion vested in the court and must be set out clearly and cogently — Mere existence of discretion by itself does not justify its exercise — Long pendency of criminal trial or offer of rapist to marry the victim or age of offender are not relevant or adequate reasons — Plight of victim to be kept in mind by courts while imposing sentence under S. 376

Allowing the appeal,

Held :

Per G.P. Mathur, J. (for Lahoti, C.J. and himself)

In the category of cases covered under Section 376(2), the sentence cannot be less than 10 years but which may be for life and shall also be liable to fine. Section 376(2) proviso empowers the court to award a sentence of less than 10 years for adequate and special reasons to be mentioned in the judgment. (Para 6)

The High Court while upholding the conviction of the accused under Section 376(2)(*g*) reduced the sentence to the period already undergone which is nearly 9½ months. The High Court in the impugned order has awarded a sentence which is not only grossly inadequate but is also contrary to the express provision of law. The High Court has not assigned any satisfactory reason much less adequate and special reasons for reducing the sentence to a term which is far below the prescribed minimum. Therefore, the sentence awarded by the High Court is clearly illegal. (Paras 4 and 6)

That apart, the High Court has written a very short and cryptic judgment. To say the least, the appeal has been disposed of in a most unsatisfactory manner exhibiting complete non-application of mind. There is absolutely no consideration of the evidence adduced by the parties. (Para 7)

Since the judgment of the High Court is not in accordance with law, the same is set aside and the matter is remitted back to the High Court for a fresh consideration of the appeal. (Para 9)

Per P.K. Balasubramanyan, J. (concurring)

The punishments prescribed by the Penal Code reflect the legislative recognition of the social needs, the gravity of the offence concerned, its impact on the society and what the legislature considers as a punishment suitable for the particular offence. It is necessary for the courts to imbibe that legislative wisdom and to respect it. (Para 12)

The rationale for advocating the award of a punishment commensurate with the gravity of the offence and its impact on society, is to ensure that a civilised society does not revert to the days of "an eye for an eye and a tooth for a tooth". Not awarding a just punishment might provoke the victim or its relatives to retaliate in kind and that is what exactly is sought to be prevented by the criminal justice system we have adopted. Even in the time of Kautilya, the need for awarding just punishment was recognised. According to Kautilya, "Whoever imposes severe punishment becomes repulsive to people, while he who awards mild punishment becomes contemptible. The ruler just with the rod is honoured. When deserved punishment is given, it endows the subjects with spiritual good, material well-being and pleasures of the senses." This philosophy is woven into our statute and our jurisprudence and it is the duty of those who administer the law to bear this in mind. (Paras 13 and 14)

The punishment must fit the crime and it is the duty of the court to impose a proper punishment depending on the degree of criminality and desirability for imposing such punishment. However, the awarding of inadequate punishments by courts is becoming disturbingly frequent. (Paras 15 and 10)

The crime here is rape. It is a particularly heinous crime, a crime against society, a crime against human dignity, one that reduces a man to an animal. The penal statute has prescribed a maximum and a minimum punishment for an offence under Section 376 IPC. To view such an offence once it is proved, lightly, is itself an affront to society. Though the award of maximum punishment may depend on the circumstances of the case, the award of the minimum punishment, generally, is imperative. (Para 11)

The provisos to Sections 376(1) and 376(2) IPC give the power to the court to award a sentence lesser than the minimum for adequate and special reasons. The power under the proviso is not to be used indiscriminately or routinely. It is to be used sparingly and only in cases where special facts and circumstances justify a reduction. The reasons must be relevant to the exercise of such discretion vested in the court. The reasons must be set out clearly and cogently. The mere existence of a discretion by itself does not justify its exercise. The long pendency of the criminal trial or the offer of the rapist to marry the victim are not relevant reasons. Nor is the age of the offender by itself an adequate reason. (Para 11)

It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, the courts cannot forget their duty to society and to the victim. The court has to consider the plight of the victim in a case involving rape and the social stigma that may follow the victim to the grave and which in most cases, practically ruins all prospects of a normal life for the victim. A court cannot afford to forget these aspects while imposing a punishment on the aggressor. The court has to do justice to society and to the victim on the one hand and to the offender on the other. The proper balance must be taken to have been struck by the legislature. Hence, the legislative wisdom reflected by the statute has to be respected by the court and the permitted departure therefrom made only for compelling and convincing reasons. (Para 17). *State of M.P.* v. *Bala*, (2005) 8 SCC 1: 2005 SCC (Cri) 1947: AIR 2005 SC 3567: 2005 Cri LJ 4371.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.*[1] and **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 3-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641; Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447; Rajendra Prasad v. State of U.P., (1979) 3 SCC 646: 1979 SCC (Cri) 749; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559; V.K. Gupta: Kautilyan Jurisprudence under the head "Nature and Scope of Punishment", relied on

[9589] — Ss. 376(2) proviso & 376(2)(f) — Applicability of proviso to S. 376(2) — Rape on child below 12 years of age — Imposition of sentence below the prescribed minimum of 10 years — Impermissibility — *Held, normal sentence in such case is not less than 10 years — Courts are obliged to respect the legislative mandate in this regard — Recourse to the aforesaid proviso can be had only for "special and adequate reasons" and not in a casual manner — Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case — No hard-and-fast rule of universal application can be laid down in this respect*

The legislative mandate to impose a sentence, for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but which may extend to life and also to fine reflects the intent of stringency in sentence. The proviso to Section 376(2) IPC, of course, lays down that the court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. Thus, the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' RI, though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' RI can also be awarded. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf of universal application. (Para 13). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[**Ed.**: See also *State of M.P.* v. *Bala*, (2005) 8 SCC 1, *State of M.P.* v. *Makhmal Khan*, (2005) 8 SCC 8, *State of M.P.* v. *Sheshrao*, (2005) 8 SCC 11(1); *State of M.P.* v. *Rajesh*, (2005) 8 SCC 11(2); *State of M.P.* v. *Veerendra Singh*, (2005) 8 SCC 11(3); *State of M.P.* v. *Dayanand Dohar*, (2005) 8 SCC 12(1); *State of M.P.* v. *Gauri Shankar*, (2005) 8 SCC 12(2); *State of M.P.* v. *Govind*, (2005) 8 SCC 12(3); *State of M.P.* v. *Parasram*, (2005) 8 SCC 13(1); *State of M.P.* v. *Mahesh Bhoomia*, (2005) 8 SCC 13(2); *State of M.P.* v. *Mulli*, (2005) 8 SCC 13(3); *State of M.P.* v. *Rakesh*, (2005) 8 SCC 13(4); *State of M.P.* v. *Killu*, (2005) 8 SCC 14(1); *State of M.P.* v. *Vilru*, (2005) 8 SCC 14(2).]

[9590] — Ss. 376(2)(f) — Rape — Sentence — Reduction of — Sustainability — *In the present case, High Court reducing custodial sentence of respondent to 3½ years instead of 7 years as was imposed by trial court — Admittedly, the victim was 10 years of age at the time of commission of offence — Hence, present case was covered by S. 376(2)(f) IPC — Minimum punishment under S. 376(2)(f) is 10 years, provided that for "adequate and special reasons" mentioned in the judgment a sentence of less then 10 years can be imposed — Held, on facts, in the absence of any reason which could have been treated as "special and adequate reason", reduction of sentence by High Court, unsustainable —*

24.(f)(ii)(2) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos - Adequate and Special reasons - Reasons that may be considered special and adequate

Trial court should have imposed sentence of 10 years in terms of S. 376(2)(f) — But, as the State had also not questioned the inadequacy of sentence on that ground, the sentence of 7 years as imposed by the trial court is restored — High Court's order reducing the sentence, set aside

It is to be noted that in sub-section (2) of Section 376 IPC more stringent punishment can be awarded taking into account the special features indicated in the said sub-section. The present case is covered by Section 376(2)(*f*) IPC i.e. when rape is committed on a woman when she is under 12 years of age. Admittedly, in the case at hand the victim was 10 years of age at the time of commission of offence. Unfortunately this aspect appears to have been lost sight of by both the trial court and the High Court and the State has also not questioned the inadequacy of sentence on that ground. (Paras 7 and 5)

The minimum punishment under Section 376(2) IPC is 10 years but the proviso provides that for "adequate and special reasons" mentioned in the judgment a sentence of less then 10 years can be imposed. But, considering the legal position and in the absence of any reason which could have been treated as "special and adequate reason" reduction of sentence as done by the High Court is clearly unsustainable. The trial court should have imposed sentence of 10 years in terms of Section 376(2)(*f*) IPC. But the State has not questioned the sentence as imposed; the sentence as imposed by the trial court is restored. The High Court's order reducing the sentence is set aside. (Paras 5 and 10). *State of Karnataka* v. *Raju*, (2007) 11 SCC 490: AIR 2007 SC 3225: (2007) 58 AIC 39 (SC): 2007 Cri LJ 4700.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 14-9-2007]

Dinesh v. State of Rajasthan, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1; Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499, relied on

(2) Reasons that may be considered special and adequate

See also C.24.(f)(ii)(1) Adequate and Special reasons — Generally', above

[9591] — S. 375 Fifthly — Conviction under, upheld in view of testimony of prosecutrix which stood corroborated by that of her father as well as of the doctor who had examined her — *That after the occurrence the prosecutrix had been living in the house of the accused and had given birth to a child, if established, could be taken into account in fixing quantum of punishment — But in the absence of any evidence in that regard, sentence of five years' RI upheld. Bishnudayal* v. *State of Bihar,* 1980 Supp SCC 358: 1981 SCC (Cri) 283: AIR 1981 SC 39: 1980 Cri LJ 1297.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 1-8-1980]

[9592] — S. 376 — Child rape — Sentence — Mitigating factors if applicable — *Rape on child aged 8 years by accused-respondent then aged 18 years — Sentence of 7 years' RI imposed by trial court — High Court erroneously acquitting the accused — 13 years elapsed and accused already undergone 3 years' sentence — On the basis of these facts, plea taken on behalf of the accused that the Court should take a sympathetic view — Held, plea cannot be accepted — Accused should undergo remaining part of the sentence*

It is not possible to accept the contention on behalf of the respondent that the incident took place about 13 years back and by now the accused has matured and would be around 31 years of age and having already undergone nearly three years of sentence, the same may be treated by the Supreme Court as sufficient punishment to him and, therefore, taking a sympathetic view, the sentence already undergone be imposed. The trial court imposed on the respondent a sentence of seven years' rigorous imprisonment besides fine. Having played with the life of a child, the respondent does not deserve any leniency and for him sympathy on the ground sought for will be wholly uncalled for. The respondent deserves to undergo the remaining part of the sentence awarded by the trial court. (Para 20). *State of Rajasthan* v. *Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210: AIR 2002 SC 2235: 2002 Cri LJ 2951.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.P. Singh*, JJ. [Date of decision: 3-5-2002]

[9593] — S. 376 — Four years' RI for raping cousin's wife — *Accused of 22 years of age with no past criminal antecedent — Victim and her family forgiving the accused — Taking an overall view of the familial and criminal factors involved, the societal proneness to sex, people's abhorrence of released prisoners and the fact that a long incarceration would make the young accused a hardened criminal, sentence reduced to 2 years' RI — Within limits of Prisons Act and Rules, authorities directed to release the accused on parole, furlough, etc. so as to keep alive the family ties for the purpose of his* *reform. Phul Singh* v. *State of Haryana*, (1979) 4 SCC 413: 1980 SCC (Cri) 1: AIR 1980 SC 249: 1980 Cri LJ 8.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *P.N. Shinghal*, JJ. [Date of decision: 10-9-1979]

Held to be not good law in State of M.P. v. Balu, (2005) 1 SCC 108

[9594] — S. 376 — Rape — Sentence — Rape of a young girl of 13 years by holding out threats — *Marriage of the accused and long lapse of time — Held, accused deserves no leniency in the matter of sentence. State of Haryana* v. *Jang Bahadur*, 1998 SCC (Cri) 693.

Bench Strength 2. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 23-7-1997]

[9595] — S. 376 — Rape of fourteen-year-old, taking advantage of her being alone at home — *High Court reducing sentence of 10 years' RI imposed by trial court to period already undergone, about 5 years and 4 months, on grounds that accused was an illiterate labourer and was only twenty at the time of commission of the rape — Held, said grounds are wholly irrelevant for reducing the sentence, having regard to nature of offence and manner of its commission — Sessions Judge rightly came to the conclusion that accused deserved no leniency — Approach of High Court lacked sensitivity towards the minor victim — Sentence restored to 10 years' RI* (Paras 6 and 7). *State of M.P.* v. *Bane Singh*, (2005) 12 SCC 367.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 25-2-2005]

State of M.P. v. Balu, (2005) 1 SCC 108: 2005 SCC (Cri) 270, followed and clarified

[**Ed.**: See also *Urmila (Minor)* v. *Raju*, (2005) 12 SCC 366 and the holding in (2005) 8 SCC 1 and 8]

[9596] — Ss. 376, 363, 366 and 368 — Leniency in sentence in rape cases — Not called for — Subsequent events, of resettlement of victim and/or rapist not relevant for leniency — *Held, rape is a heinous crime and once it is established against a person charged of offence, justice must be done to victim of crime, by awarding suitable punishment to crime-doer — Herein, although incident is of 1989 and prosecutrix had married after incident and A-1 (rapist, respondent-accused) has family of his own and sending A-1 to jail now may disturb his family life, but, none of these factors individually or collectively persuade for a soft option — Hence sentence of 7 years' RI imposed by trial court restored and A-1 directed to be taken into custody to serve out remainder thereof* (Para 35). *State of U.P.* v. *Chhotey Lal*, (2011) 2 SCC 550.

Bench Strength 2. Coram: *Aftab Alam* and **R.M. Lodha**, JJ. [Date of decision: 14-1-2011]

State of Karnataka v. Bantara Sudhakara, (2008) 11 SCC 38: (2008) 3 SCC (Cri) 955, relied on

[9597] — Ss. 376 and 366 — Rape of minor — Sentence — Moulding of punishment — *Respondent-accused found guilty under Ss. 366 and 376 IPC and sentenced to three years' and seven years' RI respectively, and fine of Rs 500 with default stipulation for each offence imposed by trial court — High Court though confirming the conviction, reducing the sentence to period already undergone — Appellant aged about 19 years while victim was less than 16 years — Evidence showing that accused and victim were in love with each other and victim admitted that she had sexual intercourse with accused because of that — Father of the victim filing an affidavit before High Court stating that since the victim was settled in life a liberal view may be taken — Held, her admission was irrelevant because she was less than 16 years of age — But considering the facts sentence fixed at three years' RI and fine of Rs 10,000 with default stipulation imposed — Out of the deposited amount of Rs 8000 directed to be paid to victim — Parameters relating to imposition of lesser sentence for offence relatable to S. 376 discussed through case law* (Paras 2 and 5 to 7). *State of Punjab* v. *Rakesh Kumar*, (2008) 12 SCC 33.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 29-8-2008]

Iqbal v. State of Kerala, (2007) 12 SCC 724, followed

[9598] — Ss. 376 and 366 — Sentence — Minimum statutory sentence — Deviation from — When impermissible — Rape of minor — *Respondent-accused alleged to have taken away the prosecutrix who was a minor but married from the lawful custody of her father, without his consent with the intention of forcing her to have sexual intercourse with him, and committed the offence against her will and without her consent — Trial court convicting him under Ss. 366/376 and sentencing him to 7 years' RI and fine of Rs 500 for each offence with default stipulation — High Court in appeal filed thereagainst reducing the sentence to period already undergone which was 4 years and 2 months observing that "she was a sensible girl having age of 15 years, she did not complain to anybody and lived for several days with the respondent at Chhatarpur" — Fact that she was a minor and subjected to rape and furthermore, according to her testimony she was compelled to live for several days with the respondent at Chhatarpur as he would not listen to her plea of taking her to her father lost sight of by High Court — Medical examination assessing her age to be between 11 to 13 years and*

24.(f)(ii)(2) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos - Adequate and Special reasons - Reasons that may be considered special and adequate *(contd.)*

rendering an opinion that rape was committed on her and she was not habituated to sexual intercourse — Affidavit affirmed by her stating her age to be 18 years found to have been obtained without her knowing the contents thereof and at the instance of respondent — Held, very fact that she was made to state that her age was 18 years and she was living with the respondent as a wife clearly goes to show the mental trauma which she was undergoing — Contents of the said affidavit were wrongly used for imposing a sentence less than the minimum prescribed sentence considering the same to be mitigating factor — Age of the prosecutrix was assessed between 11 and 13 years, but by way of abundant precaution, the Sessions Judge held her age to be less than 13, but did not award any punishment in terms of S. 376(2)(f) — Minimum statutory sentence was imposed by trial court which should have met the approval of the High Court — It was also not a case where the proviso to S. 376 could be invoked — Hence, judgment of High Court set aside so far as it relates to the quantum of sentence and sentence awarded by trial court restored (Paras 11, 12, 14 and 19 to 22). *State of M.P.* v. *Bablu Natt*, (2009) 2 SCC 272: (2009) 1 SCC (Cri) 713: AIR 2009 SC 1810: (2009) 1 KLJ 686 (SC): (2009) 2 ECrN 504 (SC): 2009 Cri LJ 1722.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-12-2008]

State of M.P. v. Bala, (2005) 8 SCC 1: 2005 SCC (Cri) 1947; State of Karnataka v. Raju, (2007) 11 SCC 490: (2008) 1 SCC (Cri) 787; State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230: 1995 SCC (Cri) 1097, considered and relied on

[9599] — S. 376 proviso — Rape — Sentence — "Adequate and special reasons" for imposing less than 7 years' imprisonment — *High Court, while noticing that the prosecutrix was a consenting party to the act of sexual intercourse and that she had willingly left her parents' house to be with the appellant, finding the prosecutrix to be "not more than 16 years of age" and on that account, upholding the conviction of the appellant — Compromise petition filed by the parties before High Court wherein the prosecutrix stating that she and the accused-appellant belonged to neighbouring villages and she had since got married and did not want the matter to be pursued any further so as to lead a happy and healthy married life with her husband — Held, this amounts to adequate and special reason for the purposes of the proviso — High Court despite noticing the compromise as also the attendant fact that the prosecutrix was a consenting party, erred in taking the view that the sentence to be awarded under S. 376 could not be less than 7 years — In the peculiar facts and circumstances of the case, the matter should be now given a quietus particularly when the alleged offence is stated to have taken place almost a decade ago — Therefore, while maintaining the conviction of the appellant under Ss. 363/366 (as recorded by the courts below), sentence should be reduced under the proviso to S. 376 to the period already undergone by the accused. Sukhwinder Singh* v. *State of Punjab*, (2000) 9 SCC 204: 2000 SCC (Cri) 1204.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *S. Rajendra Babu* and *R.C. Lahoti*, JJ. [Date of decision: 24-2-2000]

[9600] — S. 376 proviso — Sentence — Mitigating factor — Accused sentenced to 7 years' RI by trial court — *Lower appellate court reducing the sentence to 5 years on the view that the rape was committed not for lust alone but due to the circumstances that the appellant's wife abandoned him on account of PW 1 developing illicit intimacy with appellant's wife — Held, reason given by the trial court was irrelevant for committing rape — Proviso under S. 376 does not give arbitrary discretion to court to reduce the sentence on irrelevant grounds — Enhancing the sentence to 7 years', held, Sessions Judge erred in reducing the sentence to 5 years. Kommarajula Narasaiah* v. *State of A.P.*, (2000) 9 SCC 756: 2001 SCC (Cri) 1482.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and *Doraiswamy Raju*, JJ. [Date of decision: 1-5-2000]

State of Karnataka v. Krishnappa, (2000) 4 SCC 75: 2000 SCC (Cri) 755; State of Rajasthan v. N.K., (2000) 5 SCC 30, relied on

[9601] — S. 376 proviso — Sentence — Mitigating factors — Adequate and special reasons — Prosecutrix a consenting party — *Having regard to this and other facts and circumstances, accused directed to be sentenced to the period already undergone by him in the interest of justice*

As regards the quantum of sentence, the question which arises for consideration is whether a case has been made out to invoke the proviso appended to Section 376 of the Penal Code. The trial court did so. (Para 15)

The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the fact that both the courts have arrived at the conclusion that she was a consenting party, it may not be proper to send the appellant back to prison. (Para 16)

Therefore, while setting aside the judgment of the High Court and affirming that of the trial court, it must be held that the interest of justice would be met if the respondent is directed to be sentenced to the period already undergone by him. (Para 17). *State of Chhattisgarh* v. *Lekhram*, (2006) 5 SCC 736: (2006) 3 SCC (Cri) 66: AIR 2006 SC 1746: 2006 Cri LJ 2139.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[9602] — S. 376(1) — Rape — Sentence — "Adequate and special reasons" for reducing sentence of imprisonment to less than seven years — *Grounds that accused was either 17 or 19 years of age or that he was an illiterate villager coming from a rural area, were neither "adequate" nor "special" reasons contemplated under S. 376*

Allowing the appeal and restoring the sentence of seven years' RI awarded for rape by the trial court,

Held :

Section 376 IPC imposes an obligation on the court convicting the accused of that offence to impose a minimum sentence of 7 years. However, an exception is made for adequate and special reasons to be recorded in the judgment. Thus, the court can impose a sentence of less than 7 years but for good reasons. (Para 16)

None of the reasons mentioned by the High Court can be construed as either adequate or special reasons to reduce the minimum mandatory period of sentence for an offence punishable under Section 376 IPC. The High Court does not seem to have applied its mind to the gravity of the offence. Having found that the respondent has committed rape of a minor, to reduce the sentence on the ground that the accused was either 17 years or 19 years of age or that the accused is an illiterate villager coming from a rural area is neither adequate nor special reason contemplated under Section 376 IPC. The sentence of 10 months' imprisonment for an offence punishable under Section 376 is ridiculously low and is not commensurate with the gravity of the crime. The sympathy shown by the High Court is wholly misplaced and is likely to send wrong signals. In these circumstances the High Court has grossly erred in reducing the sentence imposed by the Sessions Court to a period of 10 months which the respondent had already undergone. The High Court exhibited lack of sensitivity towards the victim of rape and society by reducing the substantive sentence in the established facts and circumstances of the case. The courts are expected to properly operate the sentencing system and to impose such sentence for a proved offence, which may serve as a deterrent for the commission of like offences by others. The respondent is therefore directed to surrender to the authorities and serve out the sentence awarded to him by the trial court. (Paras 18 to 21). *State of M.P.* v. *Balu*, (2005) 1 SCC 108: 2005 SCC (Cri) 270: AIR 2005 SC 222: 2005 Cri LJ 335: (2005) 25 AIC 369 (SC).

Bench Strength 2. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 5-11-2004]

State of Karnataka v. Krishnappa, (2000) 4 SCC 75: 2000 SCC (Cri) 755; T.K. Gopal v. State of Karnataka, (2000) 6 SCC 168: 2000 SCC (Cri) 1037; State of Rajasthan v. N.K., (2000) 5 SCC 30: 2000 SCC (Cri) 898, followed

Phul Singh v. State of Haryana, (1979) 4 SCC 413: 1980 SCC (Cri) 1, held to be not good law

[**Ed.**: See also the emphatic rulings in (2005) 8 SCC 1 and (2005) 8 SCC 8 etc.]

[9603] — S. 376(1) — Rape — Sentence — Power to impose sentence below the prescribed minimum of seven years — Need for, and what are adequate and special reasons — *Held, adequate and special reasons are required to be recorded in the judgment for imposing lesser punishments — Reduction of sentence by High Court from 10 years to 4 years and 8 months on the ground that the accused was an illiterate labourer from rural area, held, not proper — For a heinous crime like rape there cannot be different standards for illiterate labourers from rural areas — Reasons recorded by the High Court not adequate and special within the meaning of S. 376(1) — Sentence imposed by trial court, restored* (Paras 3 and 4). *State of M.P.* v. *Bhagwat*, (2005) 11 SCC 141.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 1-4-2005]

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[**Ed.**: *See also* a similar recent ruling in *State of M.P.* v. *Babbu Barkare*, (2005) 5 SCC 413: 2005 SCC (Cri) 1335 and (2005) 8 SCC 1 and (2005) 8 SCC 8]

[9604] — S. 376(1) (as amended by Act 43 of 1983) — Sentence — Rape on a helpless 13/14 year old girl — Absence of mitigating circumstances on record — *Accused deserves deterrent punishment — High Court not justified in reducing the sentence to less than the prescribed minimum without assigning any special and adequate reasons — Merely because the accused would have completed the sentence of imprisonment about 5 years ago is no ground to take a lenient view ignoring the mandate of law — Sentence of 4 years' RI enhanced to 7 years' RI — Accused to be taken in custody to undergo the remaining period of the enhanced sentence*

Keeping in view the nature of the offence and the helpless condition in which the prosecutrix a young girl of 13/14 years was placed, the High Court was clearly in error in reducing the sentence imposed upon the respondent and that too without assigning any reasons, much less special and adequate reasons. The High Court appears to have overlooked the mandate of the Legislature as reflected in Section 376(1) IPC. (Para 7)

There are no adequate and special reasons available on the record justifying reduction of sentence. To show mercy in the case of such a heinous crime would be travesty of justice and the plea for leniency is wholly misplaced. (Para 8). *State of A.P.* v. *Bodem Sundara Rao*, (1995) 6 SCC 230: 1995 SCC (Cri) 1097: AIR 1996 SC 530.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *K.S. Paripoornan*, JJ. [Date of decision: 22-9-1995]

[9605] — S. 376(1) proviso — Reduction of sentence below the statutory minimum — Permissibility — Adequate and special reasons — What are — Infirmities/lacunae in prosecution's case — *Supreme Court while upholding conviction (leave granted by Supreme Court only on question of sentence) under S. 376, reducing minimum statutory sentence of seven years' RI imposed by trial court and affirmed by High Court, to period of imprisonment already undergone, of about three and a half years — Held, since there was delay of three days in lodging the FIR and doctor who examined victim did not find any confirmatory evidence of rape on victim, in the peculiar facts and circumstances of the case, sentence of imprisonment awarded should be reduced to period already undergone. Raj Kumar* v. *State of Bihar*, (2006) 9 SCC 589: (2006) 3 SCC (Cri) 112.

Bench Strength **2**. Coram: *Ashok Bhan* and *Tarun Chatterjee*, JJ. [Date of decision: 30-1-2006]

[**Ed.**: See also *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1 and *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[9606] — S. 376(1) and proviso thereto — Rape — Mandatory minimum sentence of seven years' RI — Reduction of — When warranted — "Adequate and special reasons" — What are — Marriage and leading of married life by prosecutrix subsequently — *Prosecutrix abducted by appellant-accused and then raped — Prosecutrix rescued from accused after twenty days — Sessions Judge convicting accused under S. 376 IPC to minimum sentence of RI for seven years and under S. 366 IPC to RI for five years — High Court on appeal holding that merely on consideration of age of appellant, reduction of the sentence was not warranted — Supreme Court on examination of evidence holding that sufficient evidence was tendered by prosecution to prove guilt of accused — However, since prosecutrix had since been married and was living with her husband, held, having regard to the peculiar facts and circumstances of the case, the sentence imposed by the courts below is on the highside — Sentence reduced to three years. Ram Kumar* v. *State of Haryana*, (2006) 4 SCC 347: (2006) 2 SCC (Cri) 308.

Bench Strength **2**. Coram: *Dr. Ar. Lakshmanan* and *D.K. Jain*, JJ. [Date of decision: 19-4-2006]

[**Ed.**: *See also* (2005) 8 SCC 1 and the cases following it.]

[9607] — Ss. 376(1) & (2) provisos — Reduction of sentence below the statutory minimum prescribed — Need for recording "adequate and special reasons" — "Adequate and special reasons" — What are — *In present case accused convicted of gang rape under S. 376(2)(g) — High Court without disturbing conviction reducing sentence to the period already undergone, on grounds that accused had been in custody for long, and were semi-literate agricultural labourers from rural areas — Held, none of the grounds adduced by High Court, taken separately or cumulatively are "adequate and special reasons" for reducing sentence below statutory minimum — This is not a situation where High Court could have reduced the minimum sentence — This is a case of unwarranted sympathy — Sentence of ten years' RI imposed by trial court, restored — Approach of High Court* *deprecated. State of M.P.* v. *Jaleel Khan*, (2006) 6 SCC 18: (2006) 3 SCC (Cri) 15.

Bench Strength 2. Coram: *B.N. Srikrishna* and *Tarun Chatterjee*, JJ. [Date of decision: 31-3-2006]

[**Ed.**: See also *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1 and *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[9608] — S. 376(2) proviso — Award of less than minimum sentence — Conviction of police officials under S. 376 and minimum sentence of 10 years' RI recorded by trial court and confirmed by High Court — *Having regard to the facts and circumstances of the case including conduct of the prosecutrix in not disclosing about the incident of rape for five days to anyone, held, accused entitled to sub-minimum sentence of five years. State of Haryana* v. *Prem Chand*, (1990) 1 SCC 249: 1990 SCC (Cri) 93: AIR 1990 SC 538: 1990 Cri LJ 454.

Bench Strength 2. Coram: *B.C. Ray* and *S. Ratnavel Pandian*, JJ. [Date of decision: 14-12-1989]

[9609] — S. 376(2) proviso — Rape — Sentence — "Adequate and special reasons" for reducing sentence of imprisonment to less than ten years — *Whether exist, held, would depend upon relevant facts and circumstances of the case — Rape on a minor girl aged 8 years by a married man aged 49 years — Accused first going to mother of the prosecutrix to get his sexual lust satisfied after knowing that her husband was not in the house and when she escaped he dragging the prosecutrix to a room and committing rape on her — Injuries suffered by the prosecutrix showing the cruel nature of the act — Having regard to these facts, trial court convicting the accused under S. 376 and sentencing him to 10 years' RI and fine of Rs 3000 and in default of payment of the fine a further period of 6 months' RI — But High Court in appeal taking into account the facts that the accused was an illiterate person belonging to SC, was a chronic addict to drinking and had committed the rape in a state of intoxication and had an old mother, wife and children as his dependants, reducing the sentence to 4 years' RI but maintaining the sentence of fine — Held, circumstances relied upon by High Court were neither adequate nor special reasons for reducing the sentence — Trial court had given sufficient and cogent reasons for awarding 10 years' RI*

The prosecutrix as well as the accused-respondent belong to Scheduled Caste. While the prosecutrix, then aged 8 years, was playing in the chavani of her house, the respondent, then aged 49 years, went there and after ascertaining from the prosecutrix's mother that her husband was not at home, went inside the house and asked her (prosecutrix's mother) to sleep with him and when she protested, he made obscene gestures and pulled her breasts and on her further protest, the respondent beat her up. She somehow managed to escape. The prosecutrix was also trying to run away when the respondent caught hold of her right hand and dragged her to a room of a house in coolie line where he had forcible sexual intercourse with her. She sustained bleeding injuries on her private parts and was exhausted. The respondent then left the room and locked it from outside. Father of the prosecutrix, had in the meanwhile returned home but when he tried to go there he was assaulted and threatened with dire consequences in case he disclosed about the occurrence to anyone. In the early hours of the morning, the parents of the prosecutrix could go to coolie line and rescue her. The matter was thereafter reported to the police. The prosecutrix was sent for medical examination to the hospital where she was treated. After completion of investigation, challan was filed and the respondent prosecuted. The trial court after critically examining the evidence on record convicted the respondent under Sections 376, 254, 323, 341, 363, 448 and 506 IPC. On the question of sentence for the offence under Section 376 IPC the trial court took into account the facts that the respondent was a married man of 49 years of age having children of his own and the victim of his sexual lust was an innocent helpless girl of 7/8 years of age and that the medical evidence exhibited the cruel nature of the act and the extent of pain and suffering which the victim might have undergone on her genitalia as a result of forcible coitus. The trial court had, therefore, opined that because of the cruel nature of the act, the accused was not entitled to any leniency. The trial court, accordingly, imposed a sentence of 10 years' RI and a fine of Rs 3000 and in default of payment of fine to further undergo 6 months' RI for the offence under Section 376 IPC. It was directed that in the event of recovery of fine, the entire amount shall be paid to the victim, the prosecutrix. However, the High Court, in appeal, on the ground that the accused-respondent was "unsophisticated and illiterate citizen belonging to a weaker section of the society"; that he was "a chronic addict to drinking" and had committed rape on the girl while in a state of "intoxication" and that his family comprising of "an old mother, wife and children" were dependent upon him, held that it was a case "for showing leniency" to the accused in the matter of punishment for the offence under Section 376. Accordingly, the sentence for the offence under Section 376 IPC was reduced from 10 years' RI to 4

24.(f)(ii)(2) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos - Adequate and Special reasons - Reasons that may be considered special and adequate *(contd.)*

years' RI. The sentence of fine together with the default clause was, however, maintained. The conviction and sentence for other offences under IPC were also maintained by the High Court. In the present appeal before the Supreme Court question was whether the High Court was justified in the facts and circumstances of the case in reducing the sentence for the offence under Section 376 IPC? Answering in the negative and allowing the State's appeal,

Held :

The normal sentence under Section 376(2) in a case where rape is committed on a child below 12 years of age, is not less than 10 years' RI though its proviso says that in exceptional cases "for special and adequate reasons" sentence of less than 10 years' RI can also be awarded. It is a fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf of universal application. (Para 12)

The facts and circumstances relied upon by the High Court for reducing the sentence under Section 376 did not justify recourse to the proviso to Section 376(2) IPC to impose a sentence less than the prescribed minimum. These reasons are *neither special nor adequate*. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. The approach of the High Court in this case, to say the least, was most casual and inappropriate. There are no good reasons given by the High Court to reduce the sentence, let alone "special or adequate reasons". The High Court exhibited lack of sensitivity towards the victim of rape and the society by reducing the substantive sentence in the established facts and circumstances of the case. It was, in the facts and circumstances of the case, not justified in interfering with the discretion exercised by the trial court. (Paras 18 and 12)

Therefore, while maintaining the conviction of the respondent for an offence under Section 376 IPC besides all other offences, the sentence of 4 years' RI, as imposed by the High Court, is enhanced to 10 years' RI for the said offence. (Para 19). *State of Karnataka* v. *Krishnappa*, (2000) 4 SCC 75: 2000 SCC (Cri) 755: AIR 2000 SC 1470: 2000 Cri LJ 1793.

Bench Strength **3**. Coram: **Dr. A.S. Anand, C.J.** and *R.C. Lahoti* and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230: 1995 SCC (Cri) 1097; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9610] — S. 376(2) proviso — Sentence — Police officials (appellants) convicted under S. 376 for committing rape on prosecutrix and awarded minimum sentence of 10 years' RI — *Paramour of the prosecutrix also convicted on charge of rape — On appeal High Court finding that the prosecution failed to prove age of the prosecutrix as below 18 years and that she was willingly going around with her paramour and was having sex with him of her free will, acquitted the paramour but confirmed the conviction and sentence imposed on the appellants — Having regard to peculiar facts and circumstances of the case and the promiscuous conduct of the prosecutrix, held, proviso to S. 376(2) can be invoked and a sub-minimum sentence of 5 years' RI would meet the ends of justice — Sentence accordingly reduced. Prem Chand* v. *State of Haryana*, 1989 Supp (1) SCC 286: 1989 SCC (Cri) 418: AIR 1989 SC 937: 1989 Cri LJ 1246.

Bench Strength **2**. Coram: *B.C. Ray* and **S. Ratnavel Pandian**, JJ. [Date of decision: 31-1-1989]

[**Ed.**: For review of this case on question of sentence see (1990) 1 SCC 249.]

[9611] — S. 376(2)(f) — Rape — Sentence — Leniency in — Rape of minor girl aged 10 years — Conviction by trial court to 10 years' imprisonment (the statutory minimum) — Interference with — When permissible — *Accused already in custody for 6 years — In appeal High Court reducing sentence to 7 years on the basis that the accused was a young person who was the only breadearner of his family and his children need his supervision — Permissibility — Held, in view of the settled position in law the judgment of the High Court reducing the sentence to 7 years is clearly unsustainable — Sentence of 10 years as imposed by the trial court restored*

In view of the settled position in law the judgment of the High Court reducing the sentence to 7 years is clearly unsustainable and is set aside. The sentence of 10 years as imposed by the trial court is restored. (Para 8). *State of Rajasthan* v. *Madan Singh*, (2008) 5 SCC 147: (2008) 2 SCC (Cri) 550: AIR 2008 SC 1292: 2008 Cri LJ 1939.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 1-2-2008]

[9612] — S. 376(2)(f) — Rape of child aged 1½ years — Sentence of 10 years' RI — Enhancement of, when not called for — *Ten years' RI and fine of Rs 1000 awarded by trial court upheld by High Court — Appeal preferred before Supreme Court by the accused from jail — Having regard to the facts of the case, especially the age of the victim, notice issued to appellant to show cause why the sentence of 10 years' RI should not be enhanced to life imprisonment — Mitigating circumstances stated on behalf of the appellant viz. appellant being the sole breadwinner, his family suffering, incident occurred 9 years back and appellant is in custody since the date of the incident; appellant and his family suffered great humiliation in the society; appellant has two daughters aged 16 and 10 years and prospects of their marriage have been marred to a great extent due to his conviction and sentence; and sentence of 10 years' imprisonment would be over within a year and if the Court enhances the sentence at this stage, then his family, particularly his two daughters and their future would be ruined for no fault of theirs — Having regard to the extenuating circumstances, specially the fact that appellant's two daughters have come of age and are to be married, held, the present period of incarceration of the appellant in jail is enough and he should not be made to further suffer the consequences of his bestiality* (Paras 9 and 20). *T.K. Gopal* v. *State of Karnataka*, (2000) 6 SCC 168: 2000 SCC (Cri) 1037: AIR 2000 SC 1669: 2000 Cri LJ 2286.

Bench Strength 2. Coram: **S. Saghir Ahmad** and *Doraiswamy Raju*, JJ. [Date of decision: 5-5-2000]

[9613] — S. 376(2)(f) — Rape of seven-year-old — Appropriate sentence for — "Adequate and special reasons" — What are — *Trial court imposing sentence of three years' RI and fine of Rs 1000 — High Court reducing sentence of imprisonment to six months and directing compensation of Rs 25,000 to be paid to victim, on grounds that offence was 12 years old and victim had already been married — Held, improper — Sentence awarded by trial court restored. Urmila (Minor)* v. *Raju*, (2005) 12 SCC 366.

Bench Strength 2. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-1-2005]

[**Ed.**: *See* the emphatic holding in (2005) 8 SCC 1 and 8]

[9614] — S. 376(2)(f) — Rape on a girl of eight years — Sentence — Reduction — *Accused hardly eighteen years of age at the time of incident — Already served about 6-½ years' imprisonment — Was married and had a family — In such circumstances, sentence of ten years' RI imposed by trial court reduced to seven years' RI* (Para 8). *State of Chhattisgarh* v. *Derha*, (2004) 9 SCC 699: 2004 Cri LJ 2109.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 21-4-2004]

***Distinguished** in Rajendra Datta Zarekar v. State of Goa, (2007) 14 SCC 560*

[9615] — S. 376(2)(f) — Sentence — Rape on child below 12 years of age — Life sentence — Plea as to imposition of — *Held, for said offence the statutorily provided minimum sentence is 10 years and life imprisonment can be awarded in a given case considering the attendant circumstances — In the present case, neither trial court nor High Court indicated any such circumstance/factor — Hence, sentence reduced from life imprisonment to 10 years*

Sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity-it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished fundamental right, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. (Para 6). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

24.(f)(ii)(2) Minimum sentence/Minimum statutory sentence—Ss. 376(1) & (2) provisos - Adequate and Special reasons - Reasons that may be considered special and adequate *(contd.)*

[9616] — S. 376(2)(f) proviso — Rape — Sentence — "Adequate and special reasons" must be disclosed by sentencing court for reducing the sentence from the statutory minimum of 10 years' RI — *Sentencing court must award the sentence commensurate with the gravity of the offence, having regard to all the relevant facts and circumstances including the demand of the society for justice in case of such heinous crime of rape of innocent helpless children — Trial court convicting the respondent under S. 376 for rape of a minor girl aged 5 years and after taking into account the report of District Probation Officer relating to character, conduct and antecedents of the respondent, it awarding a sentence of 10 years' RI — In appeal, High Court while confirming the conviction, merely stating "having regard to the circumstances of the case, the sentence of 10 years' RI imposed by the Court below is reduced to a period of 5 years' RI" — Held, this amounted to reducing the sentence without assigning any reasons, in a mechanical manner without proper application of mind — High Court was not justified in doing so and was expected to show sensitivity in dealing with such a case — In absence of any extenuating or mitigating circumstances mere long lapse of time and possibility that meanwhile the prosecutrix as also the accused might have got married and settled are not relevant for the Court to reduce the sentence*

Normal sentence under Section 376(2) IPC in a case where rape is committed on a child below 12 years of age, is "not less than 10 years' RI", an expression which is pre-emptory in nature. The courts are obliged to respect this legislative mandate when the case falls under Section 376(2). The proviso to Section 376(2) would come into play *only* when there are "adequate and special reasons" available in a case. Those reasons need to be disclosed in the order/judgment itself so that the appellate forum is in a position to know as to what weighed with the court in awarding a sentence less than the minimum prescribed under the Act. (Para 8)

It is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence. The sentencing court must hear the loud cry for justice by the society and more particularly, in cases of heinous crime of rape of innocent helpless children, as in this case, of the victim of crime and respond by imposing a proper sentence. (Para 9)

In the present case the order of the High Court in reducing the sentence from the statutory minimum of 10 years' RI contains no reasons, much less "special or adequate reasons". The sentence has been reduced in a rather mechanical manner without proper application of mind. It appears that the provisions of Section 376(2) IPC were not at all present to the mind of the Court. The Supreme Court has time and again drawn attention of the subordinate courts to the sensitivity which is required of the court to deal with all cases and more particularly in cases involving crime against women. (Para 11)

It is not possible to accept the contention that it being an old case the order of the High Court need not be interfered with. There are no extenuating or mitigating circumstances available on the record which may justify imposition of sentence less than the prescribed minimum on the respondent. To show mercy in a case like this, would be travesty of justice. There are no reasons, much less sufficient and adequate reasons available on the record to impose a lesser sentence than the prescribed minimum. (Para 14)

It is also not possible to accept the contention that because of the long time which has elapsed subsequent to the date of offence and the possibility that the prosecutrix, as also the respondent, may have got married and settled in life during the pendency of these proceedings, fine instead of sentence be imposed. These factors may be relevant for consideration by the executive or constitutional authorities, if they choose to remit the sentence on being so approached. (Para 16). *State of A.P.* v. *Polamala Raju*, (2000) 7 SCC 75: 2000 SCC (Cri) 1284: AIR 2000 SC 2854.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and *K.G. Balakrishnan*, JJ. [Date of decision: 9-8-2000]

State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230: 1995 SCC (Cri) 1097; State of Karnataka v. Krishnappa, (2000) 4 SCC 75: 2000 SCC (Cri) 755; Kamal Kishore v. State of H.P. (2000) 4 SCC 502: 2000 SCC (Cri) 833, relied on

[9617] — Ss. 376(2)(g), 376/34 and 342/34 — Gang rape — Sentence — Awarding sentence lesser than the prescribed minimum — Propriety — *Held, court has to record "adequate and special reasons" for exercising the discretion of — No straitjacket formula can be imposed for determining what amounts to "adequate and special" — Reason that appellant had not actually committed the rape, held, could not be a ground to warrant a* *lesser sentence — Not only was the appellant present, but he was also waiting for his turn — On facts, there was no just or special reason to award a lesser sentence — High Court rightly enhanced the sentence from four years to the prescribed minimum i.e. ten years*

Both, in cases of sub-sections (1) and (2) of Section 376 the court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for "adequate and special reasons". If the court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum. (Para 15)

In order to exercise the discretion of reducing the sentence the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but special. What is adequate and special would depend upon several factors and no straitjacket formula can be imposed. In the case at hand, the only reason which seems to have weighed with the trial court is that the present accused-appellant had not actually committed the rape. That cannot be a ground to warrant lesser sentence; more so, in view of Explanation 1 to sub-section (2) of Section 376. By operation of a deeming provision a member of a group of persons who have acted in furtherance of their common intention per se attracts the minimum sentence. Section 34 has been applied by both the trial court and the High Court to conclude that rape was committed in furtherance of common intention. Not only was the accused-appellant present, but he was also waiting for his turn, as is evident from the fact that he was in the process of undressing. The evidence in this regard is cogent, credible and trustworthy. Since no other just or special reason was given by the trial court nor could any such be shown as to what were the reasons to warrant a lesser sentence, the High Court was justified in awarding the minimum prescribed sentence. (Para 16). *Bhupinder Sharma* v. *State of H.P.*, (2003) 8 SCC 551: AIR 2003 SC 4684.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

(iii) Instances

[**9618**] — **Ss. 375 and 376 — Adequacy of sentence under** — *Respondent accused convicted under S. 376(1) IPC and S. 3(1)(xi) by trial court and sentenced to seven years' RI and one year and six months' RI respectively — High Court reducing sentence to period already undergone, of one year and three months — Held, impermissible — Matter remanded for decision afresh — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(1)(xi). State of M.P.* v. *Gauri Shankar*, (2005) 8 SCC 12(2): 2005 SCC (Cri) 1958 (1).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 4-10-2005]

[**Ed.**: Many similar appeals were filed in the Supreme Court by the State of M.P. involving the very same manner of reduction of sentence by Justice N.S. Azad of the M.P. High Court. All such appeals came before the present Bench of three Judges. The leading decision is reported above at (2005) 8 SCC 1.

All the remaining appeals [which are being reported below at pp. 11-14] have been disposed of identically except that in certain appeals besides S. 376 IPC the accused had been convicted of other offences as well, and the period of sentence undergone was also different. Since the text of all the judgments in the connected appeals in other respects is identical to the one reproduced below, they are not being reproduced. The slight difference in the conviction and period of sentence already undergone is detailed in each shortnote given separately below the cause title of each appeal. It is worthy of note that the trial court in each case had awarded the minimum mandatory sentence under S. 376(1) or S. 376(2), as the case may be.]

[**9619**] — **Ss. 375 and 376 — Moulding of punishment — Reduction of custodial sentence — When warranted** — *High Court finding appellant-accused guilty under clause "Fourthly" of S. 375 — However, taking note of the peculiar facts of the case, more particularly, the knowledge of the complainant about the accused being a married man, reducing the custodial sentence from 7 years to 3 years but enhancing the compensation to Rs 1,00,000 from Rs 10,000 with a direction that in case the compensation amount was not paid, the reduction in sentence would not be given effect to — Complainant becoming aware of appellant's first marriage on 6-3-1994 but lodging report on 19-9-1994 — Explanation given therefor that she delivered a child immediately after learning about the incident on 16-4-1994 and hence could not complain earlier and also that she was totally traumatised on learning about the marriage of the appellant-accused — Held, though explanation was really not satisfactory but in view of the position in law that the accused was really guilty of the offence punishable under S. 376 IPC, the delayed approach of the complainant cannot, in any event, wash away the offence — Reduction of sentence and*

24.(f)(iii) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos - Instances *(contd.)*

enhancement of compensation by High Court, supported by sufficient and adequate reasons, calls for no interference (Paras 16 to 18). *Bhupinder Singh* v. *UT, Chandigarh*, (2008) 8 SCC 531: (2008) 3 SCC (Cri) 553: 2008 Cri LJ 3546.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 10-7-2008]

[**Ed.**: An interesting question arises whether on these facts the appellant could have been charged under Sections 493 and 494 IPC, and if so why not.]

[9620] — Ss. 375 and 376 — Rape — Minor — Punishment — Statutory punishment — *Sentence of 10 years' RI and fine of Rs 10,000 awarded by High Court to appellant-accused for raping a girl aged 6 years — Prayer for reduction of sentence by appellant on ground of severity — Held, S. 376(2)(f) IPC specifically provides that where the victim is less than 12 years of age the sentence awarded shall not be less than 10 years but it may be for life and the accused shall also be liable to fine — Though proviso allows discretion to court for adequate and special reasons to be mentioned in the judgment, to impose a lesser sentence but in the instant case the victim was aged about 6 years and hence the case was fully covered by S. 376(2)(f) — No adequate and special reasons discernible for imposing lesser sentence — However, fine of Rs 10,000 found to be excessive and reduced to Rs 1000* (Paras 17 and 18). *Rajendra Datta Zarekar* v. *State of Goa*, (2007) 14 SCC 560: AIR 2008 SC 572: 2008 Cri LJ 710.

Bench Strength 2. Coram: **G.P. Mathur** and *G.S. Singhvi*, JJ. [Date of decision: 4-12-2007]

State of Chhattisgarh v. Derha, (2004) 9 SCC 699, distinguished

[9621] — Ss. 375 and 376 — Rape — Sentence — Reduction of — Justiciability — *Respondent-accused convicted under S. 376 and sentenced to imprisonment for 7 years and fine of Rs 1000 with default stipulation — High Court reducing the sentence to period already undergone which was about 6 months only on ground that accused came from rural area — Held, same by no stretch of imagination can be considered either adequate or special reason — Impugned order set aside and respondent directed to surrender to custody to serve remainder of sentence* (Paras 2, 3 and 5 to 8). *State of M.P.* v. *Sk. Shahid*, (2009) 12 SCC 715: (2009) 77 AIC 35 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 15-4-2009]

State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559, followed

1 Hon. 6, 1a, 9 Edn. 4, 26a (Hale PC 628); Stephen's Criminal Law, 9th Edn., p. 262; Encyclopaedia of Crime and Justice, Vol. 4, p. 1356; Halsbury's Statutes of England and Wales; 4th Edn., Vol. 12; Friedman: Law in Changing Society, cited

[9622] — S. 376 — Adequacy of sentence under — *Respondent accused convicted under S. 376(1) IPC and S. 3(1)(xi) by trial court and sentenced to seven years' RI and one year's RI respectively — High Court reducing sentence to period already undergone, of three months — Held, impermissible — Matter remanded for decision afresh. State of M.P.* v. *Dayanand Dohar*, (2005) 8 SCC 12(1): 2005 SCC (Cri) 1957 (4).

Bench Strength 3. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-10-2005]

[9623] — S. 376 — Proportionality of sentence — Sentence should be commensurate with gravity of offence — Relevant factors to be taken into account while determining proper sentence — *Held, no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment — Due consideration should be given to facts and circumstances of case, having regard to various factors including nature of offence and manner in which it was executed or committed, motive for the crime, conduct of accused and all other attendant circumstances — Aggravating and mitigating factors should be delicately balanced — Discretion in determination of quantum of punishment is required to be exercised judiciously and judicially — Extent of adherence to principle of proportionality, while sentences were determined in actual practice, discussed — On facts, reduction of sentence of imprisonment of seven years' RI imposed by trial court under S. 376(1), to period already undergone (three years and six months in case of one of the co-accused, and two months in case of the other) by High Court, held, not proper — Sentence imposed by trial court restored — CrPC, 1973, Ss. 28 & 29* (Paras 11 to 13, 19 and 20). *State of M.P.* v. *Munna Choubey*, (2005) 2 SCC 710: 2005 SCC (Cri) 559: AIR 2005 SC 682: 2005 Cri LJ 913.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 24-1-2005]

[9624] — S. 376 — Rape of teenaged girl — Sentence — On facts, reduced from 7 years' RI to the period of little less than 2 years of imprisonment already undergone by accused-respondent

The accused was taken into custody by the police on 3-11-1993. He was not allowed bail. During the trial as also during the hearing of the appeal by the High Court he remained in jail. It is only on 11-10-1995 when the High Court acquitted him of the charge that he was released from jail. Thus he had remained in jail for a little less than two years. Taking into consideration the period of remission for which he would have been entitled and the time which has elapsed from the date of commission of the offence, the accused-respondent need not now be sent to jail. It would meet the ends of justice if he is sentenced to undergo imprisonment for the period already undergone by him and to a fine of Rs 2000 with further simple imprisonment of one year and nine months in default of payment of fine as passed by the trial court. The accused-respondent is allowed time till 1-5-2000 for payment of fine. (Para 21). *State of Rajasthan* v. *N.K.*, (2000) 5 SCC 30: 2000 SCC (Cri) 898: AIR 2000 SC 1812: 2000 Cri LJ 2205.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

[9625] — S. 376 — Reduction of sentence below statutory minimum prescribed under — Permissibility — *Supreme Court while upholding conviction under S. 376 reducing minimum statutory sentence of seven years' RI imposed by trial court and affirmed by High Court, to period of imprisonment already undergone, of about four years — Held, in the facts and circumstances of the case, this is a fit case where sentence of imprisonment awarded should be reduced to period already undergone. Ravinder* v. *State of M.P.*, (2006) 9 SCC 590: (2006) 3 SCC (Cri) 349.

Bench Strength **2**. Coram: *B.N. Agrawal* and *D.K. Jain*, JJ. [Date of decision: 27-4-2006]

[**Ed.**: See also *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1 and *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[9626] — S. 376 — Sentence — Rape of minor girl — Occurrence prior to December 1982 amendment — *Sentence of 5 years' RI imposed by trial court — Enhancement of sentence not sought by State — High Court acquitting the accused — In the circumstances, while reversing the acquittal order, sentence imposed by trial court maintained by Supreme Court in appeal*

Though for such an offence a more severe sentence would have been desirable but the ends of justice would be met if the sentence to be imposed on the respondent is confined to five years RI as was awarded by the Sessions Judge for cogent reasons recorded by him. This is for the reason that the State did not seek any enhancement of the sentence by filing an appropriate petition in the High Court or in the Supreme Court and for over a period of seven years, while the case has remained pending here, no notice had been issued to the acquitted respondent to show cause as to why in the event of his acquittal being set aside, a more deterrent sentence, than the one imposed by the Sessions Judge, be not imposed upon him and without putting him on such a notice, the Court cannot enhance the sentence. If the notice were to issue now, it would further delay the disposal of the case and that would not be a proper course to be adopted. The more stringent minimum sentence prescribed for an offence under S. 376 IPC was also incorporated in the Code by an amendment only with effect from December 1982 after the offence in the present case had been committed. *State of H.P.* v. *Raghubir Singh*, (1993) 2 SCC 622: 1993 SCC (Cri) 674: 1993 (2) ALT (Cri) 286: (1993) 2 Crimes 887.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 18-2-1993]

[9627] — S. 376 proviso — Reduction of sentence from the minimum of 7 years to 2½ years by High Court — *No adequate and special reasons given therefor — Order reducing the sentence, held, cannot be sustained*

In the judgment, the learned Judge has not recorded any adequate or special reasons for reducing the sentence to the period already undergone except for stating that the respondent had remained in custody since the year 1988 and in such cases courts have taken a lenient view. Such a statement does not answer the description of adequate and special reasons which were required to be mentioned in the judgment. It is, therefore, patent that the order reducing the sentence of the respondent is illegal and cannot be sustained. (Para 4). *State of Rajasthan* v. *Kishanlal*, (2002) 5 SCC 424: 2002 SCC (Cri) 1149: AIR 2002 SC 2250: 2002 Cri LJ 2963.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **B.P. Singh**, JJ. [Date of decision: 10-5-2002]

[9628] — S. 376 and proviso thereto and Ss. 342, 363 and 366 — Rape — Heinousness of crime — Minimum sentence to be imposed under S. 376 — Trial court awarding sentence of eight years' RI — *High Court, while upholding conviction reducing sentence to period already undergone, of nearly six years and two months — Held, having regard to facts and circumstances of the case, period already undergone cannot be said to be inadequate or contrary to law. State of M.P.* v. *Sunil*, (2009) 17 SCC 386: AIR 2006 SC 627.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-10-2005]

24.(f)(iii) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos - Instances *(contd.)*

[9629] — S. 376(1) proviso — Sentence — Accused remaining in custody for 8 months — *High Court reducing the sentence to the period already undergone by him on ground that the incident had occurred a decade back — Held, these were not adequate considerations for awarding lesser sentence — Sentence of 5 years' RI imposed by the trial court restored. State of M.P.* v. *Bhaiyalal*, 1997 SCC (Cri) 1074.

Bench Strength **2**. Coram: *Faizan Uddin* and *G.T. Nanavati*, JJ. [Date of decision: 7-1-1997]

[9630] — S. 376(1) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(1), in reducing the sentence to period already undergone, of nearly one year and three months — Matter remanded for decision afresh. State of M.P.* v. *Gauri Shankar*, (2005) 8 SCC 12(2): 2005 SCC (Cri) 1958 (1).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 4-10-2005]

[9631] — S. 376(1) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(1), in reducing the sentence to period already undergone, of nearly seven months — Matter remanded for decision afresh. State of M.P.* v. *Govind*, (2005) 8 SCC 12(3): 2005 SCC (Cri) 1958 (2).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 4-10-2005]

[9632] — S. 376(1) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(1), in reducing the sentence to period already undergone, of nearly three years — Matter remanded for decision afresh. State of M.P.* v. *Vilru*, (2005) 8 SCC 14(2): 2005 SCC (Cri) 1960 (1).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-10-2005]

[9633] — S. 376(1) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(1), in reducing the sentence to period already undergone, of one year and four months — Matter remanded for decision afresh. State of M.P.* v. *Mahesh Bhoomia*, (2005) 8 SCC 13(2): 2005 SCC (Cri) 1959 (1).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-10-2005]

[9634] — S. 376(1) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(1), in reducing the sentence to period already undergone, of one year and two months — Matter remanded for decision afresh. State of M.P.* v. *Parasram*, (2005) 8 SCC 13(1): 2005 SCC (Cri) 1958 (3): 2005 Cri LJ 4365.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 4-10-2005]

[9635] — S. 376(1) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(1), in reducing the sentence to period already undergone, of three months — Matter remanded for decision afresh. State of M.P.* v. *Dayanand Dohar*, (2005) 8 SCC 12(1): 2005 SCC (Cri) 1957 (4).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-10-2005]

[9636] — S. 376(1) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(1), in reducing the sentence to period already undergone, of two years and four months — Matter remanded for decision afresh. State of M.P.* v. *Killu*, (2005) 8 SCC 14(1): 2005 SCC (Cri) 1959 (4).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-10-2005]

[9637] — Ss. 376(1) and proviso thereto, 363 and 366 — Minimum sentence under Art. 376 — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(1), in reducing the sentence to period already undergone, of one year and seven months — Matter remanded for decision afresh. State of M.P.* v. *Mulli*, (2005) 8 SCC 13(3): 2005 SCC (Cri) 1959 (2).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 4-10-2005]

[9638] — Ss. 376(1) and proviso thereto, 363 and 366 — Trial court imposing sentences of 7 years' RI under Ss. 363 and 376 and ten years' RI under S. 366 — Reduction below statutory minimum by High Court — Sustainability — *Held, High Court was wholly unjustified, while upholding the conviction on all counts, in reducing the sentence to period already undergone, of nearly two years and four months — Matter remanded for decision afresh. State of M.P.* v. *Rakesh*, (2005) 8 SCC 13(4): 2005 SCC (Cri) 1959 (3): AIR 2005 SC 4319.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-10-2005]

[**Ed.**: Many similar appeals were filed in the Supreme Court by the State of M.P. involving the very same manner of reduction of sentence by Justice N.S. Azad of the M.P. High Court. All such appeals came before the present Bench of three Judges. The leading decision is reported above at (2005) 8 SCC 1.

All the remaining appeals [which are being reported below at pp. 11-14] have been disposed of identically except that in certain appeals besides S. 376 IPC the accused had been convicted of other offences as well, and the period of sentence undergone was also different. Since the text of all the judgments in the connected appeals in other respects is identical to the one reproduced below, they are not being reproduced. The slight difference in the conviction and period of sentence already undergone is detailed in each shortnote given separately below the cause title of each appeal. It is worthy of note that the trial court in each case had awarded the minimum mandatory sentence under S. 376(1) or S. 376(2), as the case may be.]

[9639] — S. 376(2) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(2)(g), in reducing the sentence to period already undergone, of nearly four years and eight months for R-1 and four years and three months for R-2 — Matter remanded for decision afresh. State of M.P.* v. *Veerendra Singh*, (2005) 8 SCC 11(3): 2005 SCC (Cri) 1957 (3).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 20-10-2005]

[9640] — S. 376(2) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(2)(g), in reducing the sentence to period already undergone, of nearly one year and eleven months — Matter remanded for decision afresh. State of M.P.* v. *Sheshrao*, (2005) 8 SCC 11(1): 2005 SCC (Cri) 1957 (1): AIR 2005 SC 4417.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-10-2005]

[9641] — S. 376(2) and proviso thereto — Minimum sentence under — Mandatory nature of — *Held, High Court was wholly unjustified, while upholding the conviction under S. 376(2)(g), in reducing the sentence to period already undergone, of nearly three years and seven months — Matter remanded for decision afresh. State of M.P.* v. *Rajesh*, (2005) 8 SCC 11(2): 2005 SCC (Cri) 1957 (2).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-10-2005]

[**Ed.**: Many similar appeals were filed in the Supreme Court by the State of M.P. involving the very same manner of reduction of sentence by Justice N.S. Azad of the M.P. High Court. All such appeals came before the present Bench of three Judges. The leading decision is reported above at (2005) 8 SCC 1.

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[9642] — Ss. 376(2)(c) & 376/106 — Rape of 13 girls of an Ashram by its founder, A-1, systematically abetted by co-accused of the Ashram — *Victims being orphans, entirely dependent upon A-1 for their survival, A-1 had dominion/control over them physically, mentally and spiritually — Held, conviction of A-1 under S. 376(2)(c) and sentence of life imprisonment with fine of Rs 5,10,000 on each count justified — Conviction of co-accused under Ss. 376/106 and sentence of life imprisonment (except in case of A-3 who had been awarded RI for the period already undergone with fine of Rs 10,000) justified*

In the present case, most of the victim girls were orphans brought from Sri Lanka. A-1 provided them food, clothing and shelter. They were entirely dependent on A-1 for their survival. Once they were thrown out by A-1 they had no alternative place to stay. A-1 had dominion/control over the prosecutrix

24.(f)(iii) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos - Instances *(contd.)*

physically, mentally and spiritually. In fact, many of them believed that A-1 was God to them. It is in these circumstances there is no reason why the prosecutrix should depose falsely against A-1 who was the source of their survival physically, mentally and spiritually, by providing shelter, food and clothes to them. The testimony of the prosecutrix inspires confidence, on the basis of which alone conviction can be safely sustained. Moreover, in the instant case the statements of the prosecutrix are well corroborated by medical and other contemporaneous documents. It is also well-established principle of law that minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. (Paras 33 and 34). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9643] — S. 376(2)(g) — Gang rape — Sentence warranted — *Appellants convicted under Ss. 376 & 366 and sentenced to RI for 10 years and fine of Rs 1000, and RI of 5 years and fine of Rs 1000 respectively — Considering gravity of crime, prayer for reduction of sentence rejected* (Paras 1 and 16). *Jaswant Singh* v. *State of Punjab*, (2009) 16 SCC 201: (2010) 3 SCC (Cri) 243: AIR 2010 SC 894: 2010 Cri LJ 41: (2010) 2 ECrN 305 (SC): (2010) 85 AIC 193 (SC).

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *J.M. Panchal*, JJ. [Date of decision: 5-11-2009]

[9644] — Ss. 376 (as amended in 1983)/511 or 354 — Applicable provision — After finding the accused guilty under Ss. 376/511, even in absence of a charge under S. 376 read with S. 511, held, High Court should have convicted him under Ss. 376/511 by invoking S. 222, CrPC and not under S. 354 — Quantum of punishment — Determination of — *Keeping in view the objects of 1983 amendment to S. 376, held, no person committing or attempting to commit rape should be allowed to escape punishment — Having found the accused guilty, the quantum of punishment must be decided in accordance with law without being influenced by the press, electronic media or public agitation, as a trial by such agencies is the very antithesis of rule of law — While imposing fine and apportioning the whole or part thereof to the victim, the damage caused to her and even to her family should be taken into consideration — Father of eight-year-old daughter found guilty of attempting rape on a girl aged below twelve years and also found guilty under S. 57 of Bombay Children Act — High Court, however, setting aside the conviction under Ss. 376/511 and instead convicting him under S. 354 IPC and sentencing him to rigorous imprisonment for the period already undergone (only 33 days) and to a fine of Rs 40,000 of which Rs 25,000 was to be apportioned to the complainant (father of the prosecutrix in this case) — High Court upholding the respondent's conviction under S. 57 of the Bombay Act but restricting the sentence thereunder to the period of imprisonment already undergone — Matter coming up before the Supreme Court 11 long years after the incident and by then the fine imposed by the High Court having already been paid by the accused and the complainant having withdrawn his share of the fine — In such circumstances while converting the conviction of the accused from one under S. 354 IPC to that under Ss. 376/511 IPC, held, a sentence of five years' RI and a fine of Rs 40,000 would meet the ends of justice — Conviction and sentence under S. 57 of Bombay Children Act, however, affirmed — CrPC, 1973, S. 222 — Bombay Children Act, 1948 (71 of 1948), S. 57 — Law Commission Reports 42nd, 69th and 84th — Criminal Law (Amendment) Act, 1983*

The accused-respondent was convicted by the trial court for offences under Section 376 of IPC and Section 57 of the Bombay Children Act, 1948 for having committed rape on a girl of eight years of age on 24-9-1986 and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs 5000 and for offence under Section 57 of the Bombay Children Act he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs 500. The substantive sentences were ordered to run concurrently. The Bombay High Court upset the conviction under Section 376 IPC and instead convicted him for an offence under Section 354 IPC and sentenced him to suffer rigorous imprisonment which he had already undergone (which was 33 days in all) and to pay fine of Rs 40,000 out of which Rs 25,000 was directed to be paid to the complainant who was the father of the girl. The conviction for the offence under Section

57 of the Bombay Children Act was upheld but the sentence was reduced to the imprisonment already undergone. Cross appeals were filed against the High Court's decision. While the State of Maharashtra filed appeal against the conviction and sentence of the accused by the High Court praying for his conviction under Section 376 IPC and for enhancement of his sentence to a minimum of 10 years, the accused filed appeal against his very conviction and sentence under Section 354 IPC and Section 57 of the Bombay Children Act. On the question of sentence under Sections 376/511, IPC, the accused-respondent contended that when the offence was committed the accused had also a daughter of 8 years of age and that a long time had elapsed since the offence was committed and that in terms of the judgment of the High Court the accused had already deposited Rs 40,000 out of which Rs 25,000 had already been withdrawn by the father of the prosecutrix. It was submitted that if the Court came to the conclusion that the sentence had to be enhanced then only the amount of fine could be raised. Dismissing the respondent's appeal and partly allowing the State's appeal

Held :

The circumstances of the case show that the accused intended to commit rape on the girl. In the commission of that crime, he laid the girl on the seat in the Maruti car and then laid himself over her. He pulled down her knickers and also opened the zip of his pants and took out his male organ. He pressed his male organ on the private parts of the girl. But since he discharged, he could not penetrate and was unable to complete the offence of rape. However, it is clear that he did attempt to commit rape.

The High Court after having come to the conclusion that the accused was guilty of an offence under Sections 376/511 of the IPC could not have convicted the accused for an offence under Section 354 IPC. Section 511 IPC provides punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. In the instant case since the girl was under 12 years of age and the Sessions Judge having found that offence of rape had been committed could not have awarded sentence of 7 years when the law prescribes minimum sentence of rigorous imprisonment for a term not less than 10 years, unless exceptional circumstances existed. However, the State of the complainant did not come up in appeal in the High Court for enhancement of the sentence. Though there was no charge under Section 376 read with Section 511 IPC, under Section 222 CrPC when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

The respondent's plea that in case the court took a decision to enhance the sentence the amount of fine could be raised, cannot be accepted. A heinous crime has been committed and the accused must suffer for the consequences. A rapist not only violates the victim's personal integrity but leaves indelible marks on the very soul of the helpless female. The girl of 8 years must have undergone a traumatic experience. Despite the 11 year long lapse of time after the offence, keeping the objects of the 1983 amendment to Section 376 of IPC in view, the law as it exists now and the decisions of the Supreme Court on the question of sentence, the message is loud and clear that no person who commits or attempts to commit rape shall escape punishment.

Considering the whole aspect of the matter, it has to be held that a sentence of five years' rigorous imprisonment and fine of Rs 40,000 will meet the ends of justice. The fine has already been paid, out of that Rs 25,000 has been withdrawn by the father of the girl as per direction of the High Court which is upheld. The conviction of the accused-respondent is converted from one under Section 354 IPC to that under Sections 376/511 IPC and he is sentenced as aforesaid. The conviction and sentence of the accused under Section 57 of the Bombay Children Act as ordered by the High Court shall, however, stand. The sentences shall run concurrently. *State of Maharashtra* v. *Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386: AIR 1997 SC 3986.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 11-9-1997]

(g) Principles for sentencing

Synopsis

(i) Generally 734
(ii) Age/Health state of accused/Juvenile 734
(iii) Accused marrying prosecutrix 735
(iv) Delay/Pendency in proceedings/ execution of sentence 735
(v) Proportionality 737
(vi) Background/station/education of accused 737
(vii) Other 738
(viii) Sentence reduced 739
(ix) Sentence not reduced/enhanced 740

(i) Generally

See also 'C.24.(a) Sentence — Generally', and 'C.24.(f) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos', above

[9645] — S. 376 — Rape — Sentence — Courts should impose sentence commensurate with the gravity of the offence having regard to facts and circumstances of the case — Courts should not show any leniency or mercy to persons committing heinous crime of rape on innocent helpless girls — *Socio-economic status, race, caste, creed etc. of accused or victim are irrelevant considerations in awarding sentence — Crimes of violence on women should be severely dealt with — Sentence should serve as a deterrent for commission of like offences by others*

Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. The courts are expected to properly operate the sentencing system and to impose such sentence for a proved offence, which may serve as a deterrent for the commission of like offences by others. Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity — it degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised Judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. (Paras 18, 13, 15 and 16)

Therefore, while maintaining the conviction of the respondent for an offence under Section 376 IPC besides all other offences, the sentence of 4 years' RI, as imposed by the High Court, is enhanced to 10 years' RI for the said offence. (Para 19). *State of Karnataka* v. *Krishnappa*, (2000) 4 SCC 75: 2000 SCC (Cri) 755: AIR 2000 SC 1470: 2000 Cri LJ 1793.

Bench Strength **3**. Coram: **Dr. A.S. Anand, C.J.** and *R.C. Lahoti* and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230: 1995 SCC (Cri) 1097; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9646] — S. 376 — Rape — Sentence — Resignation and no resistance by victim in the face of the inevitable not a mitigating circumstance. *Nafe Singh* v. *State of Haryana*, (1971) 3 SCC 934: 1972 SCC (Cri) 182.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 16-3-1970]

(ii) Age/Health state of accused/Juvenile

See also 'C.24.(f) Minimum sentence/Minimum statutory sentence — Ss. 376(1) & (2) provisos', above

[9647] — S. 376 — Sentence — Mitigating circumstances — *Considering very young age of accused persons, circumstances in which offence committed, long lapse of time during which they suffered disrepute and mental agony sentence reduced from 7 years' R.I. to 3 years' R.I.*

So far as sentence of 7 years' R.I. on both the accused persons is concerned, it appears that it may not be unlikely that the accused persons at the beginning had a genuine desire to help the prosecutrix in reaching her brother's place quickly. But later on when she agreed to share the same room at night in the hotel the two young men became victims of sexual lust and against the consent and protest of the prosecutrix, committed rape on her. Considering the very young age of the accused persons and considering the circumstances under which there was every likelihood that they could not overcome the fit of passion and lost all sense of decency and morality and ultimately committed the offence of rape and also considering the fact that the incident had taken place long back and during the course of the proceedings up to this Court, both of them had suffered disrepute and mental agony, the ends of justice would be met if both the accused persons are awarded a lesser sentence. The accused persons were, therefore, directed to suffer R.I. for three years. *Raju* v. *State of Karnataka*, (1994) 1 SCC 453: 1994 SCC (Cri) 538: AIR 1994 SC 222: 1994 Cri LJ 248: (1994) 2 BLJR 1059: (1994) 1 Crimes 156: (1994) 31 ACC 152.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 12-10-1993]

[9648] — S. 376 — Sentence — Rape by accused, 65 years of age on a girl six years' old — *Trial Judge awarding three years' rigorous imprisonment and Rs 5000 as fine — Sessions Judge reducing imprisonment to six months and fine to Rs 500 — Held, regarding the beastliness of the crime the short term of imprisonment, in spite of his advanced age, was not improper. Ram Kishan Aggarwala* v. *State of Orissa*, (1976) 2 SCC 177: 1976 SCC (Cri) 244: AIR 1976 SC 1774: 1976 Cri LJ 1376.

Bench Strength **2**. Coram: *Y.V. Chandrachud* and **V.R. Krishna Iyer**, JJ. [Date of decision: 4-3-1976]

[9649] — S. 376 r/w S. 511 — Sentencing of juvenile — *Appellant aged 16 years 5 months and 19 days on date of occurrence — Hence held, was a juvenile, and thus, could not be compelled to undergo sentence of RI as imposed by trial court and affirmed by High Court — Setting aside sentence, appellant directed to be produced before Juvenile Justice Board for passing appropriate sentence in consonance with 2000 Act — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(k), 2(l), 7-A, 20 and 64 (as amended by Act 33 of 2006 w.e.f. 22-8-2006)* (Paras 13 to 15). *Daya Nand* v. *State of Haryana*, (2011) 2 SCC 224.

Bench Strength **2**. Coram: **Aftab Alam** and *R.M. Lodha*, JJ. [Date of decision: 7-1-2011]

Hari Ram v. State of Rajasthan, (2009) 13 SCC 211: (2010) 1 SCC (Cri) 987; Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344: (2010) 2 SCC (Cri) 1274; Mohan Mali v. State of M.P., (2010) 6 SCC 669: (2010) 3 SCC (Cri) 208, followed

Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551: 2005 SCC (Cri) 742, held, distinguished/not applicable

(iii) Accused marrying prosecutrix

[9650] — S. 376 — Sentence — Having regard to the fact that appellant married the prosecutrix sentence reduced to period already undergone. *Sultan Singh* v. *State of M.P.*, 1990 Supp SCC 635: 1991 SCC (Cri) 160(1).

Bench Strength **2**. Coram: *E.S. Venkataramiah* and *N.D. Ojha*, JJ. [Date of decision: 4-4-1988]

[9651] — Ss. 376, 147, 323/149, 342, 458 and 366 — Abduction and rape — Conviction justified — Marriage alleged by rapist not proved — *Appellants convicted under Ss. 147, 323/149, 342, 458 and 366, while Appellant 1, also additionally convicted under S. 376 — Five accused armed with iron rod and lathis alleged to have abducted the prosecutrix (PW 5) and assaulted PW 2 during the occurrence — It was further alleged that they dressed her in new ornaments and clothes and Appellant 1 raped her on two consecutive nights — Defence of Appellant 1 that since victim was married to him there was no rape as contended, rejected by courts below — No evidence of marriage as claimed brought on record — DW 2 in his cross-examination admitting that Kazi wrote their nikah — But no signature or thumb impression was obtained and Kazi Y who was claimed to have solemnised the nikah was not examined — DW 1 who is claimed to have settled the marriage accepted that same is the procedure for proving the marriage — Thus, factum of marriage not proved — Held, that being so the conviction of Appellant 1 as recorded by trial court and maintained by High Court cannot be faulted — So far as the role played by Appellant 2 is concerned, the same was clearly established by the evidence of injured witnesses PW 2 and PW 4, apart from the evidence of PW 5 (prosecutrix) — Hence, his conviction also sustained — But so far as other appellants were concerned there was no evidence to link them with crime — Hence, their conviction set aside* (Paras 8 and 9). *Neku Khan* v. *State of Rajasthan*, (2009) 11 SCC 86: (2009) 3 SCC (Cri) 1245: AIR 2009 SC 1954: (2009) 1 ECrN 859 (SC): (2009) 75 AIC 132 (SC): (2009) 1 APLJ 41 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-1-2009]

(iv) Delay/Pendency in proceedings/ execution of sentence

[9652] — S. 376 — Child rape — Rape of 10 year-old-girl — Sentence — Occurrence happened in 1976 when there was no legislative compulsion on court to impose any minimum punishment for rape — *Trial court sentencing the respondent to 6 years' RI and fine of Rs 500 — High Court acquitting the respondent — But Supreme Court setting aside the High Court's order of acquittal and restoring conviction passed by trial court — A quarter of a century had elapsed since the occurrence and respondent was in jail for a long period — In the circumstances held, respondent sentenced to 2 years' RI — On completion of the sentence the jail authorities shall release him from jail as he continues to be in jail. State of U.P.* v. *Munnoo Lal*, (2001) 10 SCC 79.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 18-1-2001]

[9653] — Ss. 376 (as amended in 1983)/511 or 354 — Applicable provision — After finding the accused guilty under Ss. 376/511, even in absence of a charge under S. 376 read with S. 511, held, High Court should have convicted him under Ss. 376/511 by invoking S. 222, CrPC and not under S. 354 — Quantum of punishment — Determination of — *Keeping in view the objects of*

24.(g)(iv) Principles for sentencing - Delay/Pendency in proceedings/execution of sentence *(contd.)*

1983 amendment to S. 376, held, no person committing or attempting to commit rape should be allowed to escape punishment — Having found the accused guilty, the quantum of punishment must be decided in accordance with law without being influenced by the press, electronic media or public agitation, as a trial by such agencies is the very antithesis of rule of law — While imposing fine and apportioning the whole or part thereof to the victim, the damage caused to her and even to her family should be taken into consideration — Father of eight-year-old daughter found guilty of attempting rape on a girl aged below twelve years and also found guilty under S. 57 of Bombay Children Act — High Court, however, setting aside the conviction under Ss. 376/511 and instead convicting him under S. 354 IPC and sentencing him to rigorous imprisonment for the period already undergone (only 33 days) and to a fine of Rs 40,000 of which Rs 25,000 was to be apportioned to the complainant (father of the prosecutrix in this case) — High Court upholding the respondent's conviction under S. 57 of the Bombay Act but restricting the sentence thereunder to the period of imprisonment already undergone — Matter coming up before the Supreme Court 11 long years after the incident and by then the fine imposed by the High Court having already been paid by the accused and the complainant having withdrawn his share of the fine — In such circumstances while converting the conviction of the accused from one under S. 354 IPC to that under Ss. 376/511 IPC, held, a sentence of five years' RI and a fine of Rs 40,000 would meet the ends of justice — Conviction and sentence under S. 57 of Bombay Children Act, however, affirmed — CrPC, 1973, S. 222 — Bombay Children Act, 1948 (71 of 1948), S. 57 — Law Commission Reports 42nd, 69th and 84th — Criminal Law (Amendment) Act, 1983

The accused-respondent was convicted by the trial court for offences under Section 376 of IPC and Section 57 of the Bombay Children Act, 1948 for having committed rape on a girl of eight years of age on 24-9-1986 and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs 5000 and for offence under Section 57 of the Bombay Children Act he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs 500. The substantive sentences were ordered to run concurrently. The Bombay High Court upset the conviction under Section 376 IPC and instead convicted him for an offence under Section 354 IPC and sentenced him to suffer rigorous imprisonment which he had already undergone (which was 33 days in all) and to pay fine of Rs 40,000 out of which Rs 25,000 was directed to be paid to the complainant who was the father of the girl. The conviction for the offence under Section 57 of the Bombay Children Act was upheld but the sentence was reduced to the imprisonment already undergone. Cross appeals were filed against the High Court's decision. While the State of Maharashtra filed appeal against the conviction and sentence of the accused by the High Court praying for his conviction under Section 376 IPC and for enhancement of his sentence to a minimum of 10 years, the accused filed appeal against his very conviction and sentence under Section 354 IPC and Section 57 of the Bombay Children Act. On the question of sentence under Sections 376/511, IPC, the accused-respondent contended that when the offence was committed the accused had also a daughter of 8 years of age and that a long time had elapsed since the offence was committed and that in terms of the judgment of the High Court the accused had already deposited Rs 40,000 out of which Rs 25,000 had already been withdrawn by the father of the prosecutrix. It was submitted that if the Court came to the conclusion that the sentence had to be enhanced then only the amount of fine could be raised. Dismissing the respondent's appeal and partly allowing the State's appeal

Held :

The circumstances of the case show that the accused intended to commit rape on the girl. In the commission of that crime, he laid the girl on the seat in the Maruti car and then laid himself over her. He pulled down her knickers and also opened the zip of his pants and took out his male organ. He pressed his male organ on the private parts of the girl. But since he discharged, he could not penetrate and was unable to complete the offence of rape. However, it is clear that he did attempt to commit rape.

The High Court after having come to the conclusion that the accused was guilty of an offence under Sections 376/511 of the IPC could not have convicted the accused for an offence under Section 354 IPC. Section 511 IPC provides punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. In the instant case since the girl was under 12 years of age and the Sessions Judge having found that offence of rape had been committed could not have awarded sentence of 7 years when the law prescribes minimum sentence of rigorous imprisonment for a term not less than 10 years, unless exceptional circumstances existed. However, the State of the complainant did not come up in appeal in the High Court for enhancement of the sentence. Though there was no charge under Section 376 read with Section 511 IPC, under Section 222 CrPC when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

The respondent's plea that in case the court took a decision to enhance the sentence the amount of fine could be raised, cannot be accepted. A heinous crime has been committed and the accused must suffer for the consequences. A rapist not only violates the victim's personal integrity but leaves indelible marks on the very soul of the helpless female. The girl of 8 years must have undergone a traumatic experience. Despite the 11 year long lapse of time after the offence, keeping the objects of the 1983 amendment to Section 376 of IPC in view, the law as it exists now and the decisions of the Supreme Court on the question of sentence, the message is loud and clear that no person who commits or attempts to commit rape shall escape punishment.

Considering the whole aspect of the matter, it has to be held that a sentence of five years' rigorous imprisonment and fine of Rs 40,000 will meet the ends of justice. The fine has already been paid, out of that Rs 25,000 has been withdrawn by the father of the girl as per direction of the High Court which is upheld. The conviction of the accused-respondent is converted from one under Section 354 IPC to that under Sections 376/511 IPC and he is sentenced as aforesaid. The conviction and sentence of the accused under Section 57 of the Bombay Children Act as ordered by the High Court shall, however, stand. The sentences shall run concurrently. *State of Maharashtra* v. *Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386: AIR 1997 SC 3986.

Bench Strength 2. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 11-9-1997]

(v) Proportionality

[9654] — **S. 376 — Imposition of "appropriate sentence" — Emphasising need of, object of law as well as duty and role of courts in this regard, stated — Awarding inadequate sentence — Effect of, on justice system and society, explained** — *Object of sentence being to protect society and deter the criminal, social impact of the crime and effect of sentence on social order are relevant considerations — Court must also keep in view rights of victim of crime and society at large — Sentence should reflect conscience of society and should be stern where it should be — Imposition of meagre sentences on account of lapse of time, as in this case, not permissible* (Paras 9, 10 and 14 to 17). *State of M.P.* v. *Munna Choubey*, (2005) 2 SCC 710: 2005 SCC (Cri) 559: AIR 2005 SC 682: 2005 Cri LJ 913.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 24-1-2005]

[**Ed.**: See in this regard (2005) 8 SCC 1 & 8]

[9655] — **S. 376 — Proportionality of sentence — Sentence should be commensurate with gravity of offence — Relevant factors to be taken into account while determining proper sentence** — *Held, no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment — Due consideration should be given to facts and circumstances of case, having regard to various factors including nature of offence and manner in which it was executed or committed, motive for the crime, conduct of accused and all other attendant circumstances — Aggravating and mitigating factors should be delicately balanced — Discretion in determination of quantum of punishment is required to be exercised judiciously and judicially — Extent of adherence to principle of proportionality, while sentences were determined in actual practice, discussed — On facts, reduction of sentence of imprisonment of seven years' RI imposed by trial court under S. 376(1), to period already undergone (three years and six months in case of one of the co-accused, and two months in case of the other) by High Court, held, not proper — Sentence imposed by trial court restored — CrPC, 1973, Ss. 28 & 29* (Paras 11 to 13, 19 and 20). *State of M.P.* v. *Munna Choubey*, (2005) 2 SCC 710: 2005 SCC (Cri) 559: AIR 2005 SC 682: 2005 Cri LJ 913.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 24-1-2005]

(vi) Background/station/education of accused

[9656] — **S. 376 — Rape — Sentence — Courts should impose sentence commensurate with the gravity of the offence having regard to facts and circumstances of the case — Courts should not show any leniency or mercy to persons committing heinous crime of rape on innocent helpless girls** — *Socio-economic status, race, caste, creed etc. of accused or victim are irrelevant considerations in awarding sentence — Crimes of violence on women should be severely dealt with — Sentence should serve as a deterrent for commission of like offences by others*

24.(g)(vi) Principles for sentencing - Background/station/education of accused *(contd.)*

Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. The courts are expected to properly operate the sentencing system and to impose such sentence for a proved offence, which may serve as a deterrent for the commission of like offences by others. Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity — it degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised Judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. (Paras 18, 13, 15 and 16)

Therefore, while maintaining the conviction of the respondent for an offence under Section 376 IPC besides all other offences, the sentence of 4 years' RI, as imposed by the High Court, is enhanced to 10 years' RI for the said offence. (Para 19). *State of Karnataka* v. *Krishnappa*, (2000) 4 SCC 75: 2000 SCC (Cri) 755: AIR 2000 SC 1470: 2000 Cri LJ 1793.

Bench Strength **3**. Coram: **Dr. A.S. Anand, C.J.** and *R.C. Lahoti* and *S.N. Variava*, JJ. [Date of decision: 30-3-2000]

State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230: 1995 SCC (Cri) 1097; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

[9657] — Ss. 376 and 366 — Sentence — Accused guilty of abduction and rape — Accused holding responsible positions of Lambardar and Sarpanch in village — *Held, sentence of three years' and four years' R.I. and fine justified. Gurcharan Singh* v. *State of Haryana*, (1972) 2 SCC 749: 1972 SCC (Cri) 793: AIR 1972 SC 2661: (1973) 2 SCR 197: 1973 Cri LJ 179.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 13-9-1972]

(vii) Other

[9658] — S. 376 — Rape — Sentence — Mitigating factors — Accused and prosecutrix were related and were immature teenagers with an age difference of 2-3 years — No mark of violence found on the body of prosecutrix — Long time elapsed since happening of the incident — *Both trial court and High Court had acquitted the accused and after the acquittal by a passage of time the members of the two families must have buried the hatchet — On facts held, a lenient view should be taken as regards the sentence and as such sentence already undergone by the accused would be sufficient to meet the ends of justice*

As regards the sentence, a lenient view may be taken for the reason that the prosecutrix and the accused are related. They were both teenagers with an age difference of about 2-3 years. Both were immature and young. Evidence indicates no marks of violence at all on any part of the body of the prosecutrix. The incident happened in 1993. After the acquittal, by the passage of time, the members of the two families must have buried the hatchet, if any, arisen on account of this incident. It was argued that a further order for custodial sentence at this distance of time may cause rupture to social harmony in the village life and may only help to rekindle the flames of anger which have been smouldering for so long between near relatives. Having regard to all these matters, it must be held that the sentence already undergone by the accused would be sufficient to meet the ends of justice. (Para 17). *State of H.P.* v. *Mango Ram*, (2000) 7 SCC 224: 2000 SCC (Cri) 1331: AIR 2000 SC 2798.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **K.G. Balakrishnan**, JJ. [Date of decision: 24-8-2000]

[9659] — S. 376 — Reduction of sentence — Appellant sentenced to ten years' imprisonment with fine of Rs 5000 — *Held, considering that offence was committed six years back and appellant who was also poor, had been under imprisonment for five years, sentence reduced to the period already undergone — Sentence of fine, however, confirmed — Directed to be paid to prosecutrix*

(Para 27). *Zindar Ali Sheikh* v. *State of W.B.*, (2009) 3 SCC 761: (2009) 2 SCC (Cri) 737: AIR 2009 SC 1467: 2009 Cri LJ 1324: (2009) 2 CHN 19 (SC): (2009) 1 ECrN 941 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 6-2-2009]

[9660] — Ss. 376, 363, 366 and 368 — Abduction and rape — Sentence — Mitigating factors — The three respondent accused acquitted by the trial court more than a decade ago and since then not involved in any other offence — *They aged between 21-24 years at the time of occurrence and by now all of them and the prosecutrix got married and settled down in life — Held, sentence of 5 years' RI and a fine of Rs 5000 each is appropriate for offence under S. 376 — But, in the circumstances of the case, it is not desirable to award any compensation particularly as no scheme as suggested in Delhi Domestic Working Women's Forum case has been drawn up. State of Punjab* v. *Gurmit Singh*, (1996) 2 SCC 384: 1996 SCC (Cri) 316: AIR 1996 SC 1393.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 16-1-1996]

Distinguished in State of M.P. v. Bablu Natt, (2009) 2 SCC 272

But Dr. A.S. Anand, C.J. in a later case of *State of Karnataka* v. *Krishnappa*, (2000) 4 SCC 75 refused reliance on the above decision by the accused and restored the sentence of 10 years fixed by the trial court for offence under S. 376 IPC *See* discussion on this aspect in *Kamal Kishore* v. *State of H.P.*, (2000) 4 SCC 502 at 508

[9661] — Ss. 376 and 366 — Sentence — Rape of a minor girl aged 15 years by a young boy of 17 years of age — *Prosecutrix a consenting party — In view of the fact that it was a one-time act and also the young age of the appellant sentence of imprisonment reduced to the period already undergone with a fine of Rs 12,000 to be paid to the prosecutrix as compensation. Jarnail Singh* v. *State of Punjab*, (1998) 8 SCC 629: 1998 SCC (Cri) 1617.

Bench Strength **2**. Coram: *M.M. Punchhi* and *Sujata V. Manohar*, JJ. [Date of decision: 18-3-1996]

[9662] — Ss. 376 r/w 511 — Sentence — Mitigating factors — *Sentence reduced in the special circumstances of the case*

In the present case serious view should have been taken of the crime committed by the appellant by misusing his position as a father of a girl friend of PWs 1 and 2, tricking them into entering the house and taking undue advantage of the situation by subjecting them to sexual harassment. But having regard to the cumulative effect of the special circumstances, viz. the appellant lost his job in view of the conviction recorded by the High Court, he must have suffered great humiliation in the society, the prospects of getting a suitable match for his own daughter have perhaps been marred in view of the stigma in the wake of the finding of guilt recorded against him in the context of such an offence and the incident occurred some seven years back and about six and a half years elapsed since the dismissal of appeal by the High Court, the ends of justice will be satisfied if the substantive sentence imposed by the High Court for the offence under S. 376 read with S. 511 is reduced from one of 2½ year RI to one of 15 months' RI. The other sentences will, however, remain intact. *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat*, (1983) 3 SCC 217: 1983 SCC (Cri) 728: AIR 1983 SC 753: 1983 Cri LJ 1096.

Bench Strength **2**. Coram: *A.P. Sen* and **M.P. Thakkar**, JJ. [Date of decision: 24-5-1983]

(viii) Sentence reduced

[9663] — S. 376 — Conviction and sentence — On facts held, prosecutrix being not a girl of easy virtue could not have voluntarily allowed the accused to sexually assault her when she ultimately married the other accused within 10-15 days of her elopement — *Her silence about non-reporting to the witnesses must be taken to be either because of fear of reprisal or to protect her image — Conviction upheld — Offence being of 1982, prior to prescription of minimum sentence, the sentence reduced to that already undergone. State of A.P.* v. *P. Narasimha*, (1994) 4 SCC 453: 1994 SCC (Cri) 1180.

Bench Strength **2**. Coram: *R.M. Sahai* and **B.L. Hansaria**, JJ. [Date of decision: 29-4-1994]

[9664] — S. 376/S. 354 — Rape alleged for the first time after eleven days of the occurrence for which no explanation put forth — Effect — *Where on the basis of the FIR and the facts as alleged and proved only offence under S. 354 made out, conviction of appellant under S. 376 unsustainable — Sentence of imprisonment for period already undergone i.e. 13 months would serve the ends of justice* (Paras 3 and 4). *Tejpal* v. *State of M.P.*, (2006) 9 SCC 762: (2006) 3 SCC (Cri) 398.

Bench Strength **3**. Coram: *B.N. Agrawal, A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 21-2-2006]

(ix) Sentence not reduced/enhanced

[9665] — S. 376(1) r/w S. 511 and Ss. 324 and 452 — Reduction of sentence — Rape case — Whether, on facts, High Court justified in reducing the sentence to the period undergone, without indicating any reason — *Relying on the principles enunciated in* Ghanshyam Singh case, *(2003) 8 SCC 13 and* Babbu Barkare case, *(2005) 5 SCC 413, held, High Court's order was unsustainable, hence, set aside* (Paras 2, 5 and 8 to 10). *State of M.P.* v. *Pappu*, (2008) 16 SCC 758: (2009) 74 AIC 173 (SC): (2008) 3 APLJ 109 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 4-8-2008]

State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13: 2003 SCC (Cri) 1935; State of M.P. v. Babbu Barkare, (2005) 5 SCC 413: 2005 SCC (Cri) 1335, relied on

[9666] — S. 376(2)(f) — Sentence — Rape of minor girl of 8 years by a medical graduate without rupturing her hymen — *Victim now 19 years old still unmarried and suffering the agony of the traumatic experience and shame and under an impression that her future chances for getting married and settling down in a respectable family completely lost — High Court while observing that "the respondent's activities were menace to the neighbours" erroneously convicting the accused under S. 354 showing misplaced sympathy to the accused by imposing a grossly inadequate sentence of only fine of Rs 3000 on the ground that accused was gainfully employed and there was nothing to show that he was indulging in his nefarious activities — Having regard to the seriousness and gravity of the repugnant offence committed by the accused under S. 376, held, justice demands award of sentence of 7 years' RI and fine of Rs 25,000 (in default 1½ years' RI) if realised to be paid to the victim girl. Madan Gopal Kakkad* v. *Naval Dubey*, (1992) 3 SCC 204: 1992 SCC (Cri) 598.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 29-4-1992]

25. Witnesses

[9667] — Ss. 375 and 376 — Rape — Independent witness — Examination of — Necessity — *Submission that apart from PWs 4 and 5 (elder sister and mother of prosecutrix) no other independent witness was examined to support allegations of rape — Held, when a minor girl alleges rape and her testimony is not shaken in cross-examination, there is no reason to disbelieve her as no girl would ever lie on such a vital issue — Besides, her testimony was corroborated by PWs 4 and 5 to whom she had reported the incident immediately after occurrence — Furthermore, on facts held, there was an independent witness PW 6, who though turned hostile at one stage of her examination had admitted that PW 5 had told her that accused had raped her daughter — She also stated that on making enquiries prosecutrix had narrated entire incident to her* (Paras 15 and 16). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697: (2010) 3 SCC (Cri) 387.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

[9668] — Ss. 375 and 376 — Rape of a minor — Child witness — Testimony — Reliability — *Submission that both the prosecutrix and her elder sister were child witnesses and they therefore should not be believed, and that they were tutored by their parents and police — Held, evidence of a child cannot be rejected outrightly and same must be evaluated with great circumspection — In instant case, depositions of PWs 3 and 4 as regards alleged occurrence was found firm and convincing and same could not be said to be influenced by any tutoring — There was no reason as to why a child on her age would falsely implicate the accused for the offence which was indisputably committed on her* (Paras 19, 20 and 22 to 24). *State of H.P.* v. *Suresh Kumar*, (2009) 16 SCC 697.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 29-5-2009]

[9669] — Ss. 376 and 302 — Child witness — Examination of — Must be nearabout the date and time of the incident — Rape and murder of a girl aged 5 years — *Solitary testimony of a child aged 4 years that while returning home along with the deceased after purchasing a balloon, accused took the deceased inside his house saying that her feet were mudstained — Not clear from her statement whether that happened before the date and time of the incident or on the date on which dead body of deceased was found — How and in what manner investigating officer came to know about this child witness so as to record her statement during investigation also remaining a mystery — Child witness examined by trial court about one year after the incident — On asking a few questions by way of preliminary examination, trial Judge finding that the witness could "answer some of the questions" — Even taking her testimony at its face value, no incriminating inference could be drawn against the accused on that basis so as to connect him with the crime — Evidence Act, 1872, Ss. 8 and 3. Subhash Chand* v. *State of Rajasthan*, (2002) 1 SCC 702: 2002 SCC (Cri) 256.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 16-10-2001]

— S. 377 *See also* Ss. 302, 376(2)(f), 377, 363 and 201

See also Ss. 375 and 377

See also Ss. 376 and 377, etc.

See also Ss. 451 and 377

[9670] — S. 377 — Anal intercourse/Sodomy — Proof of subjection to — Likely medical evidence

When an expert categorically ruled out the commission of an unnatural offence having regard to his expertise, it was obligatory on the part of the prosecution to draw his attention so as to enable him to furnish an explanation. It was contended that lacerations are likely to disappear if the examination is made after two to three days and nature of injuries would also depend upon several factors. PW 3, doctor in his evidence stated that the tissues around the anus are hard and rough. At the time of answering the calls of nature, the extra skin will be expanded. Immediately after it will come to original status. By examination it was found that the boy was not habitually used for anal intercourse. If there is continuous act of intercourse for about a week or even 2, 3 days it can be found out as to whether he had had any intercourse or not. (Paras 30, 29 and 28)

It may be true that absence of medical evidence by itself may not be a crucial factor in all cases, but, the same has to be taken into consideration as a relevant factor when other evidence points towards the innocence of the appellant. It is not a case where only one view was possible. It is a well-settled principle of law that where two views are possible, the High Court would not ordinarily interfere with the judgment of acquittal. (Paras 30 and 38). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411: (2009) 2 SCC (Cri) 813: AIR 2008 SC 2349: (2008) 65 AIC 263 (SC): 2008 Cri LJ 3042.
Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

Ejaj Ahmad: Sexual Offences; Modi: Medical Jurisprudence and Toxicology, referred to

[9671] — S. 377 — Appreciation of Evidence — Delay in filing FIR — Effect of — Effect — When material — *Delay by itself may not be a ground to disbelieve prosecution case — But where the prosecution case (or main prosecution witness relying on whom conviction is based) itself is doubtful, held, the court may take a serious notice of delay in lodging the FIR — CrPC, 1973, S. 154*

Delay in lodging of a first information report although by itself may not be a ground to disbelieve the entire prosecution case, but each case must be judged on its own facts. If the story of the complainant victim, PW 1 is to be accepted at its face value, the court may not take serious notice of delay in lodging the first information report. If PW 1 had returned to school on 3-8-1986 and attempts were made by the appellant immediately thereafter to send for him for repeating the commission of the same offence (of sodomy), there was no reason why the first information report was not lodged immediately. (Paras 17 and 18)

According to PW 4 as also PW 8, PW 1 came back to the house only on the Rakshabandhan day and stayed there for 20 days. He had to be persuaded to return to school. PW 8 came with them. Whereas according to PWs 4 and 8, they came to know about the incident on or about 18-8-1986 and Respondent 2 and his brother having stayed in the house for 20 days, it remains a mystery how first information report could be lodged on 29-8-1986. PW 4, the victim's mother in her deposition completely denied to have made any statement before the police officer on 31-8-1986. The reason is not very far to seek. Her attention was drawn to her previous statements where she had alleged that her son had mentioned about the incidents on 18-8-1986 and left the house on 28-8-1986. (Paras 19, 27 and 25)

It is unlikely that no step would be taken by the guardians when they came to know about the incident. PW 8 (the victim's maternal uncle) was attached to the Mutt. It was he, who was instrumental for admission of the boy in the Mutt. He knew the administrator. He did not meet the appellant to make enquiries. He did not meet the senior Swamiji to lodge a complaint. He did not even meet the administrator. PW 4 was not an illiterate lady. She had studied up to IXth standard. She had been working in a school as an aaya. Her sister is a teacher in a school. (Para 20). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411: (2009) 2 SCC (Cri) 813: AIR 2008 SC 2349: (2008) 65 AIC 263 (SC): 2008 Cri LJ 3042.
Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

[9672] — S. 377 — Entitlement of defence to point out improvements in subsequent statements under S. 161 CrPC vis-à-vis FIR — *Although statements under S. 161 CrPC were not part of FIR, held, defence is entitled to show improvements vis-à-vis the allegations in the FIR*

The subsequent statement may not be a part of the first information report being a statement under Section 161 of the Code; but the defence is entitled to show that improvements have been made therein vis-à-vis the allegations made in the first information report. That there exists some improvement is not in dispute. Immediately, a purported statement was taken after the first information report was lodged. A further statement was recorded that PW 1, the victim complainant had himself written the first information report. But the contents of the first information report clearly demonstrate that the same has been drafted by a person who is well versed in legal language. A bare perusal of the first information report itself shows that it cannot be in the handwriting of a student studying in Class IX i.e. the victim. It was in very good handwriting. It was written systematically. There was no mistake. There was no hesitation in writing. It was absolutely neat and clean. (Para 23). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411: (2009) 2 SCC (Cri) 813: AIR 2008 SC 2349: (2008) 65 AIC 263 (SC): 2008 Cri LJ 3042.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

[9673] — S. 377 — Expert opinion — Doubts — Duty/Obligation of prosecution — Helping expert with factual information to arrive at correct explanations regarding commission of offence — *Expert ruling out commission of unnatural offence under S. 377 IPC — Doubt regarding disappearance of lacerations due to delayed medical examination — Held, it is obligatory on the part of the prosecution to draw the attention of expert to such doubt so as to enable him to furnish an explanation — Evidence Act, 1872, S. 45 — CrPC, 1973, S. 157*

When an expert categorically ruled out the commission of an unnatural offence having regard to his expertise, it was obligatory on the part of the prosecution to draw his attention so as to enable him to furnish an explanation. It was contended that lacerations are likely to disappear if the examination is made after two to three days and nature of injuries would also depend upon several factors. PW 3, doctor in his evidence stated that the tissues around the anus are hard and rough. At the time of answering the calls of nature, the extra skin will be expanded. Immediately after it will come to original status. By examination it was found that the boy was not habitually used for anal intercourse. If there is continuous act of intercourse for about a week or even 2, 3 days it can be found out as to whether he had had any intercourse or not. (Paras 30, 29 and 28)

It may be true that absence of medical evidence by itself may not be a crucial factor in all cases, but, the same has to be taken into consideration as a relevant factor when other evidence points towards the innocence of the appellant. It is not a case where only one view was possible. It is a well-settled principle of law that where two views are possible, the High Court would not ordinarily interfere with the judgment of acquittal. (Paras 30 and 38). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411: (2009) 2 SCC (Cri) 813: AIR 2008 SC 2349: (2008) 65 AIC 263 (SC): 2008 Cri LJ 3042.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

Ejaj Ahmad: Sexual Offences; Modi: Medical Jurisprudence and Toxicology, referred to

[9674] — S. 377 — Inconsistency between circumstantial evidence and prosecution case — Discrepancies in the prosecution case — Reversal of acquittal by High Court — *High Court placing reliance only on evidence of the complainant, PW 1 the alleged victim of sodomy — Sustainability.* (Paras 34, 17, 31 and 18). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411: (2009) 2 SCC (Cri) 813: AIR 2008 SC 2349: (2008) 65 AIC 263 (SC): 2008 Cri LJ 3042.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

[9675] — S. 377 — Rule of corroboration of testimony of the victim same as under S. 376. *Rameshwar* v. *State of Rajasthan*, AIR 1952 SC 54: 1952 SCR 377: 1952 Cri LJ 547.

Bench Strength **2**. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 20-12-1951]

[9676] — S. 377 — Sentence — *Reduced from three years to 6 months' RI — Factors considered in reducing the sentence stated*

Although the absence of any force used by the accused, the notions of permissive society and the legalisation of homosexuality in some countries cannot influence the court while convicting the accused under S. 377, but in judging the depravity of the action for determining the quantum of sentence, all the relevant aspects bearing on the question of nature of offence and quantum of sentence must be kept in view. So considered the substantive sentence of 3 years' RI in the present case must be reduced to 6 months' RI. *Fazal Rab Choudhary* v. *State of Bihar,* (1982) 3 SCC 9: 1982 SCC (Cri) 529: AIR 1983 SC 323.

Bench Strength **2**. Coram: *D.A. Desai* and *Baharul Islam*, JJ. [Date of decision: 13-9-1982]

[9677] — S. 377 — Unnatural offence — Sentence — Conviction for sodomy — *Accused highly educated and cultured but suffering from mental aberration — Sentence reduced to that already undergone. Chitranjan Dass* v. *State of U.P.*, (1974) 4 SCC 454: 1974 SCC (Cri) 490: AIR 1974 SC 2352: 1975 Cri LJ 30: 1975 Punj LR (D) 16.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-12-1973]

[9678] — S. 377 — Unnatural offence — Sodomy — Appreciation of evidence — Alleged human conduct in respect of commission of the offence, whether natural —*Act allegedly committed at 8 o'clock in the morning, for a continuous period of seven days, inside the school premises — Appellant-accused Swamiji allegedly calling the victim complainant, PW 1 through PW 2 and G, to office rooms attached with staff and members — Though the office room was partitioned and one part of it was converted into a bedroom, held, it is against natural human conduct that such an act would be committed at 8 o'clock in the morning and that too for a continuous period of seven days — Evidence Act, 1872, S. 114*

On 18-7-1986 at about 8.30 a.m., the appellant Swamiji in a position of authority in the Mutt school allegedly through PW 2, *P* and *G* called the complainant, PW 1 a student of the IXth standard to his office. The office had been partitioned and one part of it had been converted into a bedroom. PW 1 alleged that he was then subjected to unnatural offence by the appellant. His clothes, anus and panche (lungi) got soiled. He allegedly came back to his house with his brother on 28-7-1986. He gave the dirty clothes for washing to his mother. His mother, PW 4 found sticky substances in the lungi. When accosted, he allegedly told her about the indecent behaviour of the appellant. PW 8, *B*, the maternal uncle of Respondent 2 at that time was also present. The victim was allegedly persuaded to go back to the school. He came back to the school on 3-8-1986. PW 9, *S* and *N* were said to have been asked by the appellant to bring him again to the appellant's office. He declined to come. He allegedly made a complaint to the senior Swamiji as regards the incident who assured him of looking thereinto and asked him not to make any complaint, the prestige of the Mutt being involved. However, no action was allegedly taken. PW 1 thereafter lodged a first information report on 29-8-1986 at about 6.30 p.m. The appeal against acquittal and the criminal revision application were taken up together for hearing by the High Court. The High Court by the impugned order convicted the appellant-accused.

Allowing the appeal,

Held :

The question as to whether the witnesses in criminal cases, irrespective of the nature of offence should be fully relied upon or not, would depend upon the facts of each case. There cannot be any precedent on facts. The entire facts and circumstances of this case must be taken note of. The High Court merely relied upon the evidence of the complainant victim, PW 1. His statements were taken as gospel truth. Only on the basis thereof, all other factors pointing out the discrepancies in the prosecution case were lost sight of. The offence of sodomy was said to have been repeated by the appellant upon Respondent 2 (a student of the Mutt school) for seven days at about the same time. It is wholly unlikely that a student of a school of the Mutt, where compulsorily prayer has to be offered on a clean cloth and as apart from two pairs of lungi and two pairs of school uniforms he did not have anything else, had been putting on the same lungi at least for about seven days while visiting the appellant at his call. From the statements of PW 4, the mother of Respondent 2 it appears that according to PW 1, his mother used to come to the school for washing the clothes once in a week or so. At the same time, soap had been provided to PW 1 for washing his clothes. This conduct on the part of PW 1 throws serious doubt on the whole story. (Paras 34, 17, 31 and 18)

It is against natural human conduct that sodomy would be committed at 8 o'clock in the morning and that too continuously for seven days. The site plan shows that the office of the senior Swamiji is only 5 ft away from the office of the appellant. There was a storeroom and also a room for sitting of the other staff members attached to the room. Even if PW 2 and *G* had been asked to bring the victim, PW 1 with them, it is against all human conduct that after closing the door they would be asked to be in the room and except seeing the act with their own eyes, for all intent and purport they would know what had been happening in the room. Despite the same, according to PW 2, when they came out of the room, PW 1 was asked about what had happened. He allegedly stated thereabout. According to the complainant, PW 2 and *G* called him only for the first day and not thereafter. How, then on all the other days, he went to the office room of the appellant in the same way is not explained. PW 2 and *G* as also PW 9 were not studying with him in the same class. They used to stay on the third floor of the hostel; whereas PW 1 used to stay on the ground floor thereof. (Paras 21 and 22). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411: (2009) 2 SCC (Cri) 813: AIR 2008 SC 2349: (2008) 65 AIC 263 (SC): 2008 Cri LJ 3042.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

State of Kerala v. Kurissum Moottil Antony, (2007) 1 SCC 627: (2007) 1 SCC (Cri) 403; State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316, relied on

B.C. Deva v. State of Karnataka, (2007) 12 SCC 122: (2008) 2 SCC (Cri) 253, distinguished

[9679] — S. 377 — Unnatural offences — Ingredients — *Held are: (i) carnal intercourse, and (ii) against order of nature — PWs 1 and 4 stating that A-2 and A-3 used to have sex and fellatio with them and other boys on many occasions — Held, ingredients of S. 377 proved — Conviction restored — Sentence of 6 years' RI and fine of GBP 20,000 on each accused, confirmed* (Paras 53 to 56). *Childline India Foundation* v. *Allan John Waters*, (2011) 6 SCC 261.

Bench Strength 2. Coram : **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision : 18-3-2011]

Vishal Jeet v. Union of India, (1990) 3 SCC 318: 1990 SCC (Cri) 482, relied on

[9680] — Ss. 377, 363, 376 r/w S. 511 — Sodomy, attempt to rape and kidnapping — Conviction justified — *Prosecutrix (aged 6 years) lured by appellant (aged between 16-18 years) and taken for a ride on a moped — He attempting to rape her, but having failed, committing intercourse through rectum — Medical report undisputed — Fact that the appellant who was known to the prosecutrix and her family, was identified the next day, even before FIR was lodged, proved — Held, conviction of appellant under Ss. 363, 376/511 and 377 and sentence of RI for 3 years, 5 years and 7 years respectively imposed by trial court and affirmed by the High Court called for no interference* (Paras 6, 2, 16 and 10). *Jameel* v. *State of Maharashtra*, (2007) 11 SCC 420: AIR 2007 SC 971: 2007 Cri LJ 1425: (2007) 51 AIC 753 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-1-2007]

[9681] — Ss. 377, 373, 372, 323 r/w Ss. 109 and 120-B — Testimony of some only of the victims and certain social activists deeply involved in espousing victims' cause — Corroboration — Need for — *Allegations of commission of unnatural offences with a number of victim boys — Only two boys (PWs 1 and 4) and two social activists (PWs 2 and 3) examined in court, the latter two being deeply involved in espousing the boys' cause and who deposed as prosecution witnesses as well — Held, further corroboration not required — No variance between examination-in-chief and cross-examination with regard to material particulars of sexual abuse — Omissions found were occasioned because Public Prosecutor had put questions which IO had not — Delay in divulging abuse inconsequential — Though conviction solely on basis of testimonies of PW 2 (social activist and lawyer working for welfare of uncared street children) and PW 3 (retired Principal and member of Monitoring Committee on Juvenile Justice) unsustainable but considering their initiation, work and interviews with children which laid foundation for investigation, their statements cannot be ignored as unacceptable — There was no need for further corroboration since it was not necessary to examine more victims of similar nature — It was also possible that since the boys were provided basic necessities in shelter homes, out of fear and to continue living in same shelter, boys other than PWs 1 and 4 may not have complained — Impugned judgment acquitting accused set aside and conviction and sentence passed by trial court restored — Evidence Act, 1872, Ss. 5, 6 and 7* (Paras 30 to 52). *Childline India Foundation* v. *Allan John Waters*, (2011) 6 SCC 261.

Bench Strength 2. Coram : **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision : 18-3-2011]

State of Kerala v. Kurissum Moottil Antony, (2007) 1 SCC 627: (2007) 1 SCC (Cri) 403; Rafiq v. State of U.P., (1980) 4 SCC 262: 1980 SCC (Cri) 947; Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551: 2004 SCC (Cri) 31, followed

[9682] — Ss. 377, 373, 372, 323 r/w Ss. 109 and 120-B — Unnatural offences against children in shelter homes — Child sex tourism — Offence committed under S. 377 IPC — Corroboration — Whether necessary — Conviction restored — *Anchorage Shelters set up by A-3, a British National — A-2 his friend, also a British National and a frequent visitor to the Shelters — Victims PWs 1 and 4 deposing in detail about activities in Anchorage Shelters which indicating criminal conspiracy amongst accused A-1 to A-3 to obtain possession of vulnerable minor street boys and subjecting them to sexual abuse — PWs 1 and 4 stating that A-2 and A-3 had sex and fellatio with them and other boys on many occasions — No sexual activity alleged against A-1 excepting that he used to cane/beat them on flimsy grounds — No variance between examination-in-chief and cross-examination with regard to material particulars of sexual abuse — Omissions found were occasioned because Public Prosecutor had put questions which IO had not — Delay in divulging abuse inconsequential — Though conviction solely on basis of testimonies of PW 2 (social activist and lawyer working for welfare of uncared street children) and PW 3 (retired Principal and member of Monitoring Committee on Juvenile Justice) unsustainable but considering their initiation, work and interviews with children which laid foundation for investigation, their statements cannot be ignored as unacceptable — There was no need for further corroboration since it was not necessary to examine* *more victims of similar nature — It was also possible that since the boys were provided basic necessities in shelter homes, out of fear and to continue living in same shelter, boys other than PWs 1 and 4 may not have complained — Impugned judgment acquitting accused set aside and conviction and sentence passed by trial court restored: A-1's sentence of 3 years' and A-2 and A-3's sentence of 6 years' RI each, confirmed — Trial Judge directed to ensure recovery and disbursal of compensation amount of GBP 20,000 each from A-2 and A-3 — Juvenile Justice Act, 1986, S. 23 — CrPC, 1973, S. 357. Childline India Foundation* v. *Allan John Waters*, (2011) 6 SCC 261.

Bench Strength **2**. Coram : **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision : 18-3-2011]

State of Kerala v. Kurissum Moottil Antony, (2007) 1 SCC 627: (2007) 1 SCC (Cri) 403; Rafiq v. State of U.P., (1980) 4 SCC 262: 1980 SCC (Cri) 947; Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551: 2004 SCC (Cri) 31, followed

— S. 378 *See also* Ss. 390, 378 and 383

[9683] — S. 378 — Accused snatching revolver from member of complainant's party to prevent further bloodshed and surrendering it to the police at the earliest — *Held, there was no intent to steal. Mohar Singh* v. *State of Rajasthan*, 1980 Supp SCC 655: 1981 SCC (Cri) 552.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali*, **A.D. Koshal** and *A.P. Sen*, JJ. [Date of decision: 6-11-1979]

[9684] — S. 378 — Circumstantial evidence — *Last seen together and recovery of ornaments — Conviction upheld under Ss. 302 and 379. Nisa Stree* v. *State of Orissa*, AIR 1954 SC 279: 1954 Cri LJ 743.

Bench Strength **3**. Coram: *M.C. Mahajan*, **S.R. Das** and *N.H. Bhagwati*, JJ. [Date of decision: 24-9-1953]

See more cases under S. 411 and S. 302

[9685] — S. 378 — "Dishonest intention" — What is — 'Theft' under IPC differs from 'larceny' in English law

A person can be said to have dishonest intention if in taking the property it is his intention to cause gain, by unlawful means, of the property to which the person so gaining is not legally entitled or to cause loss, by wrongful means, of property to which the person so losing is legally entitled. It is further clear from the definition that the gain or loss contemplated need not be a total acquisition or a total deprivation but it is enough if it is a temporary retention of property by the person wrongfully gaining or a temporary "keeping out" of property from the person legally entitled. This is clearly brought out in illustration (1) to S. 378, Penal Code, and is uniformly recognised by various decisions of the High Courts which point out that in this respect 'theft' under the Indian Penal Code differs from 'larceny' in English law which contemplated permanent gain or loss. *K.N. Mehra* v. *State of Rajasthan*, AIR 1957 SC 369: 1957 SCR 623: 1957 Cri LJ 552, 555.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 11-2-1957]

Queen-Empress v. Shri Churn Chunge, ILR 22 Cal 1017; and Queen-Empress v. Nagappa, ILR 15 Bom 344, approved

[9686] — S. 378 — 'Dishonestly' — Illegal seizure and impounding of cattle in purported exercise of power under S. 10 of Cattle Trespass Act, 1871 — *No wrongful loss to owner of property — Hence does not amount to theft*

A person is said to do a thing dishonestly when he does anything with the intention of causing wrongful gain to one person or wrongful loss to another person. In the case of illegal seizures and impounding of cattle the person seizing the cattle does not gain anything. He simply takes the cattle to the pound. He does not use them for his purpose. He in fact, exercise no greater dominion over those cattle than that of being in their custody on their journey to the pound. The owner of the cattle, seized illegally suffers no loss, and that therefore the act of illegal seizure of cattle does not cause any wrongful loss to the owner of the cattle. It follows that the person seizing cattle purporting to act under the provisions of the Cattle Trespass Act does not cause any wrongful loss to the owner of the cattle.

An act done in accordance with the provisions of the Act cannot be considered to be a dishonest act, and would not justify the conclusion that the taking of the cattle to the pound amounted to the offence of theft. *Ramratan* v. *State of Bihar*, AIR 1965 SC 926: (1965) 1 SCR 293: 1965 BLJR 399: (1965) 2 Cri LJ 18, 22-2.

Bench Strength **3**. Coram: *A.K. Sarkar*, *K.N. Wanchoo* and **Raghubar Dayal**, JJ. [Date of decision: 22-9-1964]

Empress v. Ram Jiwan, 1881 All WN 158 and Dayal v. Emperor, AIR 1943 Oudh 280, 44 Cri LJ 640, approved

[9687] — S. 378 — "Move that property" — *Illegal seizure of cattle found trespassing on land — Does not amount to theft*

Till the property is moved, no offence of theft can be committed even if the alleged offender had intended to take dishonestly the property out of the possession of any other person without his consent. Mere seizure of cattle found trespassing on land does not amount to moving the cattle. The act of moving the cattle would be subsequent to seizing them. It follows therefore that the seizure of cattle, though illegal, cannot amount to the offence of theft. *Ramratan* v. *State of Bihar*, AIR 1965 SC 926: (1965) 1 SCR 293: 1965 BLJR 399: (1965) 2 Cri LJ 18, 22.

Bench Strength **3**. Coram: *A.K. Sarkar, K.N. Wanchoo* and **Raghubar Dayal**, JJ. [Date of decision: 22-9-1964]

[9688] — S. 378 — Possession of railway property — *Accused found moving trolley loaded with railway property — Held, possession proved — Railway Property (Unlawful Possession) Act, 1966 — S. 3(a). Purna Chandra Sen Gupta* v. *Supdt. & Remembrancer of Legal Affairs*, (1994) 1 SCC 429: 1994 SCC (Cri) 430: (1994) 31 ACC 22.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 8-10-1993]

[9689] — S. 378 — Principles for interpretation of — Definition contained in policy — "Burglary" defined in policy as theft preceded by use of force or violence — Theft not so preceded, on facts, if covered by policy — *Held, the terms of the policy shall govern the contract between the parties and they have to abide by the definition given therein, and all those expressions appearing in the policy have to be construed as it is and something cannot be added, subtracted or substituted — Parties cannot rely on the definition given in other enactments — Therefore, the definition of burglary in criminal law will be of no avail to the insured, and he is restricted to the definition provided in the insurance policy — Supreme Court however not ordering recovery of compensation already given on orders of Consumer Forums below — Court making suggestion that terms of the policy be suitably amended so that burglary is given a meaning closer to the realities of life, and the common man is not tripped up on technical grounds — Contract Act, 1872, S. 37 — Insurance Act, 1938, S. 46 — Consumer Protection Act, 1986, Ss. 2(1)(o), (g) and (c)(ii)*

The respondent took out a policy by the appellant Company against burglary and/or housebreaking. The term "burglary and/or housebreaking" was defined in terms of the policy. During the currency of the policy, the respondent on a visit to a godown covered by the said policy, found that certain goods had been stolen. Thereafter, the respondent raised a claim against the appellant Company under the aforesaid policy for having incurred the aforesaid loss by theft. The appellant Company repudiated the claim of the respondent on the ground that theft was not covered by the insurance policy as no burglary had taken place in the godown by use of force or violence. Thereafter, the respondent approached the Consumer Forum and made a claim for the loss of the said goods. The appellant Company contested the claim and took the stand that the claim was not covered as per the insurance policy. However, the District Forum overruled the objection and held that burglary includes theft and directed the appellant Company to release the claim of the respondent. Since the order of the District Forum was upheld both by the State Commission and the National Commission, the appellant was before the Supreme Court by special leave.

Allowing the appeal but not ordering the recovery of compensation already given,

Held :

It is settled law that terms of the policy shall govern the contract between the parties and they have to abide by the definition given therein and all those expressions appearing in the policy should be interpreted with reference to the terms of policy and not with reference to the definition given in other laws. The terms of the policy have to be construed as it is and something cannot be added or subtracted. Howsoever liberally may the policy be construed liberalism cannot be taken to the extent of substituting the words which are not intended. It is a matter of contract and in terms of the contract the relation of the parties shall abide and it is presumed that when the parties have entered into a contract of insurance with their eyes wide open, they cannot rely on the definition given in other enactments. Therefore, when the definition of the word 'burglary' has been defined in the policy (set out in para 4 herein) then the cause should fall within that definition. Once a party has agreed to a particular definition, he is bound by it and the definition of criminal law will be of no avail. (Paras 9 and 6)

As per the definition of the word 'burglary' in the policy, followed with the reference to violence, it is clear that if any theft is committed it should necessarily be preceded with violence i.e. entry into the premises for committing theft should involve force or violence or threat to insured or to his employees or to the members of his family. Therefore, the element of force and violence is a condition precedent for burglary and housebreaking. The term 'burglary' as defined in the English dictionary means an illegal entry into the building with an intent to commit crime such as theft. But in absence of violence or force the insurer cannot claim indemnification against the insurance company. (Paras 6 and 15)

However, all the three forums have already awarded compensation and the amount has been paid to the respondent, therefore, on the point of equity the payment which has already been made would not liked to be disturbed. However, in view of the legal position stated the orders of the District

Forum, State Commission and the National Commission cannot be upheld. (Para 16)

The terms of the policy as laid down by the insurance company should be suitably amended by the insurance company so as to make it more viable and facilitate the claimants to make their claim. The definition is so stringent in the present case that it gives rise to a difficult situation for the common man to understand that in order to maintain his claim he will have to necessarily show evidence of violence or force. The definition of the word 'burglary' should be given a meaning which is closer to the realities of life. The common man understands that he has taken out the policy against theft. He hardly understands whether it should be preceded with violence or force. (Para 17). *United India Insurance Co. Ltd.* v. *Harchand Rai Chandan Lal*, (2004) 8 SCC 644: (2004) 3 KLT 560.

Bench Strength **2**. Coram: *S.N. Variava* and **A.K. Mathur**, JJ. [Date of decision: 24-9-2004]

[**Ed.**: *See also* (2004) 3 SCC 694.]

[9690] — S. 378 — Temporary dispossession or deprivation of property covered — *Taking need not be with intention of retaining property permanently*

To commit theft one need not take moveable property permanently out of the possession of another with the intention not to return it to him. It would satisfy the definition if he took any moveable property out of the possession of another person though he intended to return it later on.

In the present case the record was in the possession of the Engineering Department under the control of the Chief Engineer. The appellant was the Superintendent in that office; he took the file out of the possession of the said engineer, removed the file from the office and handed it over to another person, and returned it to the office.

Held :

It cannot be disputed that the appellant unauthorizedly took the file from the office and handed it over to another person. He had, therefore, unlawfully taken the file from the department, and for a short time he deprived the Engineering Department of the possession of the said file. The loss need not be caused by a permanent deprivation of property but may be caused even by temporary dispossession, though the person taking it intended to restore it sooner or later. A temporary period of deprivation or dispossession of the property of another causes loss to the other. *Pyare Lal Bhargava* v. *State of Rajasthan*, AIR 1963 SC 1094: 1963 Supp (1) SCR 689: (1963) 2 Cri LJ 178.

Bench Strength **4**. Coram: *Syed Jafer Imam*, **K. Subba Rao**, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 22-10-1962]

[9691] — S. 378 — Theft — Movable property in joint possession of husband and wife — *Held, husband who is alleged to have taken away articles, cannot be considered to have committed theft*

So far as the allegation in regard to criminal breach of trust is concerned, it related to the dowry articles. No allegation has been made that the appellants are guilty of commission of offence punishable under Section 3 and/or 4 of the Dowry Prohibition Act. If any dowry has been given, the same would attract the provisions of the special Act in preference to the general statute. Furthermore, if any article is given by way of dowry, the question of entrustment thereof for or on behalf of the bride would not arise. (Para 30)

Allegations made in FIR merely disclose that at the time of leaving the house, the appellants had taken with them certain articles. The said articles ought to be in lawful possession of Respondent 3 (wife). The offence of theft might have been committed. But when they are in joint possession, even no offence of theft would also be made out. (Para 31). *Harmanpreet Singh Ahluwalia* v. *State of Punjab*, (2009) 7 SCC 712: (2009) 3 SCC (Cri) 620: 2009 Cri LJ 3462.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

[9692] — S. 378 — Theft — When occurs — *Unless property is in possession of any person other than the accused, question of theft does not arise*

The averments in the complaint clearly show that neither the aircrafts nor their engines were ever in the possession of IOC. It is admitted that they were in the possession of NEPC India at all relevant times. The question of NEPC committing theft of something in its own possession does not arise. (Para 19). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[9693] — S. 378 — Theft of electrical energy is not an offence under Penal Code — It is an offence under Electricity Act — *Prosecution in respect of that offence would be incompetent unless instituted at the instance of a person named in S. 50 of Electricity Act, 1910 — Electricity Act, 1910, Ss. 39 and 50. Avtar Singh* v. *State of Punjab*, AIR 1965 SC 666: (1965) 1 SCR 103: (1965) 1 Cri LJ 605.

Bench Strength **3**. Coram: **A.K. Sarkar**, *K.N. Wanchoo* and *Raghubar Dayal*, JJ. [Date of decision: 25-8-1964]

AIR 1956 Bom 354: 1956 Cri LJ 701: 1964 (1) Cri LJ 472 (Pat) and AIR 1964 Mad 367: 1964 (2) Cri LJ 303 (FB), overruled

[9694] — Ss. 378 and 23 — "Wrongful gain" and "wrongful loss" — Theft of aircraft — *Accused along with another flying an Indian Air Force aircraft and landing inside Pakistan — Held, theft was committed*

There can be no reasonable doubt that the taking out of the aircraft by the appellant for the unauthorised flight has in fact given the appellant the temporary use of the aircraft, for his own purpose and has temporarily deprived the owner of the aircraft viz. the Government, of its legitimate use for its purposes, i.e., the use of this aircraft for the Indian Air Force Squadron that day. Such use being unauthorised and against all the regulations of aircraft-flying, was clearly a gain or loss by unlawful means. Further the unlawful aspect is emphasised by the fact that it was for flight to a place in Pakistan. The true position is that all the circumstances of the unauthorised flight justify the conclusion both as to the absence of consent and as to the unlawfulness of the means by which there has been a temporary gain or loss by the use of the aircraft. There has, therefore, been both wrongful gain to the appellant and wrongful loss to the Government.

There is no scope for any doubt in this case, that though the ultimate purpose of the flight was to go to Pakistan, the use of the aircraft for that purpose and the unauthorised and hence unlawful gain of that use to the appellant and the consequent loss to the Government of its legitimate use, can only be considered intentional. This is not by virtue of any presumption but as a legitimate inference from the facts and circumstances of the case. Therefore, the fact proved constitute theft. *K.N. Mehra* v. *State of Rajasthan*, AIR 1957 SC 369: 1957 SCR 623: 1957 Cri LJ 552, 555.

Bench Strength 3. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 11-2-1957]

[9695] — Ss. 378 and 379 — Fish taken from tank of another will be theft

Fish in their free state are regarded as *ferae naturae* but they are said to be in the possession of a person who has possession of any expanse of water such as a tank, where they live but from where they cannot escape. Fishes are also regarded as being in the possession of a person who owns an exclusive right to catch them in a particular spot known as a fishery but only within that spot. There can thus be theft of fish from a tank which belongs to another and is in his possession, if the offender catches them without the consent of the owner and without any bona fide claim of right. *Chandi Kumar Das Karmakar* v. *Abanidhar Roy*, AIR 1965 SC 585: (1965) 1 Cri LJ 496.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 9-10-1963]

[9696] — Ss. 378 and 379 — Theft — Ingredients of — Dishonest intention essential — *Can be disproved by acting under bona fide claim*

The offence of theft consists in the dishonest taking of any moveable property out of the possession of another without his consent. Dishonest intention exists when the person so taking the property intends to cause wrongful gain to himself or wrongful loss to the other. This intention is known as animus furandi and without it the offence of theft is not complete. *Chandi Kumar Das Karmakar* v. *Abanidhar Roy*, AIR 1965 SC 585: (1965) 1 Cri LJ 496.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 9-10-1963]

[9697] — Ss. 378 and 379 — Theft — Mens rea necessary — Nature and extent of — Existence of bona fide claim of right, held, good defence to prosecution for theft

The ordinary rule that mens rea may exist even with an honest ignorance of law is sometimes not sufficient for theft. A claim of right in good faith, if reasonable, saves the act of taking from being theft and where such a plea is raised by the accused it is mainly a question of fact whether such belief exists or not.

It is settled law that where a bona fide claim of right exists, it can be a good defence to a prosecution for theft. An act does not amount to theft, unless there be not only no legal right but no appearance or colour of a legal right.

By the expression "colour of a legal right" is meant not a false pretence but a fair pretence, not a complete absence of claim but a bona fide claim, however weak.

In the instant case there was a dispute between the parties which had not till then been decided by the Civil Court. In these circumstances it was not improbable that the appellants considered that they were entitled as the recorded tenants, to catch fish. Catching of fish in the big tank with net was done quite openly. The circumstances bring this case within the rule that where the taking of moveable property is in the assertion of a bona fide claim of right, the act, though it may amount to a civil injury, does not fall within the offence of theft. *Chandi Kumar Das Karmakar* v. *Abanidhar Roy*, AIR 1965 SC 585: (1965) 1 Cri LJ 496, 498.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 9-10-1963]

[9698] — Ss. 378 and 379 — Theft — Transfer of possession of the property however transient is an essential ingredient of. *State of Maharashtra* v. *Vishwanath Tukaram Umale*, (1979) 4 SCC 23: 1979 SCC (Cri) 893: AIR 1979 SC 1825: 1979 Cri LJ 1193.

Bench Strength **3**. Coram: *R.S. Sarkaria*, **P.N. Shinghal** and *O. Chinnappa Reddy*, JJ. [Date of decision: 2-8-1979]

[9699] — Ss. 378, 379 and 143 — Bona fide dispute over land — *Held, on facts of the case, by harvesting the standing crop, offence of theft not committed*

Where the documents indicate that there was from the very inception a dispute about the land going on between the parties and the possession could have been mere symbolic possession, it is impossible to say that the appellants were not under a bona fide belief that they were entitled to the possession of the land and that being so there was no question of their having trespassed into the said land or formed an unlawful assembly for committing theft. When the entire question of possession and even title was in an extremely fluid state and the question of the respondent's possession on the date of the incident was not beyond controversy, the trial court in these circumstances ought not to have and could not have, on a mere partial view of the evidence, come to a conclusion that the appellants had formed an unlawful assembly and that as members of such unlawful assembly had been guilty of stealing the said crop. *Ram Ekbal Rai* v. *Jaldhari Pandey*, (1972) 3 SCC 841: 1973 SCC (Cri) 26: AIR 1972 SC 949: 1972 Cri LJ 584.

Bench Strength **2**. Coram: **J.M. Shelat** and *H.R. Khanna*, JJ. [Date of decision: 16-2-1972]

[9700] — Ss. 378, 379 and 380 — Bona fide claim of right held good defence to prosecution for theft

Where a bona fide claim of right exists, it can be a good defence to a prosecution for theft. An act does not amount to theft, unless there be not only no legal right but no appearance or colour of a legal right. That the goods were taken openly is a good defence. *Suvvari Sanyasi Apparao* v. *Boddepalli Lakshminarayana*, AIR 1962 SC 586: 1962 Supp (1) SCR 8: (1962) 1 Cri LJ 518: 1962 All Cri R 177.

Bench Strength **3**. Coram: *S.K. Das*, *J.L. Kapur* and **M. Hidayatullah**, JJ. [Date of decision: 5-10-1961]

[9701] — Ss. 378 and 383 — Theft and extortion — Distinction between — *Held, whereas offence of extortion is carried out by overpowering the will of the owner, in commission of an offence of theft the offender's intention is always to take without that person's consent* (Para 12). *Dhananjay* v. *State of Bihar*, (2007) 14 SCC 768: (2007) 51 AIC 54 (SC): 2007 Cri LJ 1440: (2007) 2 KLJ 294 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 2-2-2007]

[9702] — Ss. 378, 403, 405, 415 and 425 — Petition under S. 482 CrPC for quashing criminal complaint alleging commission of various offences under Penal Code — Disputes arising from breach of contract — Civil remedy available and availed of — Remedy under criminal law — Availability of — *Held, the same is not barred if the allegations disclose a criminal offence — Allegations contained in the complaint, taken on their face value, if, on facts, constituted offences under Penal Code — Maintainability of the petition under S. 482 — However, current practice of misuse of criminal process to put undue pressure in civil disputes deprecated — CrPC, 1973, S. 482. Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[9703] — Ss. 378 and 405 — Respondent taking insurance policy for his business in jewellery — On a theft in his business premises, respondent lodging a claim with the appellant — Question whether the loss was covered by the insurance policy — Interpretation of the word "entrusted" as used in the exclusion clause of the policy — *High Court held that there was no entrustment on the part of the owner to the customer and that the act of removal of the goods by the customer was nothing but a plain theft — Held, it is not in dispute that the insurance policy covered the risk of theft — However, to bring the case within the exclusion clause it was for the insurer to establish that the case falls within its purview — Here, for concluding whether exclusion clause was attracted or not, loss or damage should have been occasioned, inter alia, by a customer in respect of property entrusted to him — A customer contemplated thereunder must have to be one who would be a man of trust — If a customer is not a man of trust or the property had not been entrusted to him, held, the exclusion clause would not apply — The customer who committed theft of jewellery was an unknown person as stated in the FIR — Thus, held, there was no occasion for the respondent to entrust the jewellery to him — When a customer enters into a jewellery shop, as of necessity, the owner or his agent must allow him to inspect the merchandise, the customer* *intends to purchase — For the said purpose, possession in the legal sense is not handed over — The owner or his agent does not lose complete control thereover — Transfer of possession of goods is a sine qua non for entrustment which was not done — Hence, the view taken by High Court was correct — Contract Act, 1872, S. 37*

The respondent carried a business in jewellery. It obtained a policy known as "Jeweller Block Policy" from the appellant Insurance Company. A theft of 140 gm of jewellery worth Rs 63,000 occurred in his business premises. An FIR was lodged therefor. The respondent also lodged a claim with the appellant. The same having not been settled for a long time a complaint was filed before the State Consumer Forum by the respondent. The question before the Commission was whether the loss in question was covered by the insurance policy. The contention of the appellant was that the claim of the respondent was covered by the exclusion clause contained in the insurance policy. Commission found the claim not sustainable, inter alia, on the ground that the loss was not covered by the policy holding that the theft by customer if any has been put in exclusion clause of the policy. High Court allowed the appeal preferred by the respondent by not agreeing therewith. Hence this appeal.

Dismissing the appeal,

Held :

A short question which arises is whether exclusion clause 8 of the policy is applicable to the facts and circumstances of the present case. It is not in dispute that an insurance cover against theft was granted by the appellant. The insurance policy, thus, covered the risk of theft also. An insurer determines the extent of its risk. It floats the policy knowing fully well the risk it seeks to cover. Having regard to the determination of the risk only he fixes the quantum of premium. The insured while entering into a contract of insurance must precisely know the extent of his cover so that he may take out additional insurance if it is so required. (Paras 6 and 7)

However, there may be an express clause excluding the applicability of insurance cover. Wherever such exclusionary clause is contained in a policy, it would be for the insurer to show that the case falls within the purview thereof. In a case of ambiguity, it is trite, the contract of insurance shall be construed in favour of the insured. (Para 8)

Clause 8 of the contract of insurance would be attracted only where the offences specified therein are committed by any of the persons mentioned therein. For defeating the claim of the respondent, it was, thus, obligatory on the part of the appellant to establish that the conditions prescribed therein were satisfied. (Para 9)

The word "entrust" would imply giving responsibility to a person upon whom the owner has confidence. It envisages establishment of a relationship. When a customer enters into a jewellery shop, as of necessity, the owner or his agent must allow him to inspect the merchandise, the customer intends to purchase. For the said purpose, possession in the legal sense is not handed over. The owner or his agent does not lose complete control thereover. (Para 12)

For the purpose of arriving at a conclusion as to whether the exclusion clause is attracted or not, loss or damage must be occasioned, inter alia, by a customer in respect of the property entrusted to him. A customer contemplated thereunder must have to be one who would be a man of trust. If a customer is not a man of trust or the property had not been entrusted to him, the exclusion clause would not apply. The customer who committed theft of jewellery was an unknown person. It was so categorically stated in the first information report. There was, thus, no occasion for the respondent to entrust the jewellery to him. Transfer of possession of goods is a *sine qua non* for entrustment. The person must be handed over the possession of the property. (Paras 13 and 17). *National Insurance Co. Ltd.* v. *Ishar Das Madan Lal*, (2007) 4 SCC 105: (2007) 136 Comp Cas 320: (2007) 2 CPJ 5 (SC): (2007) 53 AIC 86 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 20-2-2007]

State of Gujarat v. Jaswantlal Nathalal, AIR 1968 SC 700: (1968) 2 SCR 408; Supdt. and Remembrancer of Legal Affairs v. S.K. Roy, (1974) 4 SCC 230: 1974 SCC (Cri) 399; Ram Narayan Popli v. CBI, (2003) 3 SCC 641: 2003 SCC (Cri) 869; Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575: 1956 Cri LJ 1116, relied on

[9704] — Ss. 378 Ill. (a) and 379 — Theft — Conviction and sentence — *Stealthily uprooting standing crops and removal thereof by accused from the field of deceased party firmly established on evidence — Held, act constituted theft punishable under S. 379 — However, in absence of evidence regarding value of the uprooted crops, maximum sentence provided under S. 379 need not be imposed*

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves the property in a manner to facilitate such taking will be committing theft as defined under Section 378 IPC.

A thing attached to the earth as soon as it is severed from the earth will sufficiently constitute the ingredient necessary to make the act fall under the said provision. Illustration (*a*) to Section 378 further clarifies the position beyond doubt that as soon as the severance is effected in order to take dishonestly such commodity out of the possession of any person without his consent, the commission of the offence of theft stood completed. In this case the oral evidence tendered by PWs, who witnessed the occurrence, firmly established the uprooting of some of the crops and removal of the same by A-1. Consequently, the accused (A-1) was rightly convicted under Section 379. However, in the absence of any substantive proof of the value of the same and the lapse of time, the maximum sentence envisaged under Section 379 need not be imposed and the interest of justice would be met if the sentence is reduced to one year's RI. (Para 10). *Malhu Yadav* v. *State of Bihar*, (2002) 5 SCC 724: 2002 SCC (Cri) 1190: AIR 2002 SC 2137: 2002 Cri LJ 2819.

Bench Strength **2**. Coram: *R.P. Sethi* and **Doraiswamy Raju**, JJ. [Date of decision: 1-5-2002]

[9705] — Ss. 378 Ill. (k) and 24 — Applicability of, when financier repossess goods under hire-purchase agreement — *Held, Ill. (k) of S. 378 is not applicable where hirer in hire-purchase agreement defaults in making instalment payments and owner-financier then takes possession of the property (motor vehicle in this case) delivered to hirer under the agreement, as the vital element of "dishonest intention" is lacking*

The plea that the appellants have committed theft is without any basis as the appellants have taken repossession of the vehicle in exercise of their right under the agreement. There may be instances where the owner of the goods may commit theft of his own goods as indicated in Illustration (*k*) of Section 378 IPC. But in the instant case, the owner repossessing the vehicle delivered to the hirer under the hire-purchase agreement will not amount to theft as the vital element of "dishonest intention" is lacking. The element of "dishonest intention" which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. (Paras 12 and 13)

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. (Para 17). *Charanjit Singh Chadha* v. *Sudhir Mehra*, (2001) 7 SCC 417: 2001 SCC (Cri) 1557: AIR 2001 SC 3721.

Bench Strength **2**. Coram: *K.T. Thomas* and **K.G. Balakrishnan**, JJ. [Date of decision: 31-8-2001]

R.M. Goode: Hire Purchase Law & Practice, 2nd Edn., p. 846, relied on

Sardar Trilok Singh v. Satya Deo Tripathi, (1979) 4 SCC 396: 1979 SCC (Cri) 987; K.A. Mathai v. Kora Bibbikutty, (1996) 7 SCC 212: 1996 SCC (Cri) 281, relied on

— S. 379 *See also* Ss. 107, 120-A, 120-B and 379

See also Ss. 120-B, 302, 34, 109, 379 and 201

See also S. 120-B r/w Ss. 218, 379, 467, 468, 471 and 419

See also Ss. 147, 148, 324, 447, 448, 427, 379, 307 and 302 r/w S. 149

See also under Ss. 299 to 304

See also Ss. 378 and 379

See also Ss. 378, 379 and 143

See also Ss. 378, 379 and 380

See also Ss. 378 Ill. (a) and 379

See also Ss. 396, 506, 341 and 379

See also Ss. 406/420/120-B and 379

See also Ss. 461, 379, 403, 342, 166 and 167

[9706] — S. 379 — Accused Government servants alleged to have participated in unauthorised cutting of crop in complainant's field — *Police visiting the place at the time of occurrence and taking only one person to police station for enquiry but taking no further action — Private complaint lodged in court four days thereafter implicating several persons including the accused — Old enmity existing between complainant and accused — Implication of innocent persons cannot be ruled out in the circumstance — Hence, benefit of doubt given to the accused. Purna* v. *State of U.P.*, (1984) 2 SCC 393: 1984 SCC (Cri) 261: AIR 1984 SC 454: 1984 Cri LJ 187: 1984 ALJ 288.

Bench Strength **2**. Coram: *D.A. Desai* and *E.S. Venkataramiah*, JJ. [Date of decision: 25-2-1983]

[9707] — S. 379 — Complaint under, against Tehsildar without sanction under S. 197 CrPC — Whether, on facts, maintainable — Applicability — Test for sanction for prosecution restated — *District Collector, by an order accompanying the Revenue Collection Certificate, requiring the Tehsildar to recover a certain sum of lease money from S — Tehsildar registering the matter and getting a demand letter issued and served on S but S not making payment — Subse-*

quently, S appearing in the Tehsil Office with his scooter — Tehsildar seizing the scooter and getting the same auctioned — Such an act on the part of Tehsildar, held, was a bona fide act in purported exercise of the power under M.P. Land Revenue Code — Hence, in absence of necessary sanction under S. 197, CrPC, complaint under S. 379, Penal Code filed by S against the Tehsildar on account of seizure of the scooter, held, not maintainable — Further held, High Court erred in examining the legality of the order of attachment of the Collector at this stage and in holding otherwise on that ground — M.P. Land Revenue Code, 1959 (20 of 1959) — CrPC, 1973, S. 197

Before coming to a conclusion whether the provisions of Section 197 of CrPC will apply, the court must come to a conclusion that there is a reasonable connection between the act complained of and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim that he did it in the course of the performance of his duty. Therefore, in the present case the conclusion is inescapable that the act of the Tehsildar in seizing the scooter of the respondent was in discharge of his official duty which he was required to do in purported exercise of the power under the M.P. Land Revenue Code on the basis of the order issued by the Collector for getting the lease money from the respondent and the said act cannot be said to be a pretended or fanciful claim on the part of the Tehsildar. The High Court committed error at that stage in examining the flaw or legality of the order of attachment issued by the Tehsildar. Therefore, the acts complained of by the respondent in his complaint under Section 379, IPC against the Tehsildar cannot be taken cognizance of by any court without prior sanction of the competent authority under Section 197 CrPC. Admittedly there was no such sanction of the competent authority. *N.K. Ogle* v. *Sanwaldas*, (1999) 3 SCC 284: 1999 SCC (Cri) 405: AIR 1999 SC 1437: 1999 Cri LJ 2105.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 18-3-1999]

Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: (1955) 2 SCR 925: (1955) 28 ITR 941; Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan, (1998) 1 SCC 205: 1998 SCC (Cri) 1, followed

B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; B.S. Sambhu v. T.S. Krishnaswamy, (1983) 1 SCC 11: 1983 SCC (Cri) 125; Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944, distinguished

[9708] — S. 379 — Dishonest abstraction of electricity — *Held, is deemed to be theft within the meaning of the Penal Code and must be deemed for all purposes a theft including the purpose of imposing punishment — S. 39 must be read along with provision of IPC dealing with theft — On facts, in view of nature of the offence and long delay prosecution cannot be allowed to go on — Electricity Act, 1910, Ss. 39/44 r/w S. 379 IPC. Satya Narain Prasad* v. *Bhagwan Ramdas*, 1995 Supp (4) SCC 629: 1996 SCC (Cri) 71.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 9-2-1994]

Avtar Singh v. State of Punjab, (1965) 1 SCR 103: AIR 1965 SC 666, explained

[9709] — S. 379 — Disposal of property by Magistrate — *Appellant-company giving financial facility on hire-purchase basis to respondent for purchase of motor vehicle — On respondent committing default in the payment of purchase price, appellant taking possession of the vehicle as per terms of the agreement — Thereupon respondent filing complaint of theft against appellant — Trial Magistrate dropping the complaint but directing custody of the vehicle be returned the respondent on his executing an indemnity bond with surety — Appellant directed to have the question of title to vehicle determined by civil court — Order affirmed by Sessions Court and High Court — In appeal to Supreme Court held, the learned Magistrate was not right in passing the impugned order and thereby giving relief to a party which had invoked jurisdiction on false accusations — It was surprising that without making good the charge of theft the hirer, by using the State instrumentality, obtained possession of the vehicle — The approach of the courts below was totally unsustainable — Impugned order set aside and the vehicle directed to be restored to the possession of the appellant — CrPC, 1973, S. 452. Manipal Finance Corpn. Ltd.* v. *T. Bangarappa*, 1994 Supp (1) SCC 507: 1994 SCC (Cri) 588.

Bench Strength **2**. Coram: *A.M. Ahmadi* and *Yogeshwar Dayal*, JJ. [Date of decision: 30-4-1993]

[9710] — S. 379 — Prosecution for theft — Allegation that accused was found in possession of stolen money — *Accused acquitted and money found as belonging to the accused and not to the complainant — Order for payment of money to complainant could not be sustained. Pushkar Singh* v. *State of M.B.*, AIR 1953 SC 508: 1954 Cri LJ 153.

Bench Strength **3**. Coram: *Fazl Ali*, **M.C. Mahajan** and *Vivian Bose*, JJ. [Date of decision: 18-9-1951]

[9711] — S. 379 — Quashing of FIR — Reasoned order/Speaking order necessity — *High Court allowing respondents' application for quashing FIR registered against them for alleged commission of theft by a practically unreasoned order — Impugned order set aside — CrPC, 1973,* *S. 482* (Paras 1 and 5 to 7). *Lakhwant Singh* v. *Jasbir Singh*, (2008) 14 SCC 661: (2009) 2 SCC (Cri) 873: (2009) 1 ECrN 29 (SC): (2008) 70 AIC 48 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *G.S. Singhvi*, JJ. [Date of decision: 16-9-2008]

Jehan Singh v. Delhi Admn., (1974) 4 SCC 522: 1974 SCC (Cri) 558, considered and relied on

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272, relied on

[9712] — S. 379 — Sentence — Accused flying away an Indian Air Force aircraft to Pakistan — *Sentenced to 17 months SI — Accused already served a sentence of 11 months and 27 days and remained in jail as undertrial for about 11 months — Held, it is a fit case in which the accused need not be sent to jail again. K.N. Mehra* v. *State of Rajasthan*, AIR 1957 SC 369: 1957 SCR 623: 1957 Cri LJ 552, 556.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 11-2-1957]

[9713] — S. 379 — Theft — Allegation that appellant had stolen an attach, containing about Rs 55,000 from the possession of complainant — Conviction — Propriety — *Said money and attach, recovered from the possession of the appellant — PW 9 identified the said attaché — Explanation offered by the appellant about the source of the said money found to be wholly unacceptable — Hence held, appellant's conviction under S. 379 IPC was proper* (Paras 8 and 9). *Gulzar* v. *State of M.P.*, (2007) 1 SCC 619: (2007) 1 SCC (Cri) 395: (2007) 50 AIC 123 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 4-1-2007]

[9714] — S. 379 — Theft — Mens rea and dishonest intention — Absence of — *Bus purchased by A-2 under a hire-purchase agreement — Subsequently the bus sold to the complainant — Complainant defalcating in payment of instalment to the financier — Financier taking possession of the bus with the help of A-1 and A-2 — Held, offence of theft not made out. K.A. Mathai* v. *Kora Bibbikutty*, (1996) 7 SCC 212: 1996 SCC (Cri) 281.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 15-2-1995]

[9715] — S. 379 — Theft — Possession — Recovery of 3.5 kg of non-ferrous metal from appellant's possession — *Contention that recovery of the metal from tiffin carrier kept on the cycle of appellant, would not tantamount to recovery from possession of appellant, held, not acceptable — Conviction under S. 379 upheld. Chandreshwar Sharma* v. *State of Bihar*, (2000) 9 SCC 245: 2000 SCC (Cri) 1500.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 7-1-2000]

[9716] — S. 379 — Theft — Recovery — Snatching of gold chain — *Appellant found running, chased and apprehended but no chain recovered from him, instead an earring found from his possession — None of the PWs had seen the person who had snatched the chain — Held, evidence fell short of establishing guilt of appellant beyond doubt — Merely because for some reason the appellant was seen running or walking briskly it does not follow that he was the culprit although a strong suspicion may arise against him as in this case — Appellant entitled to be acquitted. Vindo Samuel* v. *Delhi Admn.*, 1992 Supp (3) SCC 23: 1992 SCC (Cri) 948: AIR 1992 SC 465.

Bench Strength **2**. Coram: *A.M. Ahmadi* and *M.M. Punchhi*, JJ. [Date of decision: 7-8-1991]

[9717] — S. 379 — Theft of energy — Whether this provision extends the operation of S. 378 of IPC — Offence under the IPC or the Act — *Electricity Act, 1910 — S. 39*

Section 39 did not extend S. 378 in the sense of amending it or in any way altering the language used in it. Section 378, read by itself even after the enactment of S. 39, would not include a theft of electricity for electricity is not considered to be moveable property. The only way in which it can be said that S. 39 extended S. 378 is by stating that it made something which was not a theft under S. 378, a theft within the meaning of that section. It follows that if S. 39 did so, it created the offence itself and S. 378 did not do so. In this view of the matter it is not possible to say that the thing so made a theft and an offence, became one by virtue of S. 378.

Dishonest abstraction of electricity mentioned in S. 39 cannot be an offence under the IPC for under it alone it is not an offence; the dishonest abstraction is by S. 39 made a theft within the meaning of the Code, that is, an offence of the variety described in the Code as theft. As the offence is created by raising a fiction, the section which raises the fiction, namely S. 39 of the Act, must be said to create the offence. Since the abstraction is by S. 39 to be deemed to be an offence under the Code, the fiction must be followed to the end and the offence so created would entail the punishment mentioned in the Code for that offence. The punishment is not under the Code itself for under it abstraction of energy is not an offence at all. *Avtar Singh* v. *State of Punjab*, AIR 1965 SC 666, 668, 66: (1965) 1 SCR 103: (1965) 1 Cri LJ 605.

Bench Strength **3**. Coram: **A.K. Sarkar**, *K.N. Wanchoo* and *Raghubar Dayal*, JJ. [Date of decision: 25-8-1964]

[9718] — Ss. 379, 468, 471, 420 and 506 Pt. II — Quashing of criminal proceedings — Triable issues — *Allegations relating to creation of a false agreement purporting to terminate original agreements and pilferage of records relating to a private limited company — Held on facts, issues raised in the complaint were not adjudicable solely by civil court or Company Law Board — High Court should not have quashed proceedings under S. 482 — CrPC, 1973, S. 482* (Para 13)

The appellant, who was the complainant, alleged in his complainant that there were two agreements between the respondents and a private limited company floated by the appellant, for development of land belonging to respondents. The respondents however forged another agreement by which the original agreements were terminated by the parties. The appellant further alleged that third accused had illegally taken away all records and accounts relating to private company floated by appellant, including two original agreements. However, the High Court concluded that there was no forgery of documents referred to in the complaint, and that there was no allegation that by using forged documents, the accused acquired gains. The High Court therefore quashed prosecution proceedings holding that appellant's grievance, if any, has to be got redressed through a civil court or Company Law Board.

Allowing the appeal,

Held :

The High Court has wrongly come to conclusion that the matter in issue has to be decided by a civil court or Company Law Board. Some of the allegations referred to by High Court are not adjudicable by civil court or Company Law Board. The exercise of jurisdiction by the High Court in terms of Section 482 CrPC, cannot be maintained in this case. (Para 13). *M. Viswanathan* v. *S.K. Tiles & Potteries (P) Ltd.*, (2008) 16 SCC 390: (2008) 72 AIC 68 (SC): (2009) 152 Comp Cas 335.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-11-2008]

Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283, relied on

[9719] — S. 379 r/w S. 34 — Sentence — Conviction for harvesting of crops — *Appellants poor and illiterate tribals and subjected to endless harassment by a spate of prosecutions by respondent — Two out of nine appellants given benefit of probation — Remaining appellants having earlier been given benefit of probation in another case not entitled to such benefit — However, their sentence of imprisonment reduced to period already undergone — Probation of Offenders Act, 1958, S. 4. Goda Dami* v. *Gangadhar Das*, 1990 Supp SCC 142: 1990 SCC (Cri) 634.

Bench Strength **2**. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 18-12-1987]

— Ss. 379/34 *See also under* Ss. 299 to 304

See Ss. 302/34, 307/34 and 379/34

— Ss. 379/120-B *See also under* Ss. 299 to 304

— Ss. 379/149 *See also under* Ss. 299 to 304

— S. 380 *See also* Ss. 4, 380 and 451

See also Ss. 71, 380 and 457

See also Ss. 149, 302/149, 148, 436/149, 380 and 201/149

See also under Ss. 299 to 304

See also Ss. 376, 457 and 380

See also Ss. 378, 379 and 380

See also Ss. 380, 201 and 120-B

See also Ss. 457 and 380

See also Ss. 457, 380, 411, 413 and 414

See also Ss. 457/34, 380/34, 10/457 and 380

See also Ss. 467, 302, 380 and 420

[9720] — S. 380 — Circumstances relied upon for conviction for the offences of murder and theft — *Held, on facts, consistent only with the offence of theft — Conviction under S. 302, Indian Penal Code set aside. Hukam Singh* v. *State of Rajasthan*, (1977) 2 SCC 99: 1977 SCC (Cri) 250: AIR 1977 SC 1063: 1977 Cri LJ 639.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 7-2-1977]

[9721] — Ss. 380, 120-B, 302, 392, 201, 404, 414, 457 and 460/34 — Theft — Proof of — Matters to be considered — Implication of accused other than accused person from whom identifiable recovery made — Defence allegation that prosecution had not proved that there was any theft at all — *Ornaments recovered from A-4 kept in a tiffin bearing name of deceased — Ornaments transferred from A-1, A-2 and A-3 to A-4 with sole objective of melting them — A-4 could not give any explanation of huge amount of ornaments melted and other things found in his possession — It was incumbent upon A-1, A-2 and A-3 to challenge finding against A-4 even if A-4 had not challenged his conviction — A katordan bearing name of deceased found by IO with other accused — There was no explanation as to how katordan came out of house of deceased — Huge amount of gold which was found with A-3 being 1347 gm, without any explanation — It does not stand to reason that police* *would have collected all these ornaments from house of deceased after murder and planted them with accused — Held, thus, plea that there was no theft or that prosecution had not proved any theft, unacceptable* (Paras 21 to 24, 39 to 43, 47 and 48). *Ramesh* v. *State of Rajasthan*, (2011) 3 SCC 685.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision: 22-2-2011]

Chandmal v. State of Rajasthan, (1976) 1 SCC 621: 1976 SCC (Cri) 120; Mohd. Aman v. State of Rajasthan, (1997) 10 SCC 44: 1997 SCC (Cri) 777; Mahabir Sao v. State of Bihar, (1972) 1 SCC 505: 1972 SCC (Cri) 234; Inspector of Police v. Bala Prasanna, (2008) 11 SCC 645: (2008) 3 SCC (Cri) 959, distinguished on facts

[9722] — Ss. 380, 201 and 120-B — Process quashed — *Petitioner a Metropolitan Magistrate issuing process under Ss. 380, 201 and 120-B IPC against PWD officials who had constructed, for courtroom of Metropolitan Magistrate, a judge's dais, which was not fit to be used as it was too high, almost reaching the ceiling fan, and later without consultation or authority had cut off a portion of it — Officials filing petition under S. 482 CrPC r/w Art. 227 of Constitution of India, seeking to have proceedings quashed — Held, High Court rightly quashed the criminal proceedings against the PWD officials, but erred in observing that petitioner Metropolitan Magistrate had been guilty of "gross abuse of process of court" of "defying all judicial norms" and that she had aimed to "pressurise" the officials into functioning as "desired by her" — These remarks were not necessary for the decision of the case — Adverse remarks expunged from order of High Court and also CR of petitioner — CrPC, 1973, S. 482 r/w Art. 227 of Constitution of India. K, A Judicial Officer, In re*, (2001) 3 SCC 54: AIR 2001 SC 972: 2001 Cri LJ 1157: (2001) 1 KLT 707: (2001) 1 SLR 581.

Bench Strength **2**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti**, J. [Date of decision: 8-2-2001]

— Ss. 380/34 *See also* Ss. 457/34, 380/34, 10/457 and 380

[9723] — Ss. 380/34, 460/34 and 302/34 — Circumstantial evidence — Theft and murder — *Recovery of gold jewellery and other articles belonging to the deceased from the respective* **jhuggis** *of the accused-appellants at their instance — Doubt in respect of — PW 5, who was stated to have witnessed the recovery, did not enter any of the* **jhuggis** *and, therefore, had not seen the actual recovery — Further, difference in the timing of the recovery proceedings between the evidence of PW 5 and IO — Evidence of PW 19 indicating that the recovered goods were deposited in the malkhana even before the recovery proceedings started — Thus, alleged recovery, held on facts, doubtful — Conviction liable to be set aside — Evidence Act, 1872, Ss. 27 and 114 Ill. (a) — Recovery of gold jewellery and other articles belonging to the deceased from the houses of the accused persons — Doubt in respect of — PW 5, who was stated to have witnessed the recovery, did not enter any of the jhuggis and, therefore, had not seen the actual recovery — Further, difference in the timing of the recovery proceedings between the evidence of PW 5 and IO — Evidence of PW 19 indicating that the recovered goods were deposited in the malkhana even before the recovery proceedings started — Thus, alleged recovery, held on facts, doubtful* (Paras 10 to 13). *Kuldip Singh* v. *State of Delhi*, (2003) 12 SCC 528: AIR 2004 SC 771: (2004) 109 DLT 190.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

Limbaji v. State of Maharashtra, (2001) 10 SCC 340: 2002 SCC (Cri) 1044; Gulab Chand v. State of M.P., (1995) 3 SCC 574: 1995 SCC (Cri) 552, distinguished on facts

[9724] — Ss. 380/34, 460/34 and 302/34 — Circumstantial evidence — Theft and murder — Involvement of accused in crime — Inference in respect of — *Accused alleged to be working as a servant in the house of deceased* **S** *at the relevant time — As per the prosecution, accused was re-employed by* **S** *after his services were terminated earlier — Evidence indicating re-employment of accused in factory of* **S** *and not in the house — Further, circumstance as to re-employment not put to accused during his examination under S. 313 CrPC — Hence held, said circumstance liable to be excluded from consideration* (Para 9). *Kuldip Singh* v. *State of Delhi*, (2003) 12 SCC 528: AIR 2004 SC 771: (2004) 109 DLT 190.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

[9725] — Ss. 380/34, 460/34 and 302/34 — Circumstantial evidence — Theft, trespass and murder — *Fingerprints of accused found on household articles of deceased* **S** *— Accused, a domestic helper in the house of* **S** *— In such a case, held, presence of the said fingerprints was common and natural — Hence, could not be a circumstance to establish the guilt of the accused* (Para 8). *Kuldip Singh* v. *State of Delhi*, (2003) 12 SCC 528: AIR 2004 SC 771: (2004) 109 DLT 190.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

[9726] — Ss. 380/34, 460/34 and 302/34 — Circumstantial evidence — Theft, trespass and murder — *Mere fact that the accused was once engaged by the deceased in her house as a domestic servant, held, would not be a circumstance indicat-*

ing involvement of the accused in crime as he was not the only person employed and terminated by the deceased just prior to her death — Deceased was in the habit of employing domestic servants for a few days at a time and then terminating their services (Para 9). *Kuldip Singh* v. *State of Delhi*, (2003) 12 SCC 528: AIR 2004 SC 771: (2004) 109 DLT 190.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

— S. 381 *See also* Ss. 120-B, 467, 468, 471, 491, 420, 381 and 204

See also Ss. 451 and 381 r/w S. 120-B

See also Ss. 467, 468, 471, 491, 420, 381 and 204 r/w S. 120-B

[9727] — S. 381 — On facts, held, offence not established. *Bansidhar Mohanty* v. *State of Orissa*, AIR 1955 SC 585: 1955 Cri LJ 1300.

Bench Strength **4**. Coram: *M.C. Mahajan, C.J.* and **S.R. Das**, *N.H. Bhagwati* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 19-11-1954]

[9728] — Ss. 381 and 385 — Confidentiality of documents under S. 54, IT Act, 1922 — Held, extends to documents produced by third parties and applies to requisition by criminal courts — *IT Act, 1922, S. 54(1) — IT Act, 1961, S. 137(1) (Pre 1967) — CrPC, 1898, S. 94*

The Commissioner of Income Tax filed a complaint in the Court of the Presidency Magistrate, alleging that Laxmichand Narayandas had committed offences under Ss. 381 and 385 IPC. Pending the trial, the assessee applied to the magistrate to summon the Income Tax authorities to produce certain letters alleged to have been written by the assessee's clerk, making baseless allegations against the assessee. The Commissioner pleaded secrecy under S. 54 of the Income Tax Act. The assessee argued that the prohibition applied "only to returns furnished, or accounts or documents produced by an assessee before an Income Tax authority and not to documents produced by third parties. In any view, the said prohibition does not override the power given to a criminal court under S. 94 CrPC."

Held :

(*i*) There is no distinction between documents filed by an assessee and by a third party. The prohibition under S. 54 applies to both.

(*ii*) The non obstante clause cannot restrict the embargo placed on the court under S. 54 of the Income Tax Act: the said clause only operates to make it clear that the said general ban prevails notwithstanding anything to the contrary in the Indian Evidence Act. That apart, S. 54 of the Income Tax Act contains in effect an unconditional prohibition against a public servant producing any such document, and that prohibition does not exclude any criminal process from its operation. *CIT* v. *Laxmichand Narayandas*, AIR 1962 SC 1121: (1962) 2 Cri LJ 254: (1962) 44 ITR 548, 550.

Bench Strength **3**. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 13-12-1961]

— S. 382 *See also* Ss. 323, 382, 420, 465, 468, 471, 120-B, 506 and 34

See also Ss. 406, 420, 468, 471, 504, 506, 382 and 120-B

— S. 383 *See also* Ss. 378 and 383

See also Ss. 390, 378 and 383

[9729] — S. 383 — Extortion — Ingredients of — *Held, ingredients that would constitute the offence are (1) the accused must put any person in fear of injury to that person or any other person (2) the putting of a person in such fear must be intentional (3) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security (4) such inducement must be done dishonestly* (Para 6). *Dhananjay* v. *State of Bihar*, (2007) 14 SCC 768: (2007) 51 AIC 54 (SC): 2007 Cri LJ 1440: (2007) 2 KLJ 294 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 2-2-2007]

[9730] — Ss. 383 and 384 — Ingredients of extortion — *On facts held, prima facie offence under S. 384 not made out*

Per Ranganath Misra, J. (Bhagwati, C.J. concurring)

The main ingredients of the offence are:

(*i*) the accused must put any person in fear of injury to that person or any other person;

(*ii*) the putting of a person in such fear must be intentional;

(*iii*) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; and

(*iv*) such inducement must be done dishonestly.

Before a person can be said to put any person in fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. In the present case there was no evidence that the managements of sugar cooperatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar cooperatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, the ingredients of the offence of extortion cannot be said to have been made out. Therefore, the framing of the charge for that offence was rightly refused by the trial court. *R.S. Nayak* v. *A.R. Antulay*, (1986) 2 SCC 716: 1986 SCC (Cri) 256: AIR 1986 SC 2045: 1986 Cri LJ 1922.

Bench Strength **2**. Coram: **P.N. Bhagwati, C.J.**[1] and *Ranganath Misra*[2], J. [Date of decision: 17-4-1986]

Habibul Razak v. King Emperor, AIR 1924 All 197: 25 Cri LJ 961: 21 ALJ 850, approved

[9731] — Ss. 383, 384, 503 and 506 — *Accused charged and convicted under S. 506 for criminally intimidating 'X' by threatening to circulate and publish the indecent photographs of his daughter — Magistrate holding that the accused had threatened mainly to extort money from 'X' — Conviction under S. 506 is legal even though a conviction under S. 384 was also possible*

The appellant threatened '*X*' that he would circulate and publish the photographs of his daughter taken in the nude and demanded money by way of blackmail. The appellant was charged under S. 506. The Magistrate found that the appellant took indecent photographs of the girl by showing false love to her, and threatened '*X*' in letters written to him, with publication of the photographs with intent to extort money from the latter. The appellant was convicted under S. 506 and sentenced to one year's RI. The High Court enhanced the sentence to 2 years' RI. It was contended that on the facts found the appellant could be convicted under Ss. 384/511 IPC for which the maximum punishment was 18 months.

Held :

It is perhaps correct that though the threat of publication of the photographs must have also caused alarm to *X*; but the real intention of the appellant was to cause alarm only as to make *X* pay "hush money" to him. It is not unoften that a particular act in some of its aspects comes within the definition of a particular offence, while in other aspects, or taken as a whole, it comes within another definition. There are obvious differences between the offence of extortion as defined in S. 383 and the offence of criminal intimidation as defined in S. 503. On the finding of the Magistrate which finding was affirmed by the High Court the appellant was clearly guilty of the offence of criminal intimidation. Conviction of appellant was therefore correct under S. 506. *Romesh Chandra Arora* v. *State*, AIR 1960 SC 154: (1960) 1 SCR 924: 1960 Cri LJ 177, 81.

Bench Strength **3**. Coram: **S.K. Das**, *A.K. Sarkar* and *M. Hidayatullah*, JJ. [Date of decision: 6-10-1959]

— S. 384 *See also* Ss. 120-B, 384, 388, 342, 341, 193, 201, 218, 466 and 420

See also Ss. 120-B, 406, 420 and 384

See also Ss. 302, 364, 201 and 384

See also Ss. 323, 384 and 504 r/w S. 34

See also Ss. 365, 384, 342 r/w S. 120-B and S. 120-B

See also Ss. 383 and 384

See also Ss. 383, 384, 503 and 506

See also Ss. 420/34 and 427 and 384

See also Ss. 506 and 384

[9732] — S. 384 — Extortion of money — Police officer demanding and collecting money for return of false passport — *Implied threat of prosecution against holder of false passport and of the withholding passport on that threat and a return thereof on payment of money — Held, a fear of injury had been made out whether the withholding and return of passport was in respect of the passport suspected to be a forgery or in respect of a genuine passport wrongfully withheld. Purshottam Jethanand* v. *State of Kutch*, AIR 1954 SC 700: 1954 Cri LJ 1751.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-3-1954]

[9733] — Ss. 384 & 34 and Ss. 302, 307, 120-B, 23 & 114 — Charge under latter set of sections but conviction under the former set — Permissibility — *A-3 charged of murder by resorting to extortion by engaging A-4 to put the property owner in fear of injury unless the property owner delivered his valuable property to a third party by executing a release deed in favour of A-3 — Prosecution failing to prove the commission of major offence of murder but succeeding in proving the commission of minor offence under Ss. 384 and 34 IPC — In such circumstances, A-3, held, guilty under Ss. 384 and 34 — Sentenced to two years' rigorous imprisonment with a fine of Rs 5000 — CrPC, 1973, S. 222*

In the present case, the prosecution has alleged that for completing the transaction of selling the property to *L*, A-3 procured the services of A-4 who is shown to have put *P* and his brothers in fear of injury with the object of dishonestly inducing them to deliver their valuable property to *L* by execution of releases deeds, which were for the immediate benefit of A-3. In other words A-3 was charged for the offence of murder by resorting to extortion. The offence of extortion is a lesser offence which, under the circumstances of the case, was so connected with the main transaction that no failure of justice can be caused if A-3 is convicted and sentenced for the said offence. The offence with which A-3 was charged consisted of several particulars, the combination of some of those particulars constitute a complete minor offence of extortion. The offence of extortion in the context of the facts of the case has all the ingredients connected with the major offence. Respondent 3 was charged for an offence consisting of several particulars which the prosecution failed to prove so far as the major offence is concerned but succeeded in showing the commission of the minor offence punishable under Section 384 read with Section 34 IPC as it is proved that A-3 intentionally put *P* and his brothers in fear of injury and availing the services of A-4 dishonestly induced in them fear to deliver their valuable property. A-3 though not as a conspirator but sharing common intention with A-4 committed the offence of extortion. He is therefore, guilty of the offence of extortion, punishable under Section 384 read with Section 34 IPC. He is sentenced to rigorous imprisonment for two years with fine of Rs 5000. (Paras 57 and 64). *State of Maharashtra* v. *Bharat Chaganlal Raghani*, (2001) 9 SCC 1: AIR 2002 SC 409.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 11-7-2001]

Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235, followed

See also Dalbir Singh v. State of U.P., (2004) 5 SCC 334

[9734] — Ss. 384, 365, 342 & 120-B — Extortion — Demand of money to release the kidnapped person — Conviction — Sustainability — *Victim **K** was kidnapped while he was going in his car — Accused asking brother of **K** to pay Rs 1 crore for release of **K** — Evidence of witnesses (including **K** and his brother) making it clear that **K** was kidnapped and the kidnappers were paid ransom amount for his release — Details of kidnapping, the manner in which it was done and the extortion of money were all spoken of by witnesses — Confession made by accused A-12 implicating all the accused persons, was in perfect consonance with the evidence given by the witnesses — Said confession was voluntary, truthful and admissible in evidence — On such facts, conviction of accused-appellants in respect of the above offences, held, was justified — Hence, was not liable to be interfered with — However, their acquittal in relation to other charges and the acquittal of remaining accused persons in respect of all the charges, was proper — Therefore, State's appeal against the said acquittal, held, was liable to be dismissed — TADA Act, 1987, Ss. 3 and 5* (Paras 15, 14, 10, 16 and 17)

One *S*, A-1 to A-3, A-8, A-11, A-12 and A-14 in pursuance of their common object, kidnapped PW 7 while he was going in his Maruti car. The eyes of PW 7 were bandaged with cotton and he was taken to a room and confined there for two days. The accused contacted the brother of PW 7 on phone and demanded a sum of Rs 1 crore from him for release of PW 7. After the said money was paid and PW 7 was released, a first information report was lodged with the police by the driver of PW 7. Thereafter, the accused were arrested. A-12 made a confessional statement implicating the other accused persons. Fourteen accused were tried for the offences punishable under Sections 395, 365, 365-A, 212, 465, 471 read with Section 120-B IPC and also under Sections 3 and 5 of the TADA Act read with Section 120-B IPC. They were also charged under the Arms Act. Out of the said accused, A-1 to A-3, A-7, A-8, A-11, A-12 and A-14 were found guilty of offences punishable under Sections 120-B, 342, 365 and 384 IPC and were acquitted of other offences. The other accused A-4, A-5, A-6, A-9 and A-10 were not found guilty. Hence, the present appeals by the accused and the State.

The accused-appellants challenged their conviction whereas the State challenged the acquittal of the said accused in relation to the other charges. The State also challenged the complete exoneration of the remaining accused persons. The main contention raised by the accused-appellants was that the confessional statement of A-12 was not reliable and admissible as it was not voluntarily made. The accused submitted that A-12 was put under serious pressure and on the very next day he had retracted the confession and that by itself showed that the confession was not voluntary. It was also urged that the confession of a co-accused could not be the sole ground for conviction of the accused and it was only to be used as corroborative piece of evidence.

Dismissing all the appeals, the Supreme Court decided as above. *Abdulvahab Abdulmajid Shaikh* v. *State of Gujarat*, (2007) 4 SCC 257: (2007) 2 SCC (Cri) 276: (2007) 55 AIC 204 (SC): (2007) 3 Guj LR 1841.

Bench Strength 2. Coram: **K.G. Balakrishnan, C.J.** and *G.P. Mathur*, J. [Date of decision: 24-4-2007]

[9735] — Ss. 384, 386, 506 Pt. II, 120 and 34 — Prayer for quashing complaint/FIR by complainant himself who alleged that he was pressurised to file said complaint — *Complainant in police custody/police protection from 7-11-2005 to 9-11-2005 where alleged that he was forced to write the complaint against Arun Gulab Gawali gang on 8-11-2005 — His wife making an application before Magistrate for his release from police custody or his production before court on 9-11-2005 whereafter he was released — Again on 11-11-2005 she approaching State Human Rights Commission stating that her husband had been confined in police custody, tortured and was forcibly made to sign some papers — In such a fact situation, possibility that allegations made by complainant and his wife against police in their complaints/applications/writ petitions may be true, cannot be ruled out — Thus, it was a fit case, where in order to meet the ends of justice and to prevent miscarriage of criminal justice, the inherent powers of Court to quash FIR/complaint could have been exercised — Hence complaint quashed — CrPC, 1973, S. 482* (Paras 30 to 35). *State of Maharashtra* v. *Arun Gulab Gawali*, (2010) 9 SCC 701.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-8-2010]

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Ajay Mitra v. State of M.P., (2003) 3 SCC 11: 2003 SCC (Cri) 703; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; Ganesh Narayan Hegde v. S. Bangarappa, (1995) 4 SCC 41: 1995 SCC (Cri) 634; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272; B.S. Joshi v. State of Haryana, (2003) 4 SCC 675: 2003 SCC (Cri) 848; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; M.N. Damani v. S.K. Sinha, (2001) 5 SCC 156: 2001 SCC (Cri) 823, relied on

[9736] — Ss. 384 and 506 — Offence under — Proof of — Complainant's evidence regarding — *Corroborated by her subsequent conduct in narrating the incident to witnesses on the following day and recovery of incriminating documents at accused's instance from accused's house — Admissibility in evidence — Held on facts, sufficient to establish prosecution case — High Court erred in rejecting complainant's evidence merely on ground of delay in filing FIR — Evidence Act, 1872, Ss. 6 and 157 — CrPC, 1973, S. 154*

The accused Headmaster of a school called the complainant, a lady teacher of the school, at his residence on the pretext of some official work on March 10. When the complainant reached the accused's house, he alone was there. He asked the complainant to sign on three blank papers, which in fact were meant for affidavits and threatened her that if she did not sign, he would spoil her modesty. Apprehending trouble she put her signatures on those papers whereupon the accused told her that he could malign and blackmail her by recording any kind of statement on those papers or she should act according to his wishes. The complainant refused and after reaching home she narrated the incident to her husband. On the following day she narrated the incident to three of her colleagues at the school. Thereafter, the accused used to threaten her that he would make use of those papers. On March 18, the accused sent for her to see him in his office and when she went there he was all alone and he actually caught hold of her by her arm and tried to outrage her modesty but the complainant after pushing him aside managed to escape. The complainant immediately returned home and reported the incident to her husband who along with complainant went to police station and filed an FIR on the very day. The investigating officer arrested the accused on the same day and during the course of interrogation that followed the accused made a disclosure statement regarding the three papers on which the complainant's signatures had been obtained as also some photographs of the members of the staff (including a cut-out of the complainant) and in pursuance of such statement he led the police and the Panchas to his house and he produced the three papers, and some photographs. These documents were seized under a Memo attested by Panch witnesses.

Held :

As regards the first incident relating to charges under Ss. 384 and 506 IPC, the two pieces of evidence viz. subsequent conduct on the part of the complainant in narrating the story to the three witnesses on the following day and actual recovery of the three papers bearing the signatures of the complainant thereon from the house of the accused lend the strongest support to the complainant's story and clinches the veracity of that incident as deposed to by her in her evidence. Assuming that the complainant's conduct of narrating the incident to her colleagues is not *res gestae* and hence inadmissible under S. 6 of the Evidence Act, the same when corroborated by the three witnesses is clearly admissible under S. 157 of that Act and therefore ignoring such crucial and relevant evidence has led the Court to give undue importance to the so-called delay in lodging the report with the police. In fact it could not be regarded as a case of any delayed report for, it was the second incident when the accused actually assaulted the complainant that the culminating point was reached and immediately the same evening she lodged the FIR. The so-called delay in lodging the report to the police cannot cast any doubt on the veracity of the story. The so-called doubt entertained by the Sessions Judge about the complainant's version was not a doubt of a reasonable mind. With the two strong pieces of corroborative evidence discussed above the acquittal of the accused in regard to charges under Ss. 384 and 506 must be regarded as perverse. *Chander Kala* v. *Ram Kishan*, (1985) 4 SCC 212: 1985 SCC (Cri) 491: AIR 1985 SC 1268: 1985 Cri LJ 1490.

Bench Strength **3**. Coram: **V.D. Tulzapurkar**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 1-5-1985]

[9737] — Ss. 384 and 506 Pt. II — Conviction confirmed — *A-1, in collusion with A-2 to A-5 alleged to have got complainant illegally confined in police station, snatched gold ornaments costing about Rs 25,000 from his wife, and got property worth Rs 25 lakhs transferred in his (A-1's) name by forcibly, under threat and coercion getting SPOA and POA executed by complainant in name of his father-in-law — Held, evidence led by complainant satisfactorily and convincingly proved charges against A-1 & A-2 beyond reasonable doubt — Three courts below concurrently held both accused guilty of crime and no reason to differ with view taken by them — Their conviction sustainable* (Paras 21, 22 and 1). *Karipi Rasheed Ahmed* v. *State of A.P.*, (2009) 17 SCC 515.

Bench Strength **2**. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 26-2-2009]

— Ss. 384/149 *See also* Ss. 395/149 and 384/149

[9738] — Ss. 384/506 — Applicability — Deeds and acts attributed to public servant not being part of his official duties — Disentitlement to protection of S. 197 CrPC — *Held, for applying bar of S. 197, each case has to be considered in its own fact situation in order to arrive at a finding as to whether protection of S. 197 could be given to the public servant — Herein, offences complained of cannot be said to be part of duties of respondent investigating officer while investigating an offence allegedly committed — It was no part of his duties to threaten appellant complainant or her husband to withdraw the complaint — Fact situation in the complaint herein was not such to bring the case within ambit of S. 197 — High Court, therefore, erred in quashing the complaint — CrPC, 1973, S. 197* (Paras 19, 21 and 22)

In the instant case, appellant's husband suffered grievous injury in a shoot-out for which a case was registered and police investigations started. Subsequently, appellant filed a complaint before CJM alleging therein that Respondent 2 (investigating officer) and the co-accused used to come to the house of the appellant on the pretext of conducting investigation in the aforesaid case and on one day they threatened her husband and wanted him to make a tutored statement and under threat even tried to obtain his signature on a blank paper. Therefore, cognizance was taken by the Magistrate and summons were directed to be issued under Sections 384/506 IPC.

Being aggrieved, Respondent 2 moved the High Court under Sections 397/401 read with Section 482 CrPC for quashing the same. Contention of Respondent 2 before the High Court was that the offence was allegedly committed during course of investigation of the case and, accordingly, such offence, if at all committed, was committed by him while discharging official duties which brought him within protective umbrella of Section 197 CrPC. Accordingly, the High Court quashed the proceedings and the cognizance taken on the basis thereof. Hence, the present appeal.

Allowing the appeal, the Supreme Court decided as above. *Choudhury Parveen Sultana* v. *State of W.B.*, (2009) 3 SCC 398: (2009) 2 SCC (Cri) 122: AIR 2009 SC 1404: (2009) 234 ELT 196: 2009 Cri LJ 1318: (2009) 74 AIC 1 (SC): (2009) 1 ECrN 845 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 7-1-2009]

Bhagwan Prasad Srivastava v. N.P. Mishra, (1970) 2 SCC 56: 1970 SCC (Cri) 292, followed

Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358; Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944; Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193, relied on

[9739] — Ss. 384/511 — Sentence — Protracted appeals — *Appellant having served part of the sentence — Not sent back to jail. Ram Narain* v. *State of U.P.*, (1973) 2 SCC 86: 1973 SCC (Cri) 752: AIR 1973 SC 2200: (1973) 3 SCR 911: 1973 Cri LJ 1187.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 5-4-1973]

— S. 385 *See also* Ss. 182, 211, 193, 467, 471 and 385

See also Ss. 347, 161, 167, 385 and 511

See also Ss. 381 and 385

— S. 386 *See also* Ss. 120-B, 34, 109, 364 and 386

See also Ss. 347, 386 and 365

See also Ss. 363, 364, 365, 386 and 387

See also Ss. 364, 386 and 302

See also Ss. 374 and 386

See also Ss. 378 and 386

[9740] — S. 386 — Expression — "Imprisonment for a term of not less than ten years" in S. 167(2) proviso (a)(i) — Meaning — Held, covers offences punishable with imprisonment for a clear period of 10 years or more — *Hence, offence under S. 386 IPC, being punishable with imprisonment for less than ten years, proviso (a)(i) to S. 167(2) CrPC would not apply to such offence — CrPC, 1973, S. 167(2) proviso (a)(i)*

The appellant was arrested in connection with an offence punishable under Sections 386, 506 and 120-B IPC. He was produced before the Metropolitan Magistrate and was released on bail by the Magistrate on the ground that charge-sheet was not submitted within 60 days as provided under Section 167(2) CrPC. That order was challenged before the Sessions Court by filing revision. The revision was allowed. The Additional Sessions Judge held that for an offence under Section 386 IPC, period of sentence could be up to 10 years' RI. Hence, clause (*i*) of proviso (*a*) to Section 167(2) would be applicable. But the High Court set aside the order passed by the Additional Sessions Judge. Dismissing the appeal,

Held :

From the relevant part of Section 167 CrPC it is apparent that in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if clause (*i*) of proviso (*a*) to Section 167(2) is considered, it would be applicable in case where investigation relates to an offence punishable (*1*) with death; (*2*) imprisonment for life; and (*3*) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years. (Para 6). *Rajeev Chaudhary* v. *State (NCT of Delhi), (2001) 5 SCC 34: 2001 SCC (Cri) 819: AIR 2001 SC 2369: 2001 Cri LJ 2941.*

Bench Strength **2**. Coram: **M.B. Shah** and *S.N. Variava*, JJ. [Date of decision: 4-5-2001]

Rajeev Chaudhary v. State, (2000) 86 DLT 203, affirmed

[9741] — Ss. 386 and 364 — Kidnapping followed by ransom letters — *Offence made out*

As regards the charge against him under S. 364, Penal Code, for kidnapping, though there is no direct evidence, the various ransom letters categorically state that the missing boy is in the custody or control of the writer thereof. It is asserted therein that on payment of the ransom money, the boy will be restored at a particular time and place.

The *modus operandi* disclosed in the ransom letters was clearly by putting his father in fright of the boy being murdered. There was throughout the likelihood of the boy being murdered in case the ransom money was not paid for one reason or other. *Ram Chandra* v. *State of U.P.*, AIR 1957 SC 381: 1957 Cri LJ 559.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 26-11-1956]

— S. 387 *See also* Ss. 302, 364, 201 and 387

See also Ss. 323, 34, 387, 498-A and 506

See also Ss. 363, 364, 365, 386 and 387

[9742] — Ss. 387 and 392 — TADA Act, 1987 — S. 3 — Extortion of ransom for purchasing weapons for terrorists — *Money demanded on threat on life — Amount paid few days after the demand — Recovery of currency notes from the premises of accused appellant pursuant to disclosure statement made by him substantially corroborating testimony of PW — Held on facts, conviction and sentence under S. 387 IPC and S. 3 TADA, justified — But since the money was not paid then and there when the victim was induced on fear of death, conviction under S. 392 for robbery not proper and hence set aside. Gursharan Singh* v. *State of Punjab*, (1996) 10 SCC 190: 1996 SCC (Cri) 1202.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 10-9-1996]

— **Ss. 387/511** *See also* Ss. 307/34 and 387/511

— **S. 388** *See also* Ss. 120-B, 384, 388, 342, 341, 193, 201, 218, 466 and 420

— **S. 389** *See also* Ss. 342, 389, 469, 471 and 120-B

— **S. 390** *See also* Ss. 302, 310 and 390

See also Ss. 392 and 390

See also Ss. 395, 391 and 390

See also Ss. 396, 395, 391, 390 and 302

[9743] — S. 390 — Expression "for that end" in S. 390 — Meaning of — *Held, clearly means that the hurt caused by offender must be with the object of facilitating the committing of theft or must be caused while the offender is committing theft or is carrying away or is attempting to carry away property obtained by theft* (Para 12). *Venu* v. *State of Karnataka*, (2008) 3 SCC 94: (2008) 1 SCC (Cri) 623: AIR 2008 SC 1199: 2008 Cri LJ 1634: (2008) 64 AIC 107 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 30-1-2008]

[9744] — S. 390 — Robbery — Involves element of extortion — *Hence a person cannot be convicted both for extortion and robbery, which is a special aggravated form of the former. Gursharan Singh* v. *State of Punjab*, (1996) 10 SCC 190: 1996 SCC (Cri) 1202.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 10-9-1996]

[9745] — S. 390 — Slapping the victim after dispossessing him of property to silence him — *Held, offence under S. 390 made out — Hurt caused had relation to and bearing on the theft caused. Harish Chandra* v. *State of U.P.*, (1976) 2 SCC 795: 1976 SCC (Cri) 300: AIR 1976 SC 1430: 1976 Cri LJ 1168.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **P.N. Shinghal**, JJ. [Date of decision: 23-3-1976]

[9746] — Ss. 390, 378 and 383 — Robbery — Meaning of — Necessity of violence in the course of theft — *Held, theft or extortion when caused with violence causing or causing fear of death, hurt or wrongful restraint is robbery — When there is no theft committed, then as a natural corollary, there cannot be robbery — Robbery is only an aggravated form of offence of theft or extortion — Aggravation is in the use of violence causing or causing fear of death, hurt or restraint — Violence must be in course of theft and not subsequently — Also, it is not necessary that violence should actually be committed but even attempt to commit it is enough* (Para 10). *Venu* v. *State of Karnataka*, (2008) 3 SCC 94: (2008) 1 SCC (Cri) 623: AIR 2008 SC 1199: 2008 Cri LJ 1634: (2008) 64 AIC 107 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 30-1-2008]

[9747] — Ss. 390 and 391 — Seizure of property in exercise of bona fide right over it, held, not covered. *Sardar Trilok Singh* v. *Satya Deo Tripathi*, (1979) 4 SCC 396: 1979 SCC (Cri) 987: AIR 1979 SC 850: 1979 ALJ 634: 1980 Cri LJ 822.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 11-1-1979]

[9748] — Ss. 390 and 392 — Deterrent punishment under — When called for — *Held, S. 392 itself provides that when robbery is committed on a highway and between sunset and sunrise, deterrent punishment is called for — In the instant case, evidence of victim, her husband and factum of recovery of vehicle used clearly established commission of offence by appellant-accused — Offence committed on a public road which undisputedly was a highway, between sunset and sunrise — Hence, on facts, deterrent punishment of ten years' RI imposed, merited no interference* (Paras 9, 13, 14 and 16). *Venu* v. *State of Karnataka*, (2008) 3 SCC 94: (2008) 1 SCC (Cri) 623: AIR 2008 SC 1199: 2008 Cri LJ 1634: (2008) 64 AIC 107 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 30-1-2008]

State of Karnataka v. Puttaraja, (2004) 1 SCC 475: 2004 SCC (Cri) 300, relied on

[9749] — Ss. 390 and 395 — Causing fear by exploding cracker — *Held, offence rightly made out where the accused while carrying away the stolen property exploded cracker to frighten the inmates who wanted to pursue them. Kusho Mahton* v. *State of Bihar*, 1980 Supp SCC 344: 1981 SCC (Cri) 279: AIR 1980 SC 788: 1980 Cri LJ 313.

Bench Strength **2**. Coram: *R.S. Sarkaria* and *O. Chinnappa Reddy*, JJ. [Date of decision: 7-2-1980]

— **S. 391** *See also* Ss. 390 and 391

See also Ss. 395, 391 and 390

See also Ss. 396, 395, 391, 390 and 302

[9750] — S. 391 — Dacoity — Evidence regarding — *Witness claiming to have heard that dacoity was committed in the house of the deceased — No value, held, could be attached to such a statement — Evidence Act, 1872, S. 60*

So far as DW 3 is concerned, he claims to have heard that dacoity was committed in the house of *M*. Obviously no value can be attached to his statement. (Para 23). *Ram Anup Singh* v. *State of Bihar*, (2002) 6 SCC 686: 2002 SCC (Cri) 1466: AIR 2002 SC 3006.

Bench Strength **3**. Coram: *M.B. Shah*, **B.P. Singh** and *H.K. Sema*, JJ. [Date of decision: 7-8-2002]

— **S. 392** *See also* Ss. 34, 302 and 392

See also Ss. 148, 392 and 452

See also Ss. 148, 452, 392, 147 and 451

See also Ss. 149, 326/34, 324/34, 427/34, 450 and 392, 395 and 397

See also under Ss. 299 to 304

See also Ss. 332 and 392

See also Ss. 376, 302 and 392

See also Ss. 376 and 392

See also Ss. 380, 120-B, 302, 392, 201, 404, 414, 457 and 460/34

See also Ss. 380, 392, 397 and 414

See also Ss. 387 and 392

See also Ss. 394 and 392

See also Ss. 411 and 392

See also Ss. 449, 458, 459, 392, 397, 302 and 307

See also Ss. 299-304 — CULPABLE HOMICIDE AND MURDER, 'C. 21. Robbery/ Dacoity/ Theft', in Vol. 2

[9751] — S. 392 — Acquittal in one case whether ipso facto entitles acquittal in the second case — *Held, the incidents being distinct and separate from each other, the acquittal of the accused of the charges arising out of one of the incidents does not automatically entitle them to be acquitted of the charges arising from the second incident where they have been proved beyond reasonable doubt — No interference called for — TADA Act, 1987, S. 3. Jagtar Singh* v. *State of Punjab*, (2001) 10 SCC 695: AIR 2000 SC 3604.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *M.B. Shah*, JJ. [Date of decision: 9-12-1999]

[9752] — S. 392 — Robbery — Circumstantial evidence — *Articles of robbery viz. two gold rings and a wristwatch, worn by deceased, found to be in possession of the accused — Inference under S. 114(a) of Evidence Act drawn — This along with other corroborating circumstances, held on facts, lead to the only conclusion of commission of robbery by accused punishable under S. 392 — Evidence Act, 1872, S. 114 Ill. (a)*

The following circumstances were found proved against the accused-appellant:

1. The deceased had left to attend to his work on 28-6-1995 at 7.00 in the morning putting on two rings and a watch.

2. The deceased took candles and bread from the shop of PW 8 and at about 9.00 p.m. he was sitting in front of the shop of PW 9. He left the place thereafter.

3. At about 9.30 p.m. PWs 10, 12 and 13 heard the deceased saying "take whatever you want, leave me alone". PW 12 and PW 13 are said to have recognized his voice. PW 10, the wife of PW 12 had no idea about the voice of the deceased.

4. On 29-6-1995 the accused offered the rings to PW 17 in repaying the loan but he refused to take it, ultimately he had pledged the rings with PW 19 and PW 24, which were recovered from them.

5. The dead body was recovered on 30-6-1995 but the rings and the watch were not found on the dead body.

6. On the arrest of the accused on 5-7-1995 a watch was recovered at his instance.

Partly allowing the accused's appeal,

Held :

The evidence of PWs 10, 12 and 13 that they had heard the voice of the deceased saying that "you may take whatever you like, but leave me alone", no doubt serves as a very strong link. This shows that the deceased must have been under some apprehension or threat thereof. It is though difficult to hold that PW 12 and PW 13 had heard the voice of the accused as the evidence on the point is shaky but there is no escape from the liability of possession of the property viz. the subject-matter of the robbery, with the appellant soon thereafter, which is a corroborating and clinching circumstance. The possession of the articles which had been duly identified by the witnesses as belonging to the deceased were found in his possession within less than 24 hours of the incident. It would lead to inference under Section 114(*a*) of the Evidence Act that the appellant had himself committed the robbery, an offence punishable under Section 392 IPC. Therefore, the conviction and sentence as awarded by the trial court and upheld by the High Court under Section 392 IPC are upheld. (Paras 7 and 9). *George* v. *State of Kerala*, (2002) 4 SCC 475: AIR 2002 SC 1647.

Bench Strength **3**. Coram: *M.B. Shah*, **Brijesh Kumar** and *D.M. Dharmadhikari*, JJ. [Date of decision: 3-4-2002]

[9753] — S. 392 — Robbery — Evidence — *Prosecution case that while PW 1 and his mother PW 2 were travelling with Rs 73,600 in cash, accused persons robbed Rs 40,000 from PW 2 when the PWs alighted to change bus — FIR lodged next day but delay properly explained — Pursuant to statements made by the accused persons Rs 39,170 recovered from their possession — Remaining amount of Rs 33,600 also attached from the house of the PWs — Trial court and High Court rejecting explanation regarding capacity of PW 2 to save such large* *amount during a period over 10 years, acquitting the accused — Held, approach of the courts below erroneous — Plea that the identity of the currency notes found must tally with the stolen notes before a conviction can be recorded must be rejected — Capacity to save the amount could not be doubted having regard to their cultivable lands and other sources of income — Further facts of recovery of money at the instance of the accused as also the subsequent find of the remaining sum in the house of PWs and absence of any convincing reasons for lodging false FIR against the accused, sufficiently corroborating the testimony of PWs 1 and 2 and the prosecution case that they were deprived of Rs 40,000 — Hence the accused must be convicted under S. 392 — Amounts recovered to be made over to PW 2. Suryamoorthi* v. *Govindaswamy*, (1989) 3 SCC 24: 1989 SCC (Cri) 472: AIR 1989 SC 1410: 1989 Cri LJ 1451.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 13-4-1989]

[9754] — S. 392 — Robbery — On facts, proved by discovery of article stolen at the instance of the accused — *Disregard of accused's confession, on facts, not to affect the conviction. Harish Chandra* v. *State of U.P.*, (1976) 2 SCC 795: 1976 SCC (Cri) 300: AIR 1976 SC 1430: 1976 Cri LJ 1168.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **P.N. Shinghal**, JJ. [Date of decision: 23-3-1976]

[9755] — S. 392 — Robbery — Sentence — Mitigating circumstances — *Offence committed more than 15 years before — Increase in burden of socio-economic responsibilities on the accused persons with passage of time, recovery of almost entire amount, time spent in prison before release on bail — Sentence of imprisonment converted to fine only — Fine directed to be paid commensurate with the gravity of offence committed by each accused. Suryamoorthi* v. *Govindaswamy*, (1989) 3 SCC 221: 1989 SCC (Cri) 537: (1989) 2 Crimes 265.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 5-5-1989]

[9756] — S. 392 — Robbery with murder — *Articles recovered pursuant to statement made by accused not during the first examination but later — Manner in which fingerprint of the accused taken also creating suspicion — Held, conviction cannot be sustained in the circumstances. Chandran* v. *State of Kerala*, 1991 Supp (1) SCC 39: 1991 SCC (Cri) 245: AIR 1990 SC 2148: 1990 Cri LJ 2296.

Bench Strength **2**. Coram: *B.C. Ray* and **S. Ratnavel Pandian**, JJ. [Date of decision: 28-8-1990]

[9757] — Ss. 392 and 302 — Identification of articles — Robbery and murder — Stolen ornaments specifically identified by nephew of deceased (PW 30) — *PW 30 claimed that of the recovered ornaments he had seen his maternal uncle wearing chain and two rings and his aunt wearing four bangles and four rings and earrings in her ears — Identification Magistrate had no interest against accused or in favour of prosecution — He was doing his duty — Hence, identification accepted — Recoveries from A-1 and A-2 of stolen ornaments including identified bangles and chain, held, fully proved — Evidence Act, 1872, S. 9* (Paras 35 to 43). *Ramesh* v. *State of Rajasthan*, (2011) 3 SCC 685.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision: 22-2-2011]

[9758] — Ss. 392 and 302 — Murder weapon found stained with human blood — Blood group shown to be A — Clothes of deceased stained with his own blood which was of Group A — *Held, this is a very weighty circumstance against A-3 and there is absolutely no explanation offered by A-3 of this highly incriminating circumstance — Hence held, prosecution inter alia had proved its case against A-3* (Para 30). *Ramesh* v. *State of Rajasthan*, (2011) 3 SCC 685.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision: 22-2-2011]

Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498: (2009) 2 SCC (Cri) 1150, followed

Sushil Murmu v. State of Jharkhand, (2004) 2 SCC 338: 2004 SCC (Cri) 529; Mulla v. State of U.P., (2010) 3 SCC 508: (2010) 2 SCC (Cri) 1150, considered

[9759] — Ss. 392, 302/34 and 201 — Robbery and murder — Accused-appellants seen in the company of deceased during the relevant period at various places — *Recovery of various articles used by the deceased, from the possession of the accused — No satisfactory explanation given in respect of said possession — Graffiti written by the accused and the deceased on a wall at the place of the incident — Specimen signatures of the accused similar to the said graffiti — Presence of the accused at the place of occurrence during the relevant time, held, proved — Guilt established on the basis of the said circumstances — Conviction and sentence upheld — Evidence Act, 1872, S. 114 Ill. (a)*

The deceased who was an employee of one *H* used to go to various places to collect the money due from the customers of the firm. On 27-7-1985, the deceased had collected about Rs 20,862.92p. During the night intervening 27-7-1985 and

28-7-1985, the deceased stayed with appellant *K* at his residence. In the morning of 28-7-1985 he came to the bus-stand accompanied by *K*. The case against the accused-appellants (*K* and *G*) was that they caused the death of the deceased and robbed him of the money possessed by him. The dead body of the deceased was found in a tank situated within the Jalore Fort area. An amount of Rs 10,000 and a handkerchief which belonged to the deceased were recovered from the residential house of *G*. *K* was arrested at Bombay and pursuant to the information furnished by him, a watch, a bush-shirt, a money bag, printed receipt books, pieces of a torn bank draft and a knife were recovered from him. The said articles were identified by the prosecution witnesses as articles belonging to the deceased. On site inspection, IO found that the names of the appellants and the deceased were written on the wall of the Rani Mahal of the Jalore Fort. Various photographs of this graffiti were taken and the signatures of the accused were also obtained for comparison. The appellants were identified in the identification parade. The trial court found the appellants guilty of the offences punishable under Section 302 read with Section 34 and Sections 392 and 201 IPC. The judgment was confirmed by the High Court and hence the present appeals by the accused.

Dismissing the appeals,

Held :

Appellant *K* had no satisfactory explanation as to how he came to be in possession of the articles in question. The fact of possession of these articles with the appellant only leads to the most-probable inference that he was responsible for the death of the deceased, especially when the appellant had no case that he had come to possess these articles for any other reason. (Para 5)

Another strong circumstance which was proved against the appellants was that they were found in the company of the deceased at various places immediately preceding the day of death of the deceased. The other circumstance, which would prove the presence of the appellants at the Jalore Fort during the crucial time is the graffiti found on the wall of the Rani Mahal of the Jalore Fort. PW 29 took photographs of these writings and the same were compared with the specimen signatures of the appellants. The specimen signatures of the appellants were similar to the graffiti allegedly written by the appellants. (Paras 6 and 7)

Thus, the recovery of various articles used by the deceased, from the possession of the appellants; the evidence of the witnesses who found the appellants in the company of the deceased during the relevant period; and the other circumstantial evidence clearly established the guilt of the accused. (Para 8). *Kanti Lal* v. *State of Rajasthan*, (2004) 10 SCC 113: 2004 SCC (Cri) 1760: AIR 2004 SC 2536: 2004 Cri LJ 2487.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 21-4-2004]

[9760] — Ss. 392, 380, 397 and 414 — Robbery and murder — Accused found with huge amount of ornaments and cash on their person — Minor contradictions — *Explanations therefor available from facts/prosecution — Held, such contradictions of no consequence* (Paras 25 to 27). *Ramesh* v. *State of Rajasthan*, (2011) 3 SCC 685.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *T.S. Thakur*, JJ. [Date of decision: 22-2-2011]

Chandmal v. State of Rajasthan, (1976) 1 SCC 621: 1976 SCC (Cri) 120; Mohd. Aman v. State of Rajasthan, (1997) 10 SCC 44: 1997 SCC (Cri) 777; Mahabir Sao v. State of Bihar, (1972) 1 SCC 505: 1972 SCC (Cri) 234; Inspector of Police v. Bala Prasanna, (2008) 11 SCC 645: (2008) 3 SCC (Cri) 959, distinguished on facts

[9761] — Ss. 392 and 390 — Punishment for robbery — Essential ingredients under — *Held, essential ingredients for punishment under S. 392 are: (1) accused committed theft; (2) accused voluntarily caused or attempted to cause (i) death, hurt or wrongful restraint (ii) fear of instant death, hurt or wrongful restraint; (3) accused did either act for the end (i) to commit theft (ii) while committing theft (iii) in carrying away or in the attempt to carry away property obtained by theft* (Para 8). *Venu* v. *State of Karnataka*, (2008) 3 SCC 94: (2008) 1 SCC (Cri) 623: AIR 2008 SC 1199: 2008 Cri LJ 1634: (2008) 64 AIC 107 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 30-1-2008]

[9762] — Ss. 392, 394 and 397 — Snatching of Rs 62,000 alleged — Case of planting by police and false implication — When tenable — *However, recovery of only Rs 15,000 from the bag carried by the accused — No explanation by the prosecution as to whereabouts of the remaining Rs 47,000 — Hence, contention by accused that it was implanted by the police for false implication — Held, in absence of any allegation of previous enmity between the complainant or the injured witness or the police and the accused, such contention unsustainable — Non-explanation of whereabouts of the balance amount would not vitiate the factum of recovery of Rs 15,000 from the possession of the accused along with other incriminating materials — More so, since the accused were apprehended* *along with the incriminating material while fleeing* (Para 9). *Surender Singh* v. *State of Haryana*, (2006) 9 SCC 247: (2006) 2 SCC (Cri) 444.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 17-1-2006]

[9763] — Ss. 392 and 397 — Charge-sheet under Ss. 392 and 397 of IPC and S. 27 of Arms Act r/w S. 6 of TADA — *Taxi driver informing the police of two ostensible passengers snatching from him a certain amount and his car by putting him in instant fear of death by placing a revolver on his neck — Nothing elicited in cross-examination to discredit him — His statement being corroborated by the report lodged by him with the police immediately after the incident — Identification of the accused by him also found unassailable as the informant had remained with them for several (four and a half) hours — His evidence further corroborated by the evidence of two policemen who had seized the amount, the car and the revolver from the accused within a few (9) hours of the incident — In such circumstances, the allegation that he was a procured witness, rejected — Conviction under above sections upheld — Arms Act, 1959, S. 27 — TADA Act, 1987, S. 6. Mohinder Singh* v. *State of Haryana*, (1996) 11 SCC 369: 1997 SCC (Cri) 143.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *Faizan Uddin*, JJ. [Date of decision: 23-9-1996]

[9764] — Ss. 392 and 397 — Conviction under S. 397 altered to that under S. 392 and accordingly sentence of 7 years' RI reduced to that of 3 years' RI. *Krishan Lal* v. *State (Delhi Admn.)*, (1982) 2 SCC 175 (1): 1982 SCC (Cri) 377(1): AIR 1981 SC 2008(1).

Bench Strength **2**. Coram: *A.C. Gupta* and *D.A. Desai*, JJ. [Date of decision: 16-1-1981]

[9765] — Ss. 392 and 397 — Knife blow given on the chest just below the nipple — S. 397 whether attracted — *Accused persons entering the shop of the injured and on his refusal to hand over money when demanded inflicted one injury on his right arm with a knife — Another injury was caused on left side of chest just below the nipple by a knife — Whether ingredients of S. 397 made out — Held, the facts of the instant case show that S. 397 IPC was rightly applied — Any hurt which endangers life is a grievous hurt — It would be seen that one of the injuries was caused just below the nipple — The term "endangers life" is much stronger than the expression "dangerous to life" — Apart from that in S. 397 "attempt" to cause grievous hurt attracts its application — Question whether the accused attempted to cause death or grievous hurt would depend upon the factual scenario — On facts, knife-blow was given on the chest just below the nipple — Considering the place where injury was inflicted High Court rightly applied S. 397 IPC* (Paras 10 to 12). *Niranjan Singh* v. *State of M.P.*, (2007) 10 SCC 459: (2008) 1 SCC (Cri) 55: AIR 2007 SC 2434: (2007) 56 AIC 263 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *B.P. Singh*, JJ. [Date of decision: 14-6-2007]

[9766] — Ss. 392 and 397 — Robbery — Conviction of gunman of SRTC for robbing cash from cashier of the same Corporation by causing serious injuries to the cashier and confining him in a room by bolting it from outside — *Injuries found on the cashier, missing of cash and traces of robbery at the scene of occurrence establishing the occurrence of robbery — Testimony of the cashier about commission of the offence by the gunman of great importance and the same accepted by the courts below — Cashier's testimony corroborated by another PW whom the cashier had told about the robbery — No explanation also given by the gunman for his abscondence for two and a half months — Reasons given by courts below in convicting the gunman sound and not suffering from any infirmity — Hence no interference with the conviction called for — Evidence Act, 1872, S. 60. Harinder Singh* v. *State of Punjab*, 1993 Supp (1) SCC 467: 1993 SCC (Cri) 267: AIR 1992 SC 1976.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 11-8-1992]

[9767] — Ss. 392 & 397 and 302 — Robbery and murder — Circumstantial evidence — *Accused 1 to 4 alleged to have robbed the deceased of her jewellery and assaulted her with stones resulting in her death — No eyewitnesses to the occurrence and prosecution case resting solely on circumstantial evidence — Trial court as well as High Court holding that the evidence showed a complete unbroken chain of circumstances unerringly leading to an inescapable conclusion that Accused 1 to 4 had committed the crime — Circumstances alleged were: (i) Dead body of deceased was found in field with head injuries and her jewels robbed; (ii) Injuries found on her body clearly showing that she had died of homicidal violence and her jewellery snatched; (iii) All the accused were last seen near the field of the deceased (scene of occurrence) by PW 6 and one of the accused was also seen near the field by PW 2 and the accused were also identified in TI parade; (iv) Extra-judicial confession made by accused; and (v) On information furnished by the accused, the stones used in the murder and jewels robbed from the deceased were recovered, which were identified by PW 1 (son of the deceased) —*

Discrepancy in evidence of PW 2 not found fatal to prosecution — Contention that jewels were not of such great value as to lead to murder rejected because it is not possible to say that unless the jewels are of a particular value, robbery and murder would not be committed — No apparent reason to falsely implicate accused — Held, though confessions made to police are to be excluded and though extra-judicial confession to others in its very nature is a weak piece of evidence, when examined with reference to the other proved circumstances, and the recoveries made on the information furnished by the accused, the guilt of the accused stood established — No infirmity in the reasoning or conclusions of the trial court or the High Court — Evidence Act, 1872, Ss. 8, 27 and 28 (Paras 2, 8, 9, 10, 11 and 12). *Krishnamoorthy* v. *State*, (2007) 12 SCC 110: (2008) 2 SCC (Cri) 248: 2007 Cri LJ 1803: (2007) 52 AIC 83 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **R.V. Raveendran**, JJ. [Date of decision: 1-3-2007]

[9768] — Ss. 392, 397 and 394 — Appellant armed with a pistol along with co-accused who was unarmed snatching the wrist watches and purse of the victims by pointing the pistol — *Appellant firing from the pistol only when one of the victims hit him with an empty drum of milk — Victim receiving injuries on hand, thumb and finger — Held, in the circumstances of the case, conviction under Sections 394 and 397 not justified — Conviction under S. 392 maintained — Sentence reduced to the period of 5 years which the appellant had already undergone — Co-accused who did not prefer appeal due to poverty also entitled to the benefit of modified sentence. Ajit Singh* v. *State of Haryana*, (1996) 3 SCC 335.

Bench Strength **2**. Coram: *G.N. Ray* and *N.P. Singh*, JJ. [Date of decision: 8-2-1996]

[**Ed.**: If the offender *uses* any deadly weapon at the time of committing robbery Section 397 is attracted. In this case the victims were robbed at the point of pistol. In *Phool Kumar case* cited in para 4 it has been laid down that if the deadly weapon was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have *used* that deadly weapon in the commission of the robbery.]

[9769] — Ss. 392, 397 and 452 r/w S. 34 — Non-holding of TI parade — Identification for the first time in court — When not fatal — Robbery case — *One of the accused was already known to the inmates of the house as he had whitewashed their house — During the commission of offence, all the accused were present in house for quite some time — Accused whose identity was known was arrested first and others arrested on that basis — Complainant was associated even at that stage of investigation to identify the accused and ensure properly the arrest of the real accused — In view of the said facts, identification of the accused in the court without holding a TI parade earlier, held, not fatal — Arms Act, 1959, S. 25 — Evidence Act, 1872, S. 9* (Para 6). *Ashfaq* v. *State (Govt. of NCT of Delhi)*, (2004) 3 SCC 116: 2004 SCC (Cri) 687: AIR 2004 SC 1253: 2004 Cri LJ 936: (2004) 3 MPLJ 361: (2004) 3 Mah LJ 581.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 10-12-2003]

Ramanbhai Naranbhai Patel v. State of Gujarat, (2000) 1 SCC 358: 2000 SCC (Cri) 113, followed

— S. 392 r/w S. 397 *See also under* Ss. 299 to 304

[9770] — S. 392 r/w S. 397 — Robbery with attempt to cause death or grievous hurt — Appreciation of evidence — *Accused alleged to have thrown deceased and PW 8 in canal after robbing money and tractor from them — PW 8 managed to swim to safety — Deceased catching hold of the grass grown on the bank of the canal but accused giving leg-blows on his face and again pushing him into the water, whereafter he never came out — Prosecution case resting on evidence of PW 8 who was an independent and impartial witness — Contention that the prosecution fabricated the evidence to falsely implicate the appellant rejected and that presence of PW 8 at scene of occurrence was doubtful also rejected because it was contrary to the very defence set up by the appellant in the sessions case — Further, contention that no specific overt act was attributed to appellant also rejected because his participation in alleged occurrence was substantially proved — Circumstantial evidence also clearly establishing guilt of appellant — In such circumstances, held, prosecution has established guilt of the appellant beyond all reasonable doubt for conviction under S. 392 r/w S. 397 IPC for having robbed money and tractor — Sentence of 7 years' RI upheld* (Paras 3, 9, 10, 11, 12 and 15). *Subhash* v. *State of Haryana*, (2007) 12 SCC 63: (2008) 2 SCC (Cri) 213.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 21-8-2007]

[9771] — Ss. 392/34 or 324 — For application of S. 392 IPC prosecution must establish robbery during the course of which death or hurt or wrongful restraint was caused or attempted to be caused — *Joint trial of appellant along with A-2 — Trial court disbelieving case of prosecution that appellant made a disclosure statement to police pursuant to which a bag containing a knife and cash* *was recovered — The court, however, convicting appellant under Ss. 392/34 holding that appellant was with A-2 while committing robbery during the course of which he caused injuries to PWs 2 and 3 and sentencing him to 7 years' RI — A-2 acquitted — Held, once the case of recovery of knife and cash rejected, there was no material to hold that ingredients of Ss. 392/34 were made out, especially in view of the fact that A-2 was acquitted — It was however, established beyond doubt, that the appellant had caused hurt to PWs 2 and 3 with the knife — This was supported by medical evidence — Hence conviction and sentence under S. 392/34 IPC set aside and conviction under S. 324 IPC and sentence of 3 years' RI substituted. Malkhan Singh* v. *State of Haryana*, 1994 SCC (Cri) 1422.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 11-11-1992]

[9772] — Ss. 392/34, 397 and 302 — Murder and robbery, part of the same transaction — *Two of the four accused entering the deceased's house and one of them, armed with a dagger, committing murder of the deceased in the process of robbery and his companion committing robbery while the other two accused staying outside the house without knowing possession of deadly weapon by the accused who had entered the house — Pursuant to disclosure statements made by the accused persons, the stolen goods of the deceased as well as the dagger used in the crime and bloodstained shirt of accused recovered the very next day from the places indicated by them — No explanation offered in regard thereto — Drawing presumption under S. 114 Ill. (a) of Evidence Act, held, accused, who killed the deceased in the process of commission of robbery was rightly convicted under Ss. 392/34, 397 and 302 but the co-accused persons were rightly convicted under Ss. 392/34 — Evidence Act, 1872, S. 114 Ill. (a)*

Besides Section 27, the courts can draw presumptions under Section 114, Illustration (*a*) and Section 106 of the Evidence Act. The presumption permitted to be drawn under Section 114 Illustration (*a*) of the Evidence Act has to be read along with the "important time factor". If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. (Para 28)

In the instant case also, the disclosure statements were made by the accused persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. The trial court was justified in holding that the circumstances together complete the chain of circumstances to prove the guilt of the accused persons insofar as the offence of robbery was concerned and that the disclosure statements of the accused persons and huge recoveries from them at their instance on the very next day of the incident, by itself was a sufficient circumstance which clearly goes to show that the accused persons had joined hands to commit the offence of robbery. The murder and robbery in the instant case were part of the same transaction and the accused from whom the recoveries were made, consequent upon their disclosure statements, did not offer any explanation regarding their possession of the stolen properties. Drawing a presumption under Section 114 of the Evidence Act it can safely be held that the two accused persons were at least guilty of the offence of robbery punishable under Section 392 IPC on the assumption that they were not armed with any deadly weapon and not aware of the other accused being armed with dagger. On the basis of the evidence led in the case and keeping in view the whole conspectus of the case the trial court rightly concluded that the accused, who was armed with dagger, in the process of committing robbery used a deadly weapon, namely, dagger and killed the deceased while the other three accused persons participated in the commission of crime of robbery and actually removed huge articles including jewellery from the house of the deceased. (Paras 29 and 32). *Sanjay* v. *State (NCT of Delhi)*, (2001) 3 SCC 190: 2001 SCC (Cri) 449: AIR 2001 SC 979: 2001 Cri LJ 1231.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 7-2-2001]

Gulab Chand v. State of M.P., (1995) 3 SCC 574: 1995 SCC (Cri) 552; Mukund v. State of M.P., (1997) 10 SCC 130: 1997 SCC (Cri) 799; Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859, relied on

— Ss. 392/120-B *See also under* Ss. 299 to 304

[9773] — Ss. 392/120-B and 120-B — Robbery in daytime — *Appellant and three others entering the house of PW 3 when she was alone — They dragging her inside a room, tying her hands and forcibly inserting a lungi in her mouth — Thereafter, breaking open the lock of almirah and taking away cash amounting to Rs 1.5 to 2 lakhs, silver coins and other articles — Appellant removing golden bangles from hands of PW 3 — Meanwhile PW 6 (husband of PW 3), who had gone outside, came back — On hearing the shouts of PW 3, he broke open the door — Three accused including appellant managed to escape by jumping on the road from the balcony — One accused apprehended by PW 6 with the help of constable PW 5 — Testimony of PWs 3, 5, and 6 fully establishing the participation of appellant in crime — Conviction upheld*

The testimony of PWs 3, 6 and 5 conclusively establishes the commission of the offence in question. The commission of robbery has not at all been challenged from the side of the accused. PW 3 and PW 6 are the inmates of the house where the offence was committed and their presence on the spot is most natural and there is no reason to doubt the same. PW 5 (Head Constable) has also given a very plausible explanation for his presence near the house and his reaching the spot after hearing the shouts is also most natural in the circumstances of the case. Both PW 3 and PW 6 have made a categoric statement that PW 5 came inside the house and was also instrumental in apprehending accused *R*. All these three witnesses have clearly stated that the appellant was one of the robbers who took part in the commission of the crime and thereafter jumped from the balcony of the first floor on the ground and succeeded in running away. PW 3 has assigned a very specific role of removing her golden bangles to the appellant. She saw him from a very close distance. The testimony of these witnesses fully establishes the participation of the appellant in the crime in question. Neither has the appellant led any evidence nor has he succeeded in bringing out anything in the cross-examination of the aforesaid prosecution witnesses which may cast even a slightest doubt regarding his participation and taking an active role in the crime in question. Thus, the prosecution has succeeded in establishing the case against the appellant beyond any shadow of doubt and the learned Designated Court rightly convicted and sentenced him. (Paras 6 and 14). *Munna* v. *State (NCT of Delhi)*, (2003) 10 SCC 599: AIR 2003 SC 3805.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 27-8-2003]

— Ss. 392/149 *See also under* Ss. 299 to 304

[9774] — Ss. 392/397 — Identification of accused — According to testimony of complainant, he and other witnesses had admittedly seen the accused going into jail before the TI parade *— Further, though four PWs identified the accused in TI parade but they could not identify the accused in court — Another PW remained silent on identification in TI parade but identified the accused for the first time in court — Moreover, weapon and empty cartridge were recovered but no attempt was made by obtaining FSL report to match the cartridge with the recovery weapon — Under these circumstances, conviction of the accused persons held cannot be maintained — TADA Act, 1987, S. 3(2)(ii) — Evidence Act, 1872, S. 9* (Para 7). *Lalli* v. *State of Rajasthan*, (2003) 12 SCC 666.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 2-4-2003]

— S. 393 *See also* Ss. 458 and 393

[9775] — Ss. 393 and 452 — Appellant along with his two associates entering the house of the complainant at night and one of his associates threatening the complainant that if he did not hand over all his possessions his whole family would be done to death *— Held, intention to commit offence under S. 3 TADA not established — In the circumstances, appellant only liable to be convicted under Ss. 452 and 393 IPC and not under S. 3 TADA — TADA Act, 1987, S. 3. Gurmej Singh* v. *State of Punjab*, 1995 Supp (2) SCC 365.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 13-4-1994]

[9776] — Ss. 393 and 452 — Sentence — Mitigating circumstances *— Appellant not armed with any weapon — He remaining at a little distance and running away when people assembled — No overt act attributed to him — Demand of valuables from the complainant made by his associate and grappling with the complainant also took place with his associate only — Fact that the appellant belonged to the Home Guards whose duty is to protect the citizens may be a worthy consideration but, in the facts and circumstances of the case, it did not justify imposition of maximum sentence prescribed for offence under S. 393 IPC — Sentence reduced to the period already undergone (about 2 years and nine months). Gurmej Singh* v. *State of Punjab*, 1995 Supp (2) SCC 365.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 13-4-1994]

— S. 394 *See also* Ss. 34/302 and 394
See also Ss. 120-B, 302, 307 and 394
See also S. 120-B, Ss. 302/34, 394 and 412
See also under Ss. 299 to 304
See also Ss. 392, 394 and 397
See also Ss. 392, 397 and 394
See also Ss. 396 and 394
See also Ss. 411, 394 and 302

[9777] — S. 394 — Applicability — Constructive/vicarious liability under — Classes of person who can become liable under — Classified and explained *— Nature of liability of the different classes of persons — Persons who become liable under S. 394 despite not actually causing hurt*

Section 394 describes punishment for voluntarily causing hurt in committing or attempting to commit robbery. The offence under Section 394 is a more serious offence than one under Section 392. Section 394 postulates and contemplates the causing of harm during commission of robbery or in attempting to commit robbery when such causing of hurt is hardly necessary to facilitate the commission of robbery. Section 394 applies to cases where during the course of robbery voluntary hurt is caused. Section 394 classifies two distinct class of persons. Firstly, those who actually cause hurt and secondly, those who do not actually cause hurt but are "jointly concerned" in the commission of the offence of robbery. The second class of persons may not be concerned in the causing of hurt, but they become liable independently of the knowledge of its likelihood or a reasonable belief in its probability. (Para 10). *Aslam* v. *State of Rajasthan*, (2008) 9 SCC 227: (2008) 3 SCC (Cri) 764.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-9-2008]

[9778] — S. 394 — In view of infirmities in the prosecution evidence, conviction not justified

In view of facts that the appellants belong to the neighbouring village at a distance of less than a mile, that the witnesses who came to identify the appellants had seen the accused from behind while escaping, that a witness had known one of the accused from before yet he did not name him in the FIR and went to identify him, that the identification of the two of the appellants took placed after a gap of four days after their arrest, without explaining the cause for the delay, the conviction of the appellants under S. 394, IPC, cannot be sustained. *Bali Ahir* v. *State of Bihar*, 1984 Supp SCC 625: 1983 SCC (Cri) 312: AIR 1983 SC 289.

Bench Strength **2**. Coram: *D.A. Desai* and **R.B. Misra**, JJ. [Date of decision: 18-1-1983]

[9779] — S. 394 — Sentence to be imposed under — Adequacy of — *Trial court awarding sentence of five years' RI — High Court, while upholding conviction reducing sentence to period already undergone of 358 days — Sustainability — Held, said sentence is wholly inadequate looking to nature of the offence — High Court has not assigned any satisfactory reason for reducing sentence to less than one year — Matter remanded for decision afresh. State of M.P.* v. *Anil*, (2009) 17 SCC 350: AIR 2006 SC 622: (2005) 36 AIC 359 (SC).

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 20-10-2005]

[9780] — Ss. 394 and 302 r/w S. 34 — Conviction and sentence under, as recorded by trial court — *Confirmed having regard to reliable testimony of eyewitnesses as corroborated by testimony of independent witnesses, dying declaration and circumstantial evidence including strong motive of the accused persons and their abscondence after the crime. State of U.P.* v. *Chet Ram*, (1989) 2 SCC 425: 1989 SCC (Cri) 388: AIR 1989 SC 1543: 1989 Cri LJ 1785.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 28-3-1989]

[9781] — Ss. 394, 307 and 411 — Dismissal of appeal against acquittal — Non-indication of the basis for upholding trial court's decision — Impermissibility — *In the instant case, respondent-accused of snatching money forcibly — High Court dismissing appeal by appellant State based on a telegram sent by relative of deceased accused which purportedly showed that date of arrest reported by police was post-dated — Various other factors throwing light on the controversy not considered in proper perspective — Effect of evidence of the two victims and recovery of part of forcibly snatched amount from accused, completely lost sight of — Contrary to what trial court and High Court noted, seized recovery notes clearly showed stamp of the bank from where money was withdrawn — Relevance of this factor not considered — Hence, impugned order of High Court set aside and matter remitted to it for consideration in accordance with law — CrPC, 1973, S. 378* (Paras 2, 3 and 9 to 12). *State of U.P.* v. *Ajai Kumar*, (2008) 3 SCC 351: (2008) 2 SCC (Cri) 369: AIR 2008 SC 1269: (2008) 64 AIC 224 (SC): 2008 Cri LJ 1937: (2008) 3 All LJ 512.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 7-2-2008]

State of Rajasthan v. Sohan Lal, (2004) 5 SCC 573, relied on

[9782] — Ss. 394 and 392 — Robbery and voluntarily causing hurt in committing robbery — Nature, relative scope and ingredients of — Sustainability of conviction — Punishment warranted — *Held, offence of causing hurt is more serious than robbery — 10 years' imprisonment is the minimum punishment under S. 394 — No substance found in appellant-accused's plea that the victim, PW 11, might have had the opportunity of seeing accused persons earlier and therefore TI parade was vitiated — On facts found that TI parade was conducted in presence of ACJM — Articles of robbery were also identified by the victim in presence of a Magistrate — No infirmity found in trial — Punishment imposed on appellant was minimum — Held, there was no ground for the Supreme Court to interfere — Evidence Act, 1872, S. 9* (Paras 10 to 14). *Aslam* v. *State of Rajasthan*, (2008) 9 SCC 227: (2008) 3 SCC (Cri) 764.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-9-2008]

[9783] — Ss. 394, 395, 397 and 411 — Train robbery — *Usually in such offences held, accused persons are not known to the witnesses and prosecution case mostly depends upon the evidence of identification of the accused by the witnesses and recovery of the looted articles at the instance of the accused — Where witnesses had ample opportunity to see the accused persons at the time of robbery and they correctly identified the accused in TI parade, which was not shown to be suffering from any irregularity and prosecution established recovery of the looted articles, namely, currency notes from the possession of the accused and those notes had been duly identified, held, conviction based on the evidence of identification corroborated by evidence of recovery of the looted articles was justified — Mere delay in holding TI parade, in the circumstances of the case was inconsequential*

An offence in the nature of dacoity committed in train is committed more often than not, by persons who are unknown to the victims. The perpetrators of such crime are usually persons who are motivated by sheer greed to commit such offences. In cases where the offence is usually committed by unknown persons with a criminal and professional background, it is only in very rare cases that they are known to the victim. In most cases of such nature the accused is an unknown person and the only evidence which may connect him with the crime is the evidence of identification in a test identification parade, and in some cases evidence of recovery of the articles which are the subject-matter of robbery. Cases of robbery, therefore, mostly depend on such evidence. Moreover, the arrest of the culprits in such cases is often delayed on account of the inherent difficulties which the prosecution naturally faces in such cases. The fact that the accused is not named in the first information report in a case of this nature is, therefore, not of much significance. The prosecution can prove its case on the basis of recovery of the articles which are the subject-matter of the offence and identification of the culprits in a test identification parade. (Para 26). *Lal Singh* v. *State of U.P.*, (2003) 12 SCC 554: AIR 2004 SC 299: 2004 Cri LJ 378.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-11-2003]

[9784] — Ss. 394 and 397 — Applicability — Charge framed under S. 394 r/w S. 397 — Conviction under S. 397 only — No mention of S. 394 — Prejudice caused, if any — *On facts, trial court by placing reliance on evidence of eyewitnesses and TI parade, convicted respondent under S. 397 and sentenced him to 7 years' RI — In appeal, High Court concluded that accused was shown to the witnesses — Also, that S. 397 is not a substantive offence and accused could not have been convicted under S. 397 only but under S. 394 r/w S. 397 — As the conviction was recorded under S. 397 and use of weapons was not fully established, respondent was acquitted — Sustainability — Before Supreme Court, the appellant State, inter alia, contended that S. 397 does not contain the definition of substantive offence and only regulates the punishment — That trial court had itself noted that charge was framed under S. 394 r/w S. 397 — Mere omission of S. 394 did not cause any prejudice — Held, since High Court's reasonings were perverse, impugned judgment set aside — There was no prejudice involved — Hence, respondent convicted for offence punishable under S. 394 for which he was originally charged — However, RI reduced from 7 to 5 years* (Paras 10 and 11). *State of U.P.* v. *Ilyas*, (2009) 1 SCC 365: (2009) 1 SCC (Cri) 500: AIR 2009 SC 1145: (2009) 2 All LJ 127: (2009) 2 ECrN 31 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-11-2008]

[9785] — Ss. 394 and 397 — Robbery — Circumstantial evidence — Discovery of knife and gloves pursuant to the statement made by the accused — *Accused denying he made the statement — Mahazar showing that the said articles were found lying in the open in a paddy field — Held, mere recovery of a knife and gloves in the presence of the accused cannot be regarded as sufficient for connecting the accused with the commission of crime — Evidence Act, 1872, S. 27. Varghese* v. *State of Kerala*, 1998 SCC (Cri) 890.

Bench Strength 2. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 3-3-1998]

[9786] — Ss. 394, 404 and 218 — Police Head Constable charged for having kept valuable articles recovered by a Mallah from a dead body — *Trial Court and High Court convicting accused-appellant for offence under Ss. 394, 404 and 218, IPC — Appellant denying having taken anything but handing over the articles only after search party comes to his outpost — Appellant contending that he received articles on getting information about recovery with intention to deposit and sent the information to police station through a constable — Appellant's witnesses presenting guided statements — General Diary or duty register of the outpost having no mention of the facts — Genuineness of the diary doubtful — If accused really intended to deposit the articles it would be natural for him to record the same in the General Diary — Held — Appellant had no intention to deposit the articles —*

Conviction and sentences upheld. Sathi Prasad v. *State of U.P.*, (1972) 3 SCC 613: 1972 SCC (Cri) 659: AIR 1973 SC 448: 1973 Cri LJ 344.

Bench Strength **3**. Coram: *A.N. Grover*, **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 15-3-1972]

[9787] — S. 394 r/w S. 25, Arms Act — Dacoity — Appellants refusing to participate in the identification parade alleging that they were known to the witnesses — *This does not detract the value of the evidence of the eyewitnesses who had ample opportunity to identify the two assailants who participated in the occurrence — Their evidence corroborated from recoveries conviction upheld but in the circumstances of the case sentence reduced to four years' R.I. Sunil* v. *State of Haryana*, AIR 1994 SC 1536: 1994 Cri LJ 1381.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 27-4-1993]

[9788] — S. 394 r/w S. 397 — Conviction — *When co-accused acquitted on the same evidence, held, there is no justification to sustain conviction of accused-appellant. Puttan* v. *State of U.P.*, 1992 Supp (2) SCC 749: 1992 SCC (Cri) 833: AIR 1992 SC 1032: 1992 Cri LJ 1122: 1992 ALJ 371: (1992) 1 Crimes 876.

Bench Strength **3**. Coram: **Kuldip Singh**, *R.M. Sahai* and *R.C. Patnaik*, JJ. [Date of decision: 19-2-1992]

— Ss. 394/34 *See also under* Ss. 299 to 304

[9789] — Ss. 394/34 and 302/34 — Presumption of commission of offence of robbery or murder or both can be extended under the main part of S. 114, if it is part of the same transaction — *It would be safer to so extend the presumption if there are additional incriminating circumstances reinforcing the same — In the instant case medical evidence showing that the ornaments worn by deceased were forcibly removed from the person of the deceased by inflicting injuries in the process — Other evidence showing that the accused persons came in possession of the ornaments soon after the incident whereafter they divided the booty among themselves, that on the very next day one of the accused sold one of the articles (an earring) and the remaining articles were concealed by the accused persons and that the stolen articles were recovered by police within a reasonable time on the basis of confession made by the accused — No credible explanation given by accused — On facts, held, presumption can be stretched to commission of offence of robbery by the accused — But the presumption cannot be further stretched to commission of murder also by them when there was reasonable scope for two possibilities and court is not in a position to know actual details of the occurrence — In such a situation court should adopt a cautious approach — Hence accused liable to be convicted under S. 394 r/w S. 34 IPC but not under S. 302 IPC on the basis of extended presumption under S. 114 — CrPC, 1973, S. 313 — Evidence Act, 1872, S. 114 Ill. (a)*

The deceased had gone to sleep in his field as usual. But in the morning of 30-5-1984 he was found lying dead with injuries on the ear, chest etc. and the golden earrings and silver lingakar, which he used to wear, were found missing from his person. A big stone was found lying at the spot of occurrence. PW 3, a person residing close to the field of the deceased mentioned to PW 2, the deceased's son and others that he had seen A-1, A-2 and A-3 going towards the field of the deceased at about 3 a.m. when he woke up for drawing water. A-1 and A-2 were arrested on 1-6-1984. On 7-6-1984 A-1 gave information in the presence of panchas, PW 9 and one *S* (not examined) that he would point out a shop in which he had sold a golden earring. A-1 then took the investigating officer and the panchas to the jewellery shop of PW 5, who at the instance of A-1, handed over the earring and the same was seized. PW 6, a cycle shop owner, whose assistance was sought by A-1 to dispose of the earring, corroborated the evidence of PW 5 that the sale transaction had taken place on 30-5-1984 at 1.30 p.m. PW 6 had also deposed that after about 7 days of the incident he was called at police station and on being enquired about the person to whom the earring was sold, he had told the police that it was the shop of PW 5 in which the earring was sold and that the police had taken him and PW 5 and got confirmed the sale transaction. Again on 15-6-1984, A-1 furnished information regarding the place at which silver lingakar was kept. The investigating officer along with the same panchas went to the spot which was by the side of a road. The lingakar covered in a piece of cloth was found concealed beneath the stones under a tree and the same was seized. On the same day A-2 gave information that two golden earrings were kept buried under a mango tree situated in the fields of a nearby village and on that basis those earrings were recovered and seized. A-3, who was arrested on 11-6-1984 gave information on 20-6-1984 in the presence of the same panchas that he had kept one golden earring buried under a mango tree situated in a field and on that basis the article was recovered. The seized articles were identified by PW 2 as those belonging to his deceased father. There was no direct evidence as regards the involvement of the accused persons in the murder and robbery of the deceased. However, the following circumstances were relied upon by the prosecution to establish the case of murder and robbery against the accused:

(*i*) A-1 to A-3 were seen going together towards the field of the deceased in the night of the occurrence; (*ii*) the deceased was wearing golden earrings and silver ring on his person and the same were found missing and his earlobes were found injured which indicated that in the process of removal of earrings such injuries were caused; (*iii*) A-1 pointed out the shop of PW 5 to whom he had sold one golden earring belonging to the deceased and recovery of the same in consequence of the said information; (*iv*) recovery of silver lingakar in consequence of the information given by the said accused; (*v*) recovery of two golden earrings on 15-6-1984 in consequence of the information by A-2; and (*vi*) recovery of one more earring in consequence of the information given by A-3 on 20-6-1984.

All the three accused-appellants faced the trial for offences punishable under Section 302 r/w Section 34 and Section 392 r/w Section 34 IPC. The Sessions Court acquitted the accused of the charges under Sections 302 and 392 but found them guilty under Section 411 IPC and sentenced each of them to rigorous imprisonment for two years. On appeal by the State as well as by the accused, the High Court found the accused guilty of offences punishable under Section 302 r/w Section 34 and Section 392 r/w Section 34 by pressing into service the presumption under Section 114 Illustration (*a*) of the Evidence Act and sentenced them to life imprisonment for offence of murder and 5 years' RI for the offence of robbery with the direction that both the sentences should run concurrently.

Partly allowing the appeals,

Held :

With regard to the first circumstance, the Sessions Judge held that it will not lead the prosecution anywhere, especially in view of the fact that, as stated by PW 3, there was a public lane behind his house which was used by the villagers. This is a reasonably possible view that could be taken. The High Court was not justified in giving undue weight to the first circumstance. (Para II[7])

The fact that within a short time after the murder of the deceased, the appellants came into possession of the ornaments removed from the person of the deceased and the first accused offered one of the stolen articles for sale on that very day and the further fact that the other articles were found secreted to the knowledge of the appellants coupled with non-accountal of the possession of the articles and the failure to give even a plausible explanation vis-à-vis the incriminating circumstances would go to show that they were not merely the receivers of stolen articles from another source but they themselves removed them from the person of the deceased. Thus, the presumption to be drawn under Illustration (*a*) to Section 114 should not be confined to their involvement in the offence of receiving the stolen property under Section 411 but on the facts of the case, it can safely go beyond that. (Para Vb[17])

Presumption envisaged by Illustration (*a*) to Section 114 has been stretched in decided cases to make a similar presumption as the basis for conviction for graver offences of robbery and murder, if they are part of the same transaction. Strictly speaking, such presumption does not come within the sweep of Illustration (*a*), though in some cases Illustration (*a*) has been referred to while upholding the conviction for robbery and murder. Extending the presumption beyond the parameters of Illustration (*a*) could only be under the main part of the section. The illustration only provides an analogy in such a case. (Para VIa[18])

As far as the factual matrix goes, only *Gulab Chand case*, (1995) 3 SCC 574: 1995 SCC (Cri) 552 stands apart. The recovery of the articles of the victim soon after the crime at the instance of the accused and the incredible explanation given by the accused for possession of the articles were held to be sufficient to raise the presumption of having committed robbery and murder, if they were otherwise part of the same transaction. *Gulab Chand case*, (1995) 3 SCC 574: 1995 SCC (Cri) 552 was cited with approval in *Mukund* v. *State of M.P.*, (1997) 10 SCC 130: 1997 SCC (Cri) 799 and was also referred to in *Ronny* v. *State of Maharashtra*, (1998) 3 SCC 625: 1998 SCC (Cri) 859 and *Sanjay* v. *State (NCT of Delhi)*, (2001) 3 SCC 190: 2001 SCC (Cri) 449. But in all the three cases decided subsequent to *Gulab Chand case* there were additional circumstances which shed light on the involvement of the accused. Whether the approach of the Court and ratio of the decision in *Gulab Chand case* is in consonance with the three-Judge Bench decision in *Sanwat Khan case*, AIR 1956 SC 54: 1956 Cri LJ 150 is, at least a debatable issue. When this decision was brought to the notice of Their Lordships who decided *Gulab Chand case* it was merely observed that "the said decision is not applicable in the facts and circumstances of the present case". There was no further elaboration. In this state of law, the safer course would be to give due weight to the dicta laid down and the ultimate conclusion reached by the larger Bench in *Sanwat Khan case*. (Para VIa[23])

In the present case according to the medical officer who conducted post-mortem over the dead body of the deceased, two external injuries were such which could have been caused if the earrings were forcibly snatched and the other two external injuries were such which could have been caused by a hard and blunt object like a stone. He clarified that internal injuries could be caused by the stone which was found lying at the place of occurrence, if it is forcibly hit on the chest. Further, he deposed that the external injuries and internal injuries were sufficient in the ordinary course of nature to cause death. He denied the suggestion that the deceased could not have been hit with a stone. In the light of the medical evidence, there are three points which are to be prominently kept in view. Firstly, there was a lacerated wound on the posterior aspect of the left ear and another such wound on the right ear lobule which according to the doctor could have been caused in the process of forcibly snatching the earrings worn by the victim. Secondly, the internal injuries which were the immediate cause of death would have been caused by a hard and blunt object. According to the prosecution the deceased was hit by a heavy stone found at the spot and seized under a panchnama. Thirdly, the injuries in question were ante-mortem. In this state of evidence, it is clear beyond reasonable doubt that the person or persons who removed the ornaments worn by the deceased themselves inflicted the wounds in the process of removing them. There was evidently a hush-hush operation to run away with the booty without allowing much time to pass. The fact that the ornaments on the person of the deceased came into the hands of the accused soon after the crime and they failed to give any explanation for the circumstances appearing against them justifies the presumption that they themselves removed these articles from the person of the deceased. Causing injuries to the deceased in the process of removal of earrings is inextricably interlinked with the commission of theft which is an ingredient of robbery. It would be far-fetched to think, as the trial Judge has expressed that someone else might have caused injuries and the appellant would have stolen the articles thereafter. The fact that the booty was distributed between the three accused and that they had secreted the robbed articles would clearly reveal that the three accused shared the common intention to commit robbery. Hence, it must be held that by having resort to the presumption under Section 114, an inference can be safely drawn that the appellants committed robbery in furtherance of a common intention. No other reasonable hypothesis consistent with the innocence of the accused is possible. (Para VIb[27])

Whether the presumption could be further stretched to find the appellants guilty of the gravest offence of murder is what remains to be considered. It is in this arena, there are divergent views of the Supreme Court. However, there is no need to dilate further on this aspect as in the peculiar circumstances of the case, it would be unsafe to hold the accused guilty of murder, assuming that murder and robbery had taken place as a part of the same transaction. According to the prosecution case, which is supported by the medical evidence, the deceased was hit by a heavy stone. It is not the case of the prosecution that the appellants carried any weapon with them or that the injuries were inflicted with that weapon. There is every possibility that one of the accused picked up the stone at that moment and decided to hit the deceased in order to silence or immobilise the victim. If the idea was to murder him and take away the ornaments from his person, there was really no need of forcibly snatching the earrings before putting an end to the victim. It seems that there was no premeditated plan to kill the deceased. True, common intention could spring up any moment and all the three accused might have decided to kill him instantaneously, for whatever reason it be. While that possibility cannot be ruled out, the possibility of one of the accused suddenly getting the idea of killing the deceased and in furtherance thereof picking up the stone lying at the spot and hitting the deceased cannot also be ruled out. Thus there are two possibilities. When there is reasonable scope for two possibilities and the court is not in a position to know the actual details of the occurrence it is not safe to extend the presumption under Section 114 so as to find the appellants guilty of the offence of murder with the aid of Section 34 IPC. While drawing the presumption under Section 114 on the basis of recent possession of belongings of the victim with the accused, the court must adopt a cautious approach and have an assurance from all angles that the accused not merely committed theft or robbery but also killed the victim. (Para VIc[28])

In the result, conviction of the accused under Section 302 IPC is set aside. The accused are guilty of the offence punishable under Section 394 read with Section 34 IPC and accordingly the accused are convicted under Section 394 and sentenced to undergo further imprisonment for a period of three months. (Para VII[29]). *Limbaji* v. *State of Maharashtra*, (2001) 10 SCC 340: AIR 2002 SC 491.

Bench Strength **2**. Coram: *R.C. Lahoti* and **P. Venkatarama Reddi**, JJ. [Date of decision: 14-12-2001]

Sanwat Khan v. State of Rajasthan, AIR 1956 SC 54: 1956 Cri LJ 150; Shivappa v. State of Mysore, (1970) 1 SCC 487: 1970 SCC (Cri) 215; State of Maharashtra v. Suresh, (2000) 1 SCC 471: 2000 SCC (Cri) 263, relied on

Gulab Chand v. State of M.P., (1995) 3 SCC 574: 1995 SCC (Cri) 552, doubted

UT, Goa v. Beaventura D'Souza, 1993 Supp (3) SCC 305: 1993 SCC (Cri) 999; Surjit Singh v. State of Punjab, AIR 1994 SC 110; Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859; Mukund v. State of M.P., (1997) 10 SCC 130: 1997 SCC (Cri) 799; Sanjay v. State (NCT of Delhi), (2001) 3 SCC 190: 2001 SCC (Cri) 449; Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447, considered

— Ss. 394/397 *See also under* Ss. 299 to 304

— S. 395 *See also* Ss. 147, 148, 323, 324, 149, 427 and 395

See also Ss. 147, 149, 302, 323, 395 and 396

See also Ss. 148, 302, 323, 324, 395 and 396

See also Ss. 149, 326/34, 324/34, 427/34, 450 and 392, 395 and 397

See also Ss. 149 and 395

See also Ss. 302, 395, 396 and 397

See also Ss. 302/149, 395, 364 and 201

See also Ss. 390 and 395

See also Ss. 394, 395, 397 and 411

See also Ss. 396 and 395

See also Ss. 396, 395, 391, 390 and 302

See also Ss. 396, 395 and 397

See also Ss. 397 and 395

See also Ss. 412 and 395

[9790] — S. 395 — Accused well known to the victims of dacoity — Absence of precaution to conceal his identity — *Effect of*

Where the accused was well known to the victim of dacoity and his family members and he has been identified by partisan witnesses and their evidence is corroborated by other unimpeachable evidence viz., as regards the arrest of the accused soon after the incident, their attempt to flee from the village at an unusual hour, their resistance against their arrest, the scuffle consequent upon that, and the injuries sustained therein by the accused and others, however improbable it might appear at first sight for the accused to have participated in the incident, it is difficult to get over the evidence of his having been identified and named by the victim of dacoity and other witnesses almost immediately after the incident. The only explanation about the highly desperate act on the part of the appellant is his antipathy towards the victim of dacoity getting the better of him, which made him abandon any caution which he would have otherwise taken while participating in such an incident. *Siya Ram Rai* v. *State of Bihar*, (1973) 3 SCC 241: 1973 SCC (Cri) 236: AIR 1973 SC 51: 1973 Cri LJ 155.

Bench Strength 3. Coram: **J.M. Shelat**, *S.N. Dwivedi* and *Y.V. Chandrachud*, JJ. [Date of decision: 26-9-1972]

[9791] — S. 395 — Appreciation of evidence — Conviction upheld despite minor discrepancies

Where one witness says that the appellant was carrying a weapon like a hockey stick and another witness says that the appellant was armed with a pistol, such a contradiction can have little value because it is common experience that in the confusion of the moment witnesses are prone to make such errors specially seized by sudden fear. Besides, those who are determined to be lawless do not always stick to their weapons.

Where about 20 persons were travelling by the bus and though almost all of them were looted but the first information report contained the names of some of them only, the fact that the person who successfully identified the miscreants was not included in the first information report cannot justify the inference that he was not travelling by the bus. *Bharat Singh* v. *State of U.P.*, (1973) 3 SCC 896: 1973 SCC (Cri) 574: AIR 1972 SC 2478: 1972 Cri LJ 1705.

Bench Strength 3. Coram: *J.M. Shelat*, *S.N. Dwivedi* and **Y.V. Chandrachud**, JJ. [Date of decision: 15-9-1972]

[9792] — S. 395 — Appreciation of evidence — *Six accused prosecuted for dacoity — All the six named in the FIR and known to the witnesses — Three belonging to the village of the occurrence and three to neighbouring village — All the witnesses inimical to all the six accused*

High Court acquitted three accused belonging to the village of the occurrence on the ground that it was not probable that they would commit dacoity in their own village without taking any precaution to conceal their identity. The conviction of the remaining three accused was maintained and they were not given the benefit of these deficiencies.

Held :

There are no sufficient reasons for differentiating the case of the appellant from that of the other accused who were acquitted by the High Court. *Ram Shankar Singh* v. *State of U.P.*, AIR 1956 SC 441: 1956 Cri LJ 822.

Bench Strength 3. Coram: **S.R. Das**[2], *N.H. Bhagwati* and **B.P. Sinha**[1], JJ. [Date of decision: 19-4-1955]

[9793] — S. 395 — Bank dacoity — *FIR promptly lodged — Accused persons arrested red-handed near the place of dacoity while escaping in a car — Non-mention of the car number in FIR only a minor infirmity — Part of the loot as well as weapons used* *in the dacoity recovered — Testimony of Bank employees reliable, they being independent witnesses — On facts, held, offence under S. 395 made out. State of Rajasthan* v. *Sukhpal Singh*, (1983) 1 SCC 393: 1983 SCC (Cri) 213: AIR 1984 SC 207.

Bench Strength **2**. Coram: **Y.V. Chandrachud, C.J.** and *V.D. Tulzapurkar*, J. [Date of decision: 16-12-1982]

[9794] — S. 395 — Concurrent running of sentences — Plea for — Conviction under S. 395 IPC — *One accused-appellant convicted in 4 different cases while other accused-appellant convicted in 5 different cases — RI for 7 years ordered by Assistant Sessions Judge against the appellants in each case to run one after the other — Supreme Court not desiring to give benefit of all sentences to run concurrently — Adopting via media consistent with the administration of criminal justice, total period of 14 years' imprisonment to each appellant in respect of all the convictions passed against the appellants, held, was sufficient to meet the ends of justice — CrPC, 1973, S. 427. Ammavasai* v. *Inspector of Police, Valliyanur*, (2000) 9 SCC 749: 2001 SCC (Cri) 1477: AIR 2000 SC 3544.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 3-3-2000]

[9795] — S. 395 — Conviction based on identification by five witnesses — *Delay in conducting the identification parade, held, made the identification doubtful — Conviction improper. Soni* v. *State of U.P.*, (1982) 3 SCC 368(1): 1983 SCC (Cri) 49(1).

Bench Strength **2**. Coram: **V.D. Tulzapurkar** and *Baharul Islam*, JJ. [Date of decision: 6-3-1981]

[9796] — S. 395 — Conviction of less than five — *All named nine persons charged but only four convicted by trial court — Remaining three except the appellant acquitted by High Court — Held, appellant's alone conviction under S. 395 cannot stand. Ram Lakhan* v. *State of U.P.*, (1983) 2 SCC 65: 1983 SCC (Cri) 339: AIR 1983 SC 352(1): 1983 Cri LJ 691(1): 1983 ALJ 283.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 2-2-1983]

[9797] — S. 395 — Conviction of less than five persons — *Six accused placed on trial for committing dacoity — Not mentioned that some others participated in the dacoity with them — Three accused acquitted — Conviction of remaining 3 accused under S. 395, held, illegal*

The charge framed against the six accused placed on trial for dacoity did not indicate that those six persons along with other unknown persons had committed dacoity. The charge was that the six persons placed on trial were the persons who had committed dacoity. The High Court acquitted three of the six accused. Only three persons are thus left as the persons concerned with the trial.

Held :

The High Court having come to the conclusion that three out of the six convicted persons were not guilty, should have gone into the question whether there was satisfactory evidence to show that the three remaining appellants before it could be convicted under S. 395, IPC, on the charge as framed. In any event, the three remaining accused persons could be convicted of the lesser offence of robbery under S. 392, IPC, if there was evidence to show that they had committed acts of theft and used violence while committing the theft.

In such a situation their individual acts in connection with the alleged occurrence had to be considered. *Ram Shankar Singh* v. *State of U.P.*, AIR 1956 SC 441: 1956 Cri LJ 822, 827.

Bench Strength **3**. Coram: **S.R. Das**^{2}, *N.H. Bhagwati* and **B.P. Sinha**^{1}, JJ. [Date of decision: 19-4-1955]

[9798] — S. 395 — Conviction of less than five persons when sustainable — *More than five persons committing robbery — Conviction of all not possible for lack of identification — Conviction of three persons upheld as participation by more than five not disputed*

Where the charge against the convicted persons was that apart from the named seven or eight persons there were five or six others who had taken part in the commission of a dacoity, it cannot be said that the offence was committed by less than five persons. *Saktu* v. *State of U.P.*, (1973) 1 SCC 202: 1973 SCC (Cri) 307: AIR 1973 SC 760: 1973 Cri LJ 599.

Bench Strength **3**. Coram: *J.M. Shelat*, **Y.V. Chandrachud** and *I.D. Dua*, JJ. [Date of decision: 27-10-1972]

AIR 1956 SC 441: 1956 Cri LJ 822 distinguished
For the principle involved here See also S. 149

[9799] — S. 395 — Conviction under, set aside. *Tulsi Ram* v. *State of M.P.*, 1987 Supp SCC 464: 1988 SCC (Cri) 104.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 24-2-1987]

Antar Singh v. State of M.P., (1979) 1 SCC 79: 1979 SCC (Cri) 147: AIR 1979 SC 1188, followed

[9800] — S. 395 — Dacoity — Appreciation of evidence — *Prosecution case believed to be concocted and testimony of recovery of looted articles from the accused alleged to have committed the dacoity disbelieved — On the same testimony, held, recovery of gun from one of the accused should not have been believed — Ownership of the gun not* *having been established, such accused cannot alone be convicted. Nanhey* v. *State of U.P.*, (1977) 2 SCC 74: 1977 SCC (Cri) 241: AIR 1977 SC 783: 1977 Cri LJ 583.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **A.C. Gupta**, JJ. [Date of decision: 14-12-1976]

[9801] — S. 395 — Dacoity — Attempt to commit robbery — *More than five persons attempting to commit robbery — No robbery committed and the robbers taking to their heels on a hue and cry being raised — Held, accused were guilty of the offence of dacoity under the section*

Where an attempt to commit robbery was made by five or more than five persons though in fact no robbery was committed as the robbers took to their heels without collecting any booty when they found that villagers had collected, the offence of dacoity was committed and the dacoits were guilty under S. 395, IPC. *Shyam Behari* v. *State of U.P.*, AIR 1957 SC 320: 1957 Cri LJ 416, 418, 419.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and **N.H. Bhagwati**, *Syed Jafer Imam, S.K. Das* and *P. Govinda Menon*, JJ. [Date of decision: 5-10-1956]

[9802] — S. 395 — Dacoity — Conviction based on evidence of related injured witnesses — Plea of false implication, held, cannot be inferred merely because of the relationship between the witnesses and the victim — *If such plea is raised, court's approach should be cautious and it should determine whether evidence of such witness is credible or not — On facts held, testimony of the related witnesses, who were injured in the incident, was trustworthy and conviction could be based thereon*

Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. (Para 13)

In this case, two injured eyewitnesses were related to the victims. But credibility of their evidence was not in doubt. Hence the appellant-accused were rightly convicted on the basis of such evidence. *Arjun Mahato* v. *State of Bihar*, (2008) 15 SCC 604: AIR 2008 SC 3270: (2008) 69 AIC 39 (SC): 2008 Cri LJ 4313.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 13-8-2008]

Dalip Singh v. State of Punjab, AIR 1953 SC 364; Babulal Bhagwan Khandare v. State of Maharashtra, (2005) 10 SCC 404: 2005 SCC (Cri) 1553; Salim Sahab v. State of M.P., (2007) 1 SCC 699: (2007) 1 SCC (Cri) 425, relied on

[9803] — S. 395 — Dacoity — Omission to file list of articles alleged to have been looted and taken away by dacoits — *Complainant also not stating nature of such articles — Nothing recovered from accused persons — Held, charge of dacoity not sustainable — Conviction set aside. Suresh* v. *State of U.P.*, 1990 Supp SCC 138: 1990 SCC (Cri) 643.

Bench Strength **2**. Coram: *B.C. Ray* and *K. Jagannatha Shetty*, JJ. [Date of decision: 8-12-1987]

[9804] — S. 395 — Dacoity — Seizure of some stolen articles from possession of the appellant and some recovered in pursuant to his statement — *Appellant identified by three witnesses in test identification parade — Conclusion drawn by the courts below found to be based on proper appreciation of evidence — In the circumstances of the case concurrent findings of fact merit no disturbance — Conviction upheld. Ramanand Ramnath* v. *State of M.P.*, (1996) 8 SCC 514.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *G.B. Pattanaik*, JJ. [Date of decision: 10-4-1996]

[9805] — S. 395 — Dacoity — Sentence — Reduction of, on sympathetic grounds, not called for

The High Court altered the conviction of the appellant-accused from Section 396 to Section 395 IPC and from sentence of life imprisonment to sentence of seven years' RI. Before the Supreme Court, in appeal, it was submitted that most of the appellants have suffered sentence of nearly 4½ years and considering the long passage of time, the sentence should be suitably reduced. In the case of one of the appellants, it was submitted that though he has suffered custody for about one year, considering the unclear role attributed to him by the prosecution his case deserves sympathetic consideration. Witnesses were related to the deceased and their evidence should not be accepted particularly when two of them were disbelieved and the role of an accused which was so eloquently stated by the witnesses has been discarded.

Rejecting the submission,

Held :

In the instant case the credibility of at least two witnesses, who were related to the victims and had sustained injuries in the incident, was not in doubt. It is a serious case of dacoity, any leniency in sentence would not only be undesirable but also would be improper. The passage of time cannot wash away the gravity of offence. (Para 15). *Arjun Mahato* v. *State of Bihar*, (2008) 15 SCC 604: AIR 2008 SC 3270: (2008) 69 AIC 39 (SC): 2008 Cri LJ 4313.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 13-8-2008]

[9806] — S. 395 — Dacoity — TI parade — Identification of accused by one witness only — Other witness who was also present at the crime scene not participating — Investigation, held, not vitiated — *Accused punished under S. 395 IPC, for commission of dacoity at the house of PWs 1 and 3 (wife and husband) who were locked in bathroom — Only PW 3 identifying appellant — PW 1 not participating in TI parade — PW 3 specifically denying that the accused had been shown to him before TI parade — Appellant's conviction maintained — Sentence of 10 years' RI and fine also did not warrant any interference — Evidence Act, 1872, S. 9* (Paras 10 and 12). *Mohd. Kalam* v. *State of Rajasthan*, (2008) 11 SCC 352: AIR 2008 SC 1813: 2008 Cri LJ 2602.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 14-3-2008]

Malkhansingh v. State of M.P., (2003) 5 SCC 746: 2000 SCC (Cri) 1247; Munshi Singh Gautam v. State of M.P., (2005) 9 SCC 631: 2005 SCC (Cri) 1269, relied on

[9807] — S. 395 — Dacoity committed in complainant's house in early hours of evening — *Although there is some consistency in the testimony of the prosecution witnesses, held on facts and in the circumstances, the complainant falsely implicated his neighbour, the appellant, in the crime due to enmity and hence the conviction cannot be sustained. Lakshman Prasad* v. *State of Bihar*, 1981 Supp SCC 22: 1981 SCC (Cri) 642: AIR 1981 SC 1388: 1981 Cri LJ 1010.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *Baharul Islam*, JJ. [Date of decision: 26-3-1981]

[9808] — S. 395 — Dacoity in temple — Appreciation of evidence — Conviction confirmed — PW 14 (Special Executive Magistrate), who supervised test identification parade (TI parade), proved identification memos in his deposition — *He deposed that all possible precautions were taken in conduct of TI parade — There is no challenge to his testimony — Regarding substantive evidence, appellants identified by inmates of temple in court — Being inmates, their presence in temple at the time of incident was natural — There was sufficient light for enabling them to identify dacoits — Prosecution also examined large number of witnesses to adduce link evidence to the effect that right from arrest of accused persons till being lodged in jail, faces of suspects were kept veiled and nowhere did opportunity to see them arise — Again, grounds on which A-3 and A-6 were given benefit of doubt, did not, in any manner, affect credibility of evidence of PWs 2, 3 and 9 in court or TI parade insofar as appellants (A-2, A-4 and A-5) are concerned — Further, prosecution explanation for delay in TI parade, that suspects, including appellants, were arrested on different dates and last of such arrest being of A-4, TI parade was held only thereafter, is acceptable and it cannot be said that TI parade suffered from any undue and unexplained delay — Hence, held, conviction recorded by trial court and confirmed by High Court do not suffer from any factual or legal infirmity — Evidence Act, 1872, S. 9* (Paras 15 to 21). *Ram Babu* v. *State of U.P.*, (2010) 5 SCC 63.

Bench Strength **2**. Coram: *P. Sathasivam* and **R.M. Lodha**, JJ. [Date of decision: 19-4-2010]

[9809] — S. 395 — Disposal of appeal by High Court on merits in absence of accused appellant's counsel and upholding conviction under S. 395 and sentence of 10 years of rigorous imprisonment — Propriety — *In view of the large number of convicts (12 in this case) and the severity of the sentence, held, it was advisable for the High Court to appoint an amicus curiae in such a case — Omission to do so, held, ended in miscarriage of justice as the High Court had taken into account a set of legally forbidden material such as the statements made by witnesses to the investigating officer particularly when the investigating officer had not been examined — Such flaws might have been averted if a counsel was appointed to argue for the appellants — Hence, matter remitted to High Court for disposal of the appeal afresh in accordance with law — Moreover, in the peculiar facts of the case, direction given to the High Court that if the counsel for the accused appellants did not appear, it should appoint an advocate at State's cost to argue for the accused — Practice and procedure — Appearance of party or counsel — Proper course for the appellate court in case of absence of appellant's counsel in criminal appeal involving a large number of persons and a severe sentence — CrPC, 1973, Ss. 386, 374, 303, 304 and 162*

All the twelve appellants were convicted by the Sessions Court under Section 395 of the Penal Code and sentenced to rigorous imprisonment for 10 years each. They filed an appeal before the High Court. On the date of hearing their counsel did not turn up and, therefore, the High Court heard the counsel for the State alone and dismissed the appeal on merits. Allowing the instant appeal,

Held :

When the counsel engaged by the appellants in a criminal appeal does not turn up there is no obligation on the court of appeal to wait for him or even to adjourn the case awaiting his presence. However, if the counsel is absent there is nothing in law which precludes the court of appeal from appointing another counsel at the State's expense to assist the court. It is a matter of prudence that the court may, in an appropriate case, appoint a counsel at the State's expense to argue for the cause of the accused. Of course it is for the court to determine, on a consideration of the conspectus of the case, whether it does or does not require such legal assistance. There can be appeals which could be disposed of unassisted by counsel to put forth the favourable features for the accused. But if the sentence imposed by the judgment impugned in the appeal is of a substantial range it is advisable to seek the assistance of a legal talent. (Paras 4, 5 and 9)

On the fact situation of the instant case it has to be held that there was miscarriage of justice as the High Court proceeded to decide the appeal unaided by the arguments of an advocate or an amicus curiae. The stake involved in the appeal for the large number of convicted persons is obviously very high, particularly in view of the sentence of rigorous imprisonment for 10 years imposed on each of them. Hence any supercilious dealing of their case will be at the risk of a serious miscarriage of justice. (Paras 6 and 8)

The High Court has taken into account a set of legally forbidden materials in reaching the conclusion. It is trite that whatever a witness had stated to the investigating officer cannot be used as evidence. Section 162 CrPC, which incorporated the aforesaid prohibition, permits such statements to be used only for the limited purpose of contradicting the witness in certain circumstances. Moreover, in the instant case the investigating officer has not been examined. If a counsel was appointed to argue for the accused (when the counsel engaged by the accused did not turn up) the High Court might have averted such a legal infirmity. (Paras 11 and 12). *Rishi Nandan Pandit* v. *State of Bihar*, (1999) 8 SCC 644: AIR 1999 SC 3850.

Bench Strength 2. Coram: **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision: 15-10-1999]

Bani Singh v. State of U.P., (1996) 4 SCC 720: 1996 SCC (Cri) 848, relied on

Ram Naresh Yadav v. State of Bihar, AIR 1987 SC 1500: 1987 Cri LJ 1856, held overruled

[**Ed.**: The Supreme Court remitted the case to the High Court for disposal of the appeal afresh. On the peculiar facts of the case the Supreme Court directed the High Court that in case no counsel for the accused turned up, it should appoint an advocate at State cost to argue for the accused appellants. (Para 13).]

[9810] — S. 395 — Evidence — *No rule of law that eyewitnesses cannot recognise the dacoits whom they had seen committing the dacoity at night — Only that courts have to be extremely cautious. Delhi Admn.* v. *Bal Krishan*, (1972) 4 SCC 659: AIR 1972 SC 3: 1972 Cri LJ 1.

Bench Strength 2. Coram: *A.N. Ray* and **D.G. Palekar**, JJ. [Date of decision: 15-10-1971]

[9811] — S. 395 — Five named accused charged for dacoity but two of them acquitted — *Held, in such a situation the conviction of the other three accused for dacoity cannot stand — Hence their conviction altered to that under S. 392, IPC. Om Prakash* v. *State of Rajasthan*, 1998 SCC (Cri) 696: AIR 1998 SC 1220.

Bench Strength 2. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 21-1-1998]

[9812] — S. 395 — Highway robbery — *Accused clearly identified by victims in T.I. parade as well as in trial court as one of the participants in the robbery and assault — Accepting the victim's testimony on sound and convincing reasons, accused convicted under S. 395 and sentenced to 4 years' RI by trial court — Held, High Court erred in setting aside the trial court's order and acquitting the accused in perfunctory, superficial and casual manner — Conviction and sentence recorded by trial court upheld. State of Haryana* v. *Uttam*, (1987) 3 SCC 485: 1987 SCC (Cri) 606.

Bench Strength 2. Coram: *A.P. Sen* and **V. Balakrishna Eradi**, JJ. [Date of decision: 21-4-1987]

[9813] — S. 395 — Sentence — *Three year's RI awarded by trial court — High Court acquitting the accused persons and they remaining on bail for long after undergoing a substantial part of the imprisonment — But Supreme Court restoring order of conviction and sentence passed by trial court — In view of long lapse of the time during which accused got married and now well settled, sentence of imprisonment reduced to the period already undergone but a fine of Rs 3000 imposed on each of the accused. State of Rajasthan* v. *Sukhpal Singh*, (1983) 1 SCC 393: 1983 SCC (Cri) 213: AIR 1984 SC 207.

Bench Strength 2. Coram: **Y.V. Chandrachud, C.J.** and *V.D. Tulzapurkar*, J. [Date of decision: 16-12-1982]

[9814] — S. 395 — Sentence — Appellants, youngmen — Fear caused by exploding cracker — No attempt to cause injury to anyone — *On the facts and circumstances sentence reduced to one and a half years already undergone by them. Kusho Mahton* v. *State of Bihar*, 1980 Supp SCC 344: 1981 SCC (Cri) 279: AIR 1980 SC 788: 1980 Cri LJ 313.

Bench Strength **2**. Coram: *R.S. Sarkaria* and *O. Chinnappa Reddy*, JJ. [Date of decision: 7-2-1980]

[9815] — S. 395 — Sentence — Dacoity — Enhancement by High Court, held, justified

In the dacoity, property of more than six thousand rupees in value had been looted, the victims of the dacoity had been injured, the dacoits had used guns and had, in fact, fired at persons who had chased them. In any event, dacoity is a serious offence and the maximum sentence which could be passed under S. 395 of the Indian Penal Code is a sentence of imprisonment for life.

There is no justification for the Supreme Court to say that the grounds given by the High Court for enhancing the sentence were inadequate and required interference by Supreme Court in an appeal by special leave. *Phuchar Jha* v. *State of Bihar*, Cr. A. No. 2 of 1957.

Bench Strength **2**. Coram: **Syed Jafer Imam** and *P. Govinda Menon*, JJ. [Date of decision: 4-9-1957]

[9816] — S. 395 — Sentence — Five years' RI not adequate — *High Court justified in enhancing the sentence of 5 years' RI to 10 years' RI. Sarjug Rai* v. *State of Bihar*, AIR 1958 SC 127: 1958 SCR 768: 1958 Cri LJ 268, 269.

Bench Strength **2**. Coram: **B.P. Sinha** and *J.L. Kapur*, JJ. [Date of decision: 28-10-1957]

[9817] — S. 395 — Sentence — Offence of a technical nature — *Officers of Sales Tax Department making a search — Accused snatching papers seized and thereby committing dacoity — Sentence reduced from 2 years' RI to imprisonment of 1 month already undergone. Sheonath Prasad* v. *State of Bihar*, AIR 1968 SC 1517: (1969) 1 SCR 150: (1968) 22 STC 488: 1969 Cri LJ 37, 40.

Bench Strength **2**. Coram: *S.M. Sikri* and **R.S. Bachawat**, JJ. [Date of decision: 30-4-1968]

[9818] — S. 395 — Sentence under, reduced by taking a lenient view — Relatively insignificant loot and all appellant-accused presently grown old — *Twenty-eight years already elapsing since offence took place and appellants suffering for all those years — Although all appellants might have been present during dacoity, but had caused no injury to any witnesses — Considering overall circumstances, held, appellants deserve lenient treatment — Hence, sentence awarded by High Court reduced to three years — Appellants' bail bonds cancelled and they directed to surrender and serve remaining sentence* (Paras 4 and 5). *Ram Sunder Mahto* v. *State of Bihar*, (2009) 16 SCC 191: (2010) 3 SCC (Cri) 234.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 7-10-2009]

[9819] — S. 395 — Sentence warranted — Dacoity in temple — Appellant-accused convicted under S. 395 and sentenced to five years' RI — *Appellants' plea that as incident took place 30 years back and they had already undergone half the sentence, their sentence be reduced to that already undergone — Tenability — Held, dacoity is a daredevil act — Most of the time, a serious crime like dacoity is committed by unknown persons and it is very difficult to trace them and still more difficult to secure their conviction — As a matter of fact, looking to the nature of crime and the manner in which appellants looted temple properties, graver punishment was warranted — In any case, sentence of five years' RI awarded by trial court and confirmed by High Court, calls for no interference* (Para 22). *Ram Babu* v. *State of U.P.*, (2010) 5 SCC 63.

Bench Strength **2**. Coram: *P. Sathasivam* and **R.M. Lodha**, JJ. [Date of decision: 19-4-2010]

[9820] — S. 395 — SLP — Interference with findings of HC — Practice — *Accused in dacoity case acquitted by HC under S. 395 IPC — Complainant (appellant in the present case) applying to HC for return of property, which was the subject matter of the dacoity, as belonging to him — HC declining the request on the ground that ownership was not established — In appeal to SC, held the court was not inclined to interfere with the finding of HC — However, in case the appellant chose to claim the property by way of a regular suit, the findings of HC would not come in his way in establishing his ownership — CrPC, 1973, Ss. 452 and 454. Devi Lal* v. *Chandan Singh*, 1994 SCC (Cri) 157.

Bench Strength **2**. Coram: *Kuldip Singh* and *P.B. Sawant*, JJ. [Date of decision: 20-11-1992]

[9821] — S. 395 — Test identification parade — Paper make-up of accused — *Moles, cuts and scars on face and body of appellant covered with pieces of paper — Ten undertrials with similar paper coverings mixed with appellant and all the eleven made to close their eyes for the purpose of identification parade — Possibility of appellant being shown to witnesses while taking him away from police station to jail not eliminated by prosecution — Held, manner in which identification* *parade conducted not satisfactory — Paper make-up on the faces of the participants, to such an extent, has rendered the identification parade wholly unreliable — It would not be safe to convict the appellant on the basis of the identification evidence — Evidence Act, 1872, S. 9. Chaman* v. *State of U.P.*, 1993 Supp (1) SCC 403: 1993 SCC (Cri) 212: AIR 1992 SC 601.

Bench Strength **2**. Coram: *Kuldip Singh* and *Yogeshwar Dayal*, JJ. [Date of decision: 26-11-1991]

[9822] — **S. 395 — TI parade — Sustainability of conviction on basis of** — *Accused (seven in number) alleged to have broken glasses of the office of a petrol pump, beaten up the complainant's party with lathis and snatched Rs 10-12 thousand from the cash-box — A-1 & A-6 (appellants) identified in TI parade — Trial court finding evidence of PWs cogent and credible and convicting all the accused — High Court, in appeal, convicting the accused-appellants under S. 395, but acquitting the co-accused — Discussing the evidentiary value of TI parade based on case law, held, in the instant case appellants were identified by PWs 1 and 11 and no infirmity was noticed in their evidence — Moreover, all requisite formalities with regard to test identification parade were adopted and followed — High Court's judgment sustainable* (Paras 7, 2 and 3). *Heera* v. *State of Rajasthan*, (2007) 10 SCC 175: (2007) 3 SCC (Cri) 461: AIR 2007 SC 2425: (2007) 56 AIC 119 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 20-6-2007]

Matru v. State of U.P., (1971) 2 SCC 75: 1971 SCC (Cri) 391; Munshi Singh Gautam v. State of M.P., (2005) 9 SCC 631: 2005 SCC (Cri) 1269, relied on

[9823] — **S. 395 — Three accused convicted and sentenced to ten years' RI whereas other five accused, whose acquittal by trial court reversed, sentenced to eight years' RI by High Court without assigning any reasons** — *Proper course would be to award a uniform sentence of seven years to all accused convicted by the High Court. Lachhman Ram* v. *State of Orissa*, (1985) 2 SCC 533: 1985 SCC (Cri) 263: AIR 1985 SC 486: 1985 Cri LJ 753.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 1-3-1985]

[9824] — **Ss. 395 and 120-B — Threatening and illegal demand of money** — *Charges framed under S. 120-B r/w S. 307 r/w Ss. 34, 307 r/w Ss. 114, 307 r/w Ss. 149, 387 r/w Ss. 34, 143, 144, 147, 148 and 506(ii), 353 r/w S. 114 IPC and Ss. 3(2)(ii), 3(3), 3(5), 5 and 6, TADA Act and S. 25(1-B)(a), S. 5 r/w S. 27, Arms Act — Appellants along with five other accused persons charged under the aforesaid sections for threatening and illegally demanding Rs 10 lakhs from builders which was finally settled at Rs 5 lakhs — PW 7, who was threatened to meet the said demand informing the police officials about the same and getting the appellants arrested on spot — Trial court appreciating the prosecution evidence convicting the appellants only under Ss. 395 and 120-B and acquitting the others of all the charges framed against them — In absence of any illegality in the findings recorded or the evidence appreciated by the trial court, held, impugned judgment was not liable to be interfered with. Babu Kuttan R. Pillai* v. *State of Maharashtra*, (2001) 9 SCC 409.

Bench Strength **2**. Coram: *S.S.M. Quadri* and **D.P. Mohapatra**, JJ. [Date of decision: 15-12-2000]

[9825] — **Ss. 395, 216, 224, 147, 201 and 332 — Conviction under for gaming — Sentence — Mitigating circumstances** — *Long lapse of time — Trivial injuries caused to policemen by stone pelting for disruption of cock-fight — Held, in circumstances of case severe punishment not called for — Sentence reduced to punishment already undergone but fine imposed under S. 395 increased*

The case does not call for a severe punishment. The background in which the incident occurred, the minor injuries caused to some of the policemen and the circumstances in which the crowd pelted stones at the police party betray frustration for not being able to enjoy the cock-fight rather than any real desire to attack the police party. In the special circumstances of the case and having regard to the passage of time the ends of justice will be met if substantive sentence awarded to each appellant under each count is reduced to punishment already undergone and increase the fine imposed under S. 395 IPC to Rs 750. *Ajab* v. *State of Maharashtra*, 1989 Supp (1) SCC 601: 1989 SCC (Cri) 602: AIR 1989 SC 827: (1989) 1 Crimes 725: 1989 Cri LJ 954.

Bench Strength **2**. Coram: *S. Natarajan* and **A.M. Ahmadi**, JJ. [Date of decision: 24-2-1989]

[9826] — **Ss. 395, 300 and 307 — Dacoity in dark night — Murder of five persons and injuries to three** — *Assailants wearing masks and could not be identified by the injured witnesses — Approver arrested in connection with another case complaining against police in his bail application that he was being forced to be an approver though he knew nothing about the crime — Subsequently the approver showing his intention of becoming approver after about 3 years of the incident — Arrest of the approver found unnatural and his self-confessed participation in crime without taking any active part not acceptable — Conviction set aside*

On July 3, 1984 between 7.30 p.m. and 10 p.m. a dacoity was committed on a highway in which 5 persons were killed and 3 injured. There was no clue as to the culprits in the case and no arrest was made. None of the injured witnesses could throw light on the identity of their assailants or those who had committed the murders as according to them assault had been committed by some men wearing masks in the darkness of the night. Since the investigation did not yield any results, demonstrations against police inaction were held and both the public and the press continued to blame the police for their inaction. The approver was arrested on July 7, 1984 in connection with some other case and his confessional statement was recorded on July 21, 1984. After waiting for more than two years after his arrest and the statement made by him under S. 164 CrPC, while the approver was in the judicial lock-up, he submitted an application to the District and Sessions Judge, on January 17, 1987 seeking bail and in that application he said that he was being forced to become *an eyewitness* in the case *although he knew nothing about the crime*. Bail was, however, declined and he continued to remain in custody. According to the prosecution case, on April 1, 1987, the accused suddenly and of his own decided to become an approver and to make a disclosure of all facts, about which he had said in his application dated January 17, 1987 that he knew nothing. The approver was granted pardon. Remaining eight accused were tried for offences under Ss. 302, 307, 342/149 and Ss. 395 and 396 IPC. The trial Court accepting the testimony of the approver and other prosecution evidence convicted all the eight accused. On appeal the High Court acquitted 3 of them and conviction of remaining 5 accused was maintained. Allowing their appeal by special leave

A careful analysis of the statement of the approver given at the trial in the present case coupled with the circumstances under which he came to be arrested, the averments in his application for grant of bail and other circumstances has created an impression that the approver is a planted witness and his testimony is not at all worthy of reliance and credence. The investigating agency appears to have created false evidence and fabricated false clues insofar as the testimony of the approver is concerned. From all the attendant circumstances it becomes clear that the approver is not a reliable witness; his arrest was intrinsically unnatural and his self-confessed participation in the crime without taking any active part in it not acceptable. The approver has claimed to be a spectator of every fact and of every moment but asserted that he did not participate in the assault at any stage and remained standing at a distance taking care of the clothes of some of the co-accused. His statement is almost of an exculpatory nature. His statement as a whole does not inspire confidence. His story is not worthy of credence. No reliance can be placed on his untrustworthy and unreliable evidence and in that view of the matter no opinion can be expressed about the effect of the alleged non-compliance with the provisions of S. 306(4) read with S. 307 CrPC, as after grant of pardon no statement of the approver was recorded till he appeared at the trial as a prosecution witness. It is only after the grant of pardon that the status of an accused is changed into that of a witness and the law enjoins upon the courts to record the statement of the approver immediately after pardon is granted to him so that he may consider himself bound by that statement and failure to do so at the trial would render him liable for prosecution. That exercise was not performed in this case.

The entire story regarding arrest of the approver appears to be a police concoction and padding with a view to silence the large discontent against the police on account of its inaction to apprehend culprits, who were responsible for committing five murders on the highway, besides causing injuries to three witnesses. The investigating agency failed to apprehend the real criminals and created false evidence and fabricated false clues in the present case to somehow or the other secure the conviction of the appellants and save its image in the face of the severe attack about its incapacity to apprehend the real culprits by the public and the media. The prosecution has not been able to prove the case against any of the appellants beyond a reasonable doubt and therefore, their conviction is not sustainable. *Rampal Pithwa Rahidas* v. *State of Maharashtra*, 1994 Supp (2) SCC 73: 1994 SCC (Cri) 851: 1994 Cri LJ 2320: (1994) 1 Crimes 1017.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 1-3-1994]

[9827] — Ss. 395, 391 and 390 — Applicability of S. 395 — *Held, applicable only when an offence under S. 390 is made out and the number of assailants reaches the statutory minimum — On facts, since the offence did not fall within the scope of S. 390, held, S. 395 was not attracted* (Para 4). *Krishna Gopal Singh* v. *State of U.P.*, 2000 SCC (Cri) 93: AIR 2000 SC 3616.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 9-2-1999]

[9828] — Ss. 395 and 396 — Train dacoity — *Victim's testimony in court identifying accused- appellant corroborated by his correct identification of the accused in T.I. parade held properly — Special leave petitions of co-accused persons already dismissed by Supreme Court and they serving out their sentences of life imprisonment — Conviction under Ss. 395 and 396 and sentence of life imprisonment accepting the victim's evidence, held, rightly affirmed by High Court. Shiv Charan* v. *State of Haryana*, 1986 Supp SCC 508: 1987 SCC (Cri) 1: AIR 1987 SC 1.

Bench Strength **2**. Coram: *A.P. Sen* and **B.C. Ray, JJ.** [Date of decision: 13-11-1986]

[9829] — Ss. 395, 396 and 397 — Dacoity — Identification — Duty of prosecution to hold test identification at the earliest — But no time limit can be fixed — *Dacoity in which 4 persons killed in gruesome and callous manner — Test identification held after 3 months of occurrence but within 24 hours of their arrest — Held, identification evidence reliable — Evidence Act, 1872, S. 9*

This has always been a ground in dacoity cases to challenge the identification by witnesses at a test identification by claiming that the police officer had shown the suspects to the witnesses before they were put up for test identification. Before accepting the identification by the witnesses at a test identification, the court has to first consider the objection to such identification. Although, this task is not very easy, but the court has to examine on the basis of the materials on record as to whether actually the suspects, who were to be put up for test identification, had already been shown to the witnesses. In the instant case the police officer went to District Jail of another district and took custody of the appellants and lodged in sub-jail of the district to which the case belonged on the next day. Same day the test identification was held in which as many as 11 persons participated and they correctly identified the appellants, although they had been mixed up with 11 others at the time of the test identification. If the police officer wanted to first get the appellants identified by the witnesses, in normal course, it was not expected that he would have held the test identification within 24 hours of their arrest. There was no difficulty in fixing the test identification on any later date and in the meantime, the appellants could have been shown to the witnesses. But the promptness with which the test identification was held, after the appellants were taken into custody in connection with the present case, is a circumstance, which satisfies the conscience of the Court about the genuineness and fairness of the test identification. When the appellants were produced before the Magistrate for being remanded to custody, it was specifically mentioned in the order-sheet that they had been produced *Baparda* i.e. their faces had been concealed. This precaution was necessary, so that the witnesses may not see the appellants, while being produced for remand before the Magistrate.

In the present case test identification was held after 3 months of the occurrence. It is true that with lapse of time, the memory of the witnesses, who have seen the culprits at the time of the commission of the dacoity gets dimmer and dimmer, and the earliest the test identification is held, it inspires more faith about the fairness of the test identification. But no time-limit can be fixed for holding a test identification, after which the investigating officer will be debarred from putting the suspects for test identification. While accepting the position that such test identifications should be held at the earliest, at the same time it cannot be ignored that it is an not always within the reach of the investigating officer or up to him to hold such test identification. Any test identification can be held only if some persons are arrested, who are suspected to have participated in the dacoity in question. The position will be different where in spite of such suspects being in custody, the test identification is postponed, there being no reasonable cause for the same. Once the investigating officer suspects that persons arrested are accused in connection with a particular dacoity, they should be put up for test identification at the earliest. It is an imperative duty on the part of the investigating officer to put up such suspects at test identification without any delay. That gives sanctity to the test identification.

As the appellants were put on test identification within 24 hours of their arrest in connection with the present case, the identification made by the witnesses cannot be rejected merely on the ground that it was not possible for them to identify after lapse of a period of three months. This was not an ordinary case of dacoity; for commission thereof, four persons were killed, one of them being a lady. The gruesome and callous manner, in which the dacoity was committed by the culprits must have left a deep impression on the minds of the witnesses, who had occasion to see such culprits in the electric light during the course of commission of assault, firing and removal of the articles from the house in question. This deep impression will also include the facial impression of the culprits, which in normal course must not have been erased only within a period of three months. *Brij Mohan* v. *State of Rajasthan*, (1994) 1 SCC 413: 1994 SCC (Cri) 527: AIR 1994 SC 739: 1994 Cri LJ 922: (1994) 1 Crimes 288.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 16-12-1993]

[9830] — Ss. 395, 396, 397 and 449 — Identification — Reliability of evidence — *Strangers allegedly committing dacoity in a house during night time arrested after three months and put for identification 22 days later — None of their features even suggestively mentioned in FIR or case diary — None of the eyewitnesses admitting to have recognised the dacoits inside the house — in such circumstances, trial court's rejection of the evidence regarding the identification parade of the accused, held, reasonable — Hence, participation of the accused in dacoity, held, doubtful — Evidence Act, 1872, S. 9. Narayan Singh* v. *State of M.P.*, 1994 Supp (1) SCC 62: 1994 SCC (Cri) 232.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 31-3-1993]

[9831] — Ss. 395, 396, 397 and 449 — Participation of accused in dacoity — *Evidence regarding identification of accused not reliable — Held on facts accused's participation doubtful. Narayan Singh* v. *State of M.P.*, 1994 Supp (1) SCC 62: 1994 SCC (Cri) 232.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 31-3-1993]

[9832] — Ss. 395 and 397 — Accused brandishing deadly weapons, threatening with dire consequences and taking away fish from the tank of the complainants — *Courts below accepting the prosecution case in toto — Conviction of the first three accused-appellants under Ss. 395/397 and their sentence of 7 years' RI and that of the remaining accused-appellants under S. 395 and with sentence of 3 years' RI, held would be justified. Gedda Raminaidu* v. *State of A.P.*, (1980) 1 SCC 676: 1980 SCC (Cri) 322: AIR 1980 SC 2127: 1980 Cri LJ 1477.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 22-1-1980]

[9833] — Ss. 395, 397 and 450 — Bank dacoity — Identification — Accused persons identified by witnesses in test identification parade — Allegation that photographs of accused persons already shown to the witnesses — *No suggestion made in the cross-examination of eyewitness that identification was based on photographs — Held, identification rightly believed by trial court as well as High Court — Evidence Act, 1872, S. 9*

It may be that some photographs may have been shown to the witness regarding some arrested persons but that by itself does not affect his evidence particularly when it is not put to him specifically that he had seen the photographs of this appellant and his identification was on the basis of those photographs. The trial court as well as the High Court have relied on this witness and there is nothing wrong, more particularly because he has stoutly denied the suggestions regarding the accused persons being shown to him earlier when they were in the custody. (Para 19). *Pravin* v. *State of M.P.*, (2008) 16 SCC 166: AIR 2008 SC 1846: 2008 Cri LJ 2980.

Bench Strength **2**. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 25-3-2008]

[9834] — Ss. 395, 397 and 450 — Bank dacoity in broad daylight — Identification — *Accused persons got identified by witnesses in test identification parade — Identification parade questioned by appellant-accused — No reference of test identification parade in the substantive evidence of witness — Identification in the court, whether inconsequential — Held, in the absence of proper cross-examination of witnesses who were Bank employees, about identifying the accused in court and fact that incident took place in broad daylight where witnesses spent some time with accused persons, and also that evidence of Magistrate before whom identification took place remained unrebutted, no error committed by courts below in accepting the evidence — Defects in identification of accused, held, not substantial in facts and circumstances of the case — Evidence Act, 1872, S. 9*

The mainstay of the defence was that the investigation was not fair in this case inasmuch as the police had shown the accused persons to the identifying witnesses. It is true that in his substantive evidence PW 1 did not speak about his identifying the appellant-accused in the identification parade but it cannot be forgotten that there is a clear-cut evidence of the Magistrate who conducted the parade confirming such identification. There is practically no cross-examination of this witness. (Para 28)

There is no significant cross-examination of the witness at all as regards the evidence and more particularly his identification of the accused in the court. He had very specifically identified the appellant herein. Very significantly, no question has been put to this witness. It is not suggested as if the accused had covered their faces. There is no challenge also to the story that the dacoits had pointed revolver at him. In the absence of any substantial cross-examination, there was no error on the part of trial court and the High Court in accepting the evidence of this witness particularly about his identification. The witness had full opportunity in broad daylight to be with the accused and the incident itself was so significant that it would undoubtedly make a dent on his memory. He was after all an educated bank officer holding a responsible position of a Branch Manager. Since his evidence about knowing the appellant-accused was not at all challenged, the courts below were right in accepting the evidence. (Para 16)

Even if the test identification parade is ignored, there is nothing suggested to the witness in his cross-examination to challenge his identification in the court. It is true that identification, for the first time in the court, is inconsequential. However, the fact that in this case all these witnesses were the bank employees who had undergone a traumatic experience of a broad daylight dacoity cannot be forgotten. They were with the dacoits for substantial time. The dacoits had also not covered their faces. Identification in the peculiar facts of this case by witnesses would be acceptable in spite of the so-called defects shown by the defence in holding the identification. (Paras 18 and 33). *Pravin* v. *State of M.P.*, (2008) 16 SCC 166: AIR 2008 SC 1846: 2008 Cri LJ 2980.

Bench Strength **2**. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 25-3-2008]

[9835] — Ss. 395, 397 and 450 — Delay in holding test identification parade, effect of — Some accused persons absconding — *Held, delay is insignificant specially when no question regarding delay asked from investigating officer who could have explained the delay, during his cross-examination — Evidence Act, 1872, S. 9*

The delay in holding the identification parade was not of any significance. As the other accused persons are still at large and, therefore, test identification parade could not have been conducted in respect of only some of the accused. Again the question of delay was never raised by way of cross-examination and no explanation was called for from the investigating officer. Had the question been asked, the witness would have answered the same. (Paras 29 and 30). *Pravin* v. *State of M.P.*, (2008) 16 SCC 166: AIR 2008 SC 1846: 2008 Cri LJ 2980.

Bench Strength **2**. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 25-3-2008]

Pramod Mandal v. State of Bihar, (2004) 13 SCC 150: 2005 SCC (Cri) 75; Bharat Singh v. State of U.P., (1973) 3 SCC 896: 1973 SCC (Cri) 574; State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393: 1983 SCC (Cri) 213, relied on

[9836] — Ss. 395, 397 and 450 — Recovery of crime articles — No explanation by accused as to the possession of gun, a bag which belonged to a witness as well as huge sum of money — *Held, lends support to fair investigation, and recovery of articles rightly believed*

It is significant to note that recovery of Rs 40,000 from the possession of the appellant-accused (in a case relating to a daylight bank dacoity) which recovery has been accepted by the trial and the appellate courts. The recovery of the slips as also of the gun which was brandished against the witness is also no less significant. There is no explanation given by the accused as to how a huge sum of Rs 40,000 and Dena Bank slips and the other bank documents could be recovered from him. It cannot again be forgotten that the stolen property was recovered from the possession of the appellant. It would, therefore, be justified in using the presumption raised by Section 114 of the Evidence Act. There is also supporting and corroborating evidence of the recovery of the other materials like the bag of witness which was recovered during the investigation. This discovery of the bag is also extremely significant because there was no reason for this bag, which contained the private documents of witness, to be recovered from the accused. That also lends credence to the fairness of the investigation by the police. (Paras 28, 32 and 33). *Pravin* v. *State of M.P.*, (2008) 16 SCC 166: AIR 2008 SC 1846: 2008 Cri LJ 2980.

Bench Strength **2**. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 25-3-2008]

State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393: 1983 SCC (Cri) 213, followed

Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859, relied on

[9837] — Ss. 395, 397, 467, 468 and 471 — Anticipatory bail when warranted — Different versions given in three different complaints pertaining to same alleged occurrence — *Besides, allegations with regard to offences under Ss. 395, 397, 467, 468 and 471 IPC sought to be added at later stage of investigation — Held, no interference with grant of anticipatory bail to respondents called for — CrPC, 1973, S. 438* (Paras 19 to 21). *Pravinbhai Kashirambhai Patel* v. *State of Gujarat*, (2010) 7 SCC 598.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 8-7-2010]

State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2), relied on

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; CBI v. Tapan Kumar Singh, (2003) 6 SCC 175: 2003 SCC (Cri) 1305; Animireddy Venkata Ramana v. Public Prosecutor, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600; State v. Anil Sharma, (1997) 7 SCC 187: 1997 SCC (Cri) 1039; Anil Kumar Tulsiyani v. State of U.P., (2006) 9 SCC 425: (2006) 2 SCC (Cri) 565, considered

[9838] — Ss. 395 and 400 — Charge of committing dacoity along with others at night — Appellant accused identified for the first time in court in Test identification parade taking place

seven years after the occurrence — *Held, evidence of identification doubtful — Evidence Act, 1872, S. 9. Veerpal* v. *State of Haryana*, 1986 Supp SCC 733: 1987 SCC (Cri) 227.

Bench Strength **2**. Coram: *M.P. Thakkar* and *K.N. Singh*, JJ. [Date of decision: 16-10-1986]

[9839] — Ss. 395, 411 and 412 — Stolen property recovered from the accused — Connection between dacoity and recovery — Criteria and resumption — *Evidence Act, 1872 — S. 114*

If there is other evidence to connect an accused with the crime itself, however small, the finding of the stolen property with him is a piece of evidence which connects him further with the crime. There is then no question of presumption. The evidence strengthens the other evidence already against him. It is only when the accused cannot be connected with the crime except by reason of possession of the fruits of crime that the presumption may be drawn.

If the gap of time is too large, the presumption that the accused was concerned with the crime itself gets weakened. The presumption is stronger if the discovery of the fruits of crime is immediately after the crime is committed. *Shivappa* v. *State of Mysore*, (1970) 1 SCC 487: 1970 SCC (Cri) 215: AIR 1971 SC 196: 1971 Cri LJ 260.

Bench Strength **3**. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 19-2-1970]

[9840] — Ss. 395 and 412 — Factum of recovery of articles made very soon after the dacoity at the instance of the accused persons in the presence of police officers and panch witnesses who deposing to the same — *Held on facts, itself sufficient for conviction under S. 412 as well as S. 395 with the aid of S. 114 Evidence Act, 1872. Lachhman Ram* v. *State of Orissa*, (1985) 2 SCC 533: 1985 SCC (Cri) 263: AIR 1985 SC 486: 1985 Cri LJ 753.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 1-3-1985]

[9841] — Ss. 395, 427, 506 Pt. II and S. 34 — Consideration of application under Ss. 451 and 457 CrPC — Directions that can be issued at stage of — *Application for interim custody of animals filed during pendency of applicant's complaint under various provisions of IPC, accusing certain persons, of illegally and with help of police, taking over possession of applicants' animals during transportation thereof in trucks — Trial court not having named any police officer as errant — Direction issued to State Government at this stage before final disposal of complaint, to take departmental action for illegal or unauthorised actions, if any, on the part of any police officer, held, harsh as well as uncalled for — Hence, set aside — CrPC, 1973, Ss. 451 and 457*

In the order passed by the Additional CJM no officer has been named at all. Whether search and seizure of the goats and sheep was illegal or not can be effectively gone into only at the stage of final disposal of the trial and not at interim stage when the court hears an application under Section 451 read with Section 457 CrPC for interim custody of the muddammal. Direction to the State Government to initiate appropriate departmental action against erring police officer for illegal or unauthorised actions at the interim stage is harsh as well as not called for on the facts of the case. Therefore, the said direction also deserves to be set aside. (Para 44). *Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 4-11-2009]

[9842] — Ss. 395, 427, 506 Pt. II and S. 34 — Disputes under — If can be decided in writ petition — *Writ petitioner accusing appellant herein of taking possession of livestock and trucks illegally before FIR was lodged while the latter averring that he was handed over custody of the animals by police consequent to FIR — Such highly contentious disputes, held, not resolvable in petition under Art. 226 — Constitution of India, Art. 226*

In the instant case, the assertion made by Appellant 1 was that he had been handed over custody of goats and sheep by the police after registration of FIR whereas the case of Respondents 1 to 6 was that Appellant 1 had taken possession of the livestock and trucks illegally before the FIR was lodged and had acted in a high-handed manner. Such a highly contentious dispute cannot and could not be resolved in a petition under Article 226 of the Constitution. (Paras 40 and 41)

Thus, there was no justification at all in directing Appellant 1 to pay the sum specified towards compensation and costs to each of Respondents 1 to 6 and to pay to Respondent 8 herein (the pinjrapole) the cost of maintenance and treatment of the animals in question on behalf of Respondents 1 to 6. (Para 42). *Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 4-11-2009]

[9843] — Ss. 395, 427, 506 Pt. II and S. 34 — Quashment of FIR at the instance of third party — Impermissibility — *FIR against drivers and cleaners, but not against owners, of trucks for filling animals in trucks in a cruel manner and carrying them for slaughter contrary to statutory* *prohibition — Consequently, animals seized — Owners of trucks filing complaint against First Informant and police but not seeking quashment of FIR — They also seeking custody of seized animals but trial court rejecting that request and therefore they filing writ petition — Quashment of FIR in such writ petition, held, impermissible — Prevention of Cruelty to Animals Act, 1960, S. 11(1)(d) — Bombay Animal Preservation Act, 1954 (72 of 1954), Ss. 5, 6 and 8 — CrPC, 1973, Ss. 154, 155, 451 and 457 — Constitution of India, Art. 226*

Respondents 1 to 6, who had filed writ petition before the High Court, were not accused. Therefore, they could not have prayed for and, in fact, had not prayed to quash the FIR filed by Appellant 1 and the proceedings pursuant thereto. Prayer for quashing the FIR could have been made only by the accused, who had been named therein. But none of them had chosen to invoke jurisdiction of the High Court either under Section 482 CrPC or under Article 226 of the Constitution to get the FIR quashed. The quashing of FIR at the instance of third parties is unknown to law. Further, it is well settled that neither power under Section 482 CrPC nor jurisdiction under Article 226 can be exercised by the High Court to quash the complaint if prima facie commission of offences is made out. (Paras 20 and 19)

Even before the investigation could be completed and report submitted to the competent court by the investigating agency, the High Court arrived at a premature conclusion that no offences under Section 279 IPC and under Sections 5, 6 and 8 of the Bombay Animal Preservation Act, 1954 were made out against the accused and quashed the criminal proceedings. Such a relief to the accused, who had not approached the High Court for quashing the FIR, could not have been granted in a petition filed by the owners of goats and sheep seeking custody of the livestock notwithstanding wide amplitude of power available under Article 226 of the Constitution. (Para 22). *Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 4-11-2009]

Dosukhan Samdakhan Sindhi v. State of Gujarat, 2009 Cri LR 101 (Mah & Guj), reversed

[9844] — Ss. 395, 447 and 506 — Applicability — Demand of illegal gratification of Rs 10,000 by appellant public servants from a shopkeeper (complainant) — *On refusal to pay the same, appellants ransacking his shop and taking away the goods — Threatening him with dire consequences — Held, court below was justified in holding that S. 197 CrPC was not applicable in such a case — Appellants not entitled to protection under S. 197 CrPC — CrPC, 1973, S. 197* (Para 13). *S.K. Zutshi* v. *Bimal Debnath*, (2004) 8 SCC 31: 2004 SCC (Cri) 2096: AIR 2004 SC 4174: (2004) 3 KLT 505.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 10-8-2004]

— S. 395 r/w S. 149 *See also* Ss. 307 and 395 r/w 149

[9845] — S. 395 r/w Ss. 397 and 396 — Trial court convicting the accused under S. 395 r/w Ss. 397 and 396 IPC along with S. 3 r/w S. 25 of the Arms Act — *On appeal, High Court acquitted all the accused giving them benefit of doubt in the matter of identification of the accused persons, of recovery of articles at their instance and of identity of articles and ornaments as there was inconsistency in the evidence — Held, High Court was right in concluding that the prosecution failed to prove its case beyond reasonable doubt — Evidence Act, 1872, S. 27* (Paras 2 to 5 and 19). *State of Rajasthan* v. *Netrapal*, (2007) 4 SCC 45: (2007) 2 SCC (Cri) 187: 2007 Cri LJ 1783.

Bench Strength **2**. Coram: **C.K. Thakker** and *L.S. Panta*, JJ. [Date of decision: 27-2-2007]

[9846] — Ss. 395/149 — If charge under S. 395 can be established applying S. 149 is mere surplusage. *Musa Khan* v. *State of Maharashtra*, (1977) 1 SCC 733: 1977 SCC (Cri) 164: AIR 1976 SC 2566: 1976 Cri LJ 1987.

Bench Strength **3**. Coram: *P.N. Bhagwati*, *V.R. Krishna Iyer* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 11-10-1976]

[9847] — Ss. 395/149 and 384/149 — Where no articles or moveables of the victims were looted but money extorted, the conviction under Ss. 384/149 was the proper one. *Vishnu Shiv Ram Bhoir* v. *State of Maharashtra*, (1979) 3 SCC 365: 1979 SCC (Cri) 642: AIR 1979 SC 1943: 1979 Cri LJ 1305.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision: 22-2-1979]

[9848] — Ss. 395/397/376 — Dacoity — Acquittal justified — *Eight accused armed with deadly weapons alleged to have caused dacoity in house of S — Two of the accused also alleged to have raped two young inmates of the house — Three accused were declared proclaimed absconders and charges against them proved — Trial court relying on evidence of witnesses, PWs 1, 2, 3, 5 and 8 and finding appellant-Accused 1, 2, 3, 5 and 6 guilty under S. 395 r/w S. 397 — Allegations of rape were not held to be established — High Court dismissing the appeal filed thereagainst merely referring to certain conclusions of the trial court without analysing* *the evidence and various submissions made by the appellants and basing its findings on surmises, contrary to factual scenario: (i) High Court noting that a telephonic message was given by a stranger regarding dacoity whereas evidence showing that information was given by PW 1 and the accused were not strangers and were practically neighbours of the informant and his family; (ii) it also observing that there was no intention to falsely implicate the accused persons because of enmity and there was no reason as to why dignity of two young girls would be put at stake by alleging rape; but as found by trial court there was no material to substantiate the plea of rape; (iii) High Court noting that the evidence of PWs 1, 2, 3, 5 and 8 stood fully corroborated by the medical evidence but evidence of PW 4 was clearly contrary to the medical evidence; (iv) it recording that accused A was absconding; whereas evidence showed that IO had arrested A on the day FIR was lodged — Moreover, FIR was lodged long after the incident and in fact law was already set in motion after the telephonic message had been received — Aforesaid infirmities in the background of admitted animosity between the parties render prosecution version unacceptable — Appellants acquitted* (Paras 3, 4, 5, 7, 11, 12 and 13). *Abdul Gafur* v. *State of Assam*, (2007) 12 SCC 627: (2008) 3 SCC (Cri) 316: AIR 2008 SC 607: 2008 Cri LJ 800.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 6-12-2007]

— Ss. 395/398 *See also* Ss. 397 and 395/398

— S. 396 *See also* Ss. 120-B, 121, 132, 302, 307 and 396

See also Ss. 147, 149, 302, 323, 395 and 396

See also Ss. 148, 302, 323, 324, 395 and 396

See also under Ss. 299 to 304

See also Ss. 364, 396 and 120-B

See also Ss. 395 and 396

See also Ss. 395, 396 and 397

See also Ss. 395, 396, 397 and 449

See also Ss. 395 r/w Ss. 397 and 396

See also Ss. 396 r/w Ss. 34 and 201 r/w S. 34

See also Ss. 411 and 396

See also Ss. 412 and 396

[9849] — S. 396 — Arrest of accused in appeal from acquittal — Power of High Court under S. 390 CrPC — *Held, High Court has the power to rearrest the accused pending disposal of appeal against acquittal — On facts, appellant and five others acquitted by trial court for offences under S. 396 IPC r/w Ss. 3 and 35 of Arms Act, 1959 — In appeal, High Court noting that in test identification parade and trial, PW 18 correctly identified the accused persons — Forensic science laboratory report confirmed foot moulds taken were of the accused and seized hair from hands of deceased tallied with that of accused in DNA test — Finding that trial court had not considered evidence in proper perspective, High Court directed arrest of two accused persons and release of others on bail pending disposal of appeal — Held, no infirmity in the order warranting interference — Arms Act, 1959, Ss. 3 and 35 — CrPC, 1973, Ss. 390 and 378* (Paras 13, 16 and 17). *Amin Khan* v. *State of Rajasthan*, (2009) 3 SCC 776: (2009) 2 SCC (Cri) 749: 2009 Cri LJ 2266.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 25-2-2009]

[9850] — S. 396 — Belated identification parade — Offence of dacoity — Test identification parade held two months and twenty days after arrest of appellant — *No explanation given for the delay — Identifying witnesses making only omnibus statements that they saw the appellant committing dacoity — Not associating their memory with any overt act or weapon in the hands of the appellant — Proceedings of identification parade also not inspiring confidence — Held, the gross delay in holding the identification parade made the prosecution case doubtful — Even on overall view of the evidence, the prosecution had not made out a case against the appellant beyond reasonable doubt — Hence conviction under S. 396 and sentence of life imprisonment imposed on the appellant by the lower courts set aside — Evidence Act, 1872, S. 9. Chotey Lal* v. *State of U.P.*, 1994 SCC (Cri) 144.

Bench Strength **2**. Coram: *Kuldip Singh* and *P.B. Sawant*, JJ. [Date of decision: 4-12-1992]

[9851] — S. 396 — Conviction under — Sessions Judge not giving reasons for not awarding death sentence — Effect of not convicting under S. 302 — *Interference by High Court justified*

The trial Court awarded the sentence of imprisonment for life without giving any reasons at all for adopting that course. It is true that the appellants were not convicted in the present case for the offence of murder simpliciter under S. 302, IPC but that is immaterial. The conviction of the appellants under S. 396, IPC was not based on constructive liability as members of the gang of dacoits. There was clear finding by the Court of Session which has been upheld by the High Court that each of these appellants committed a cold-blooded murder by shooting two inmates of the house simply with the object of facilitating commission of dacoity by them. Those persons were shot and killed even though they had not even tried to put up any resistance. The offence under S. 396, IPC was therefore, no less heinous than an offence under S. 302, IPC. In these circumstances when the Court of Session gave no reason at all for not awarding the sentence of death and for sentencing them to imprisonment for life only, it cannot be held that the High Court was not justified in interfering with that order. *Iman Ali* v. *State of Assam*, AIR 1968 SC 1464: (1968) 3 SCR 610: 1969 Cri LJ 23, 25.

Bench Strength **3**. Coram: *V. Ramaswami, J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 28-3-1968]

[9852] — S. 396 — Conviction under, not possible in view of unreliability of evidence regarding identification of the accused in T.I. parade — *High Court not justified in interfering under S. 378, Criminal Procedure Code with the order of acquittal passed by the trial Court. Wakil Singh* v. *State of Bihar*, 1981 Supp SCC 28: 1981 SCC (Cri) 634: AIR 1981 SC 1392: 1981 Cri LJ 1014.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 31-3-1981]

[9853] — S. 396 — Dacoity — Acquittal by High Court for offences under S. 396 IPC — Doubts regarding conviction — *Deceased's party on inimical terms with named accused persons — First oral information by PW 3 (village chowkidar) only against unknown persons — Later addition of accused persons (inimical to deceased party) in written report of PW 2 (member of deceased party) — No witnesses speaking about* **A** *(respondent-Accused 4) — Known inimical accused persons did not try to cover their face during dacoity though unknown persons covered their face — Interference with acquittal of* **A** *(respondent-Accused 4) for offences under S. 396 IPC, held, is not warranted — CrPC, 1973, S. 154*

On 9-5-1973, about 16-17 dacoits successfully decamped with cash, jewellery, ornaments, firearms, etc. after committing dacoity for about 2-3 hours in the house of *RD*, *HP* and *HL* (deceased). During the course of commission of dacoity, *HL*, *M* and *SM* sustained injuries, of whom *HL* died. While the dacoity was in operation, the matter was reported orally at Police Station by village chowkidar *RR* (PW 3) on the same day at 1.30 p.m. wherein none was named. Head Moharrir *F* (PW 1) recorded the report and registered case under Sections 395/397 IPC. Station Officer *Y* (PW 29) took up investigation and he immediately proceeded to the scene of occurrence. He met injured *HL*, *M* and *SM* on the way and sent them for medical examination. When the injured persons were being taken to hospital, *HL* succumbed to his injuries. The constable who was escorting the injured then gave information at the police station about the death of *HL*, whereupon case was converted to one under Section 396 IPC.

When the IO reached the place of occurrence, *HP* (PW 2) handed over to him a list of stolen articles and also a report giving out details of commission of dacoity in his house wherein he named three persons, namely, *A* (respondent-Accused 4), *J* and *B*. The IO recorded the statements of witnesses on 10-5-1973, arrested named as well as some unknown persons during the course of investigation and recovered some stolen articles from *A*(respondent-Accused 4) and the other accused. In order to further its version, the prosecution examined 29 witnesses. Placing reliance on the testimony of *HP* (PW 2), *RL* (PW 7), *SS* (PW 11) and *SR* (PW 12), the trial court directed conviction under Section 396 IPC and acquittal under Section 314 IPC.

The challenge in this appeal is to the judgment of a Division Bench High Court setting aside the conviction of *A* (respondent-Accused 4) for the offence punishable under Section 396 IPC.

Dismissing the appeal,

Held :

Interference in the appeal against acquittal of *A* (respondent-Accused 4) for offences under Section 396 IPC is not warranted. Though the judgment of the High Court is not happily worded and some of its reasons are not legally supportable, the ultimate conclusion is a possible view. The enmity aspect was lost sight of by the trial court while convicting the accused persons under Section 396 IPC. The accused persons were admittedly on inimical terms with *HP* (PW 2) and it was a specific case that accused *B*had absconded and did not face trial. He was on inimical terms with the deceased and *HP* (PW 2). *A* (respondent-Accused 4) happened to be brother-in-law of *B*. The High Court also referred to the fact that while some of the alleged dacoits covered their faces to conceal the identity; the three named accused persons did not try to cover their faces. (Paras 12, 6 and 8)

Originally three persons were named as accused and reference was made to 9 unknown persons. One of them died during trial, and one died during pendency of the appeal before the High Court. In any event, for a long time no witness supposedly spoke about *A* (respondent-Accused 4). Though the village chowkidar, *RR* (PW 3) reported the matter to the police station, no one was named as accused and the case was registered against unknown persons. Only when a written report was submitted by *HP*

(PW 2) to the IO, name of the *A* (respondent-Accused 4) was indicated along with *B* and *J*. It was pointed out that though *HP* (PW 2) was shouting that three named persons were committing dacoity, in the report submitted by Village Chowkidar *RR* (PW 3), the names were not given. Ram Lakhan (PW 4) in his evidence admitted that he never mentioned the names of the three persons whose names appeared in the report given by *HP* (PW 2). (Paras 5 and 6)

With reference to the evidence of *SS*, the High Court noticed that she did not know *A* (respondent-Accused 4), yet stated as if she was acquainted with him. Her statement in the cross-examination was highlighted by the High Court. Similar was the position regarding *SR* (PW 12). The IO stated that when he was going to the place of occurrence, he met the deceased and two other persons (*M* and *SM*), who received injuries in the occurrence. He talked with them and he sent them for medical examination. But till that time, the names of *A* (respondent-Accused 4), *B* and *J* were not disclosed. Primarily, on these premises the High Court directed acquittal. (Para 7)

It is pointed out that the witnesses on hearing about the dacoity had rushed to the police station and had no occasion to know the names of the accused persons. The parameters for dealing with an appeal against the judgment of acquittal have been laid down by the Supreme Court in several cases. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence for the purpose of ascertaining as to whether any of the accused committed any offence or not. (Paras 10 and 11). *State of U.P.* v. *Awdhesh*, (2008) 16 SCC 238.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 9-9-2008]

Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577, relied on

Glanville Williams: 'The Mathematics of Proof II'; Sweet and Maxwell: Criminal Law Review, 1979, p. 340 (342), cited

[9854] — S. 396 — Dacoity — Proof of participation — Statement of accused under — Reliance on inculpatory part of admission — *Statement of accused that he was caught by village people who were chasing the dacoits and was taken to the village on suspicion — Inculpatory part of his admission that he was caught by the village people and that he made a confession before the Mukhia cannot be rejected merely because exculpatory part of his admission that he was arrested on suspicion is found to be false — General denial of his participation in dacoity could not set at naught admission of independent facts — Evidence Act, 1872, S. 24 — CrPC, 1973, S. 313. State of Bihar* v. *Anirudh Thakur*, (1998) 9 SCC 616: AIR 1998 SC 921.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.S.M. Quadri*, JJ. [Date of decision: 6-2-1998]

[9855] — S. 396 — Dacoity at night causing injuries to inmates of the house, death of one of them and looting of property — *Dacoits 25-30 in number — Identification of five accused-appellants among them, who were known to PWs (2 and 11) being of the same village, by flashing torches, held on facts, doubtful — Their participation in the crime, in absence of any corroboration by evidence regarding recovery of the crime weapons or looted articles from them also doubtful — Hence their conviction under S. 396 cannot be sustained*

Seeing the formidable force of the dacoits and their number the PWs (2 and 11) would have been so nonplussed that they would not have dared to betray their presence by switching on and off their torches especially when they were unarmed and were no match to the might of the dacoits. These two witnesses do not claim that they could identify the dacoits by means other than their torches. This part of the story of the prosecution obviously does not inspire confidence. Further, PW 11 was injured on the head before he ran for safety. That was enough to shake and frighten him. But before the receipt of such injury he claims to have switched on his torch first and to have seen in the first glimpse the appellants and others. But his flash of the torch was met instantaneously with numerous torch flashes by the dacoits and it was like daylight as said by PW 1. It is difficult in this situation to believe PW 11 that he could in a split second have such a perception so as to identify all the five appellants and some others. It is obvious and natural that behind a lit torch darkness prevails hiding the identity of the torch-bearer and persons situated close. So identity of the dacoits was not possible by PW 11. Moreover it is ununderstandable that when the dacoits had chosen dark hours for committing the dacoity, obviously to take advantage of the darkness, and when they were 25-30 in number, most of them unknown persons, where was the need for the appellants to be in the forefront to risk themselves for identification. This view is apart from the opinion of the High Court that muffling of faces and concealment of identity by dacoits is not universally practised. Thus in the facts and circumstances of the case, the participation of the appellants in the crime is doubtful because of the failure of the prosecution to lead convincing evidence about the identity of the appellants as dacoits. There is even no corroboration in the form of recovery of firearms and other weapons, or of the looted articles from the appellants, so as to lend some assurance to the participation of the appellants in the crime. It may well be that the motive asserted by the prosecution (relating to the dispute about a pond) may have given cause to PW 11 to assume that the appellants were responsible for the dacoity committed in his house and for PW 2 to entertain that belief in a sweep. Therefore, the conviction of the appellants under S. 396 cannot be sustained. *Munni Singh* v. *State of Bihar*, 1993 Supp (1) SCC 395: 1993 SCC (Cri) 142.

Bench Strength **2**. Coram: **M.M. Punchhi** and *S.C. Agrawal*, JJ. [Date of decision: 21-4-1992]

[9856] — S. 396 — Dacoity with murder — *Trial court taking the view that there was legal and reliable evidence to substantiate the prosecution case that dacoity had taken place in the house of informant and in the course of the dacoity husband of the informant and another person had been killed — Held, this shows commission of dacoity with murder — S. 396 attracted* (Para 13). *Sanatan Rana* v. *State of Jharkhand*, (2005) 12 SCC 596: 2005 Cri LJ 4162: AIR 2005 SC 3532.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 19-9-2005]

[9857] — S. 396 — Dacoity with murder — Death sentence — When not justified — *Appellant killing the deceased by firing a shot established — But evidence as to why and under which circumstances he fired that shot found inconsistent — Facts and circumstances of the case not justifying the inference that the case is a rarest of rare case — Sentence reduced to imprisonment for life* (Para 6). *Jagdish Yadav* v. *State of Bihar*, (1999) 9 SCC 99: 1999 SCC (Cri) 464.

Bench Strength **2**. Coram: **G.T. Nanavati** and *N. Santosh Hegde*, JJ. [Date of decision: 27-1-1999]

[9858] — S. 396 — Dacoity with murder — Identification of accused — Prosecution case against appellant, one of the accused, solely based on evidence of TI parade held before Magistrate seven weeks after the incident — *Credibility of identification of appellant by PWs — Incident took place at night at the house of deceased — Appellant not known to PWs — Dacoits had covered their face with a cloth — Even assuming that eyes and nose of the dacoits could have been seen to some extent despite the mask, identification of an unknown masked dacoit in the dim glow of a lantern and flash of torchlight, held, was not reasonably possible and therefore doubtful — Moreover, there was no recovery of any looted property nor was there any corroborating evidence linking the appellant to the crime — Four co-accused already acquitted by trial court and identification of three other accused disbelieved by High Court and therefore, they also acquitted — Having regard to facts and circumstances of the case, held, evidence regarding identification of appellant not reliable — Hence appellant entitled to acquittal. Umesh Kamat* v. *State of Bihar*, (2005) 9 SCC 200: 2005 SCC (Cri) 1218: AIR 2005 SC 726: 2005 Cri LJ 908.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 13-1-2005]

Tahir Mohd. v. State of M.P., 1993 Supp (2) SCC 697: 1993 SCC (Cri) 760, relied on

[9859] — S. 396 — Dacoity with murder at night — Appreciation of evidence — Infirmities in prosecution case — Manner of dacoity and participation of accused doubtful — Long-standing dispute between parties — False implication — Likelihood of — *Discrepancy between alleged eyewitness' version regarding weapons used by accused in the crime and medical evidence, according to which the corresponding injuries sustained by the victims not caused by those weapons — Discrepancy between evidence of alleged eyewitnesses and investigating officer regarding manner in which door was opened by the accused for entering into victims' room — Delay in recording statements of two PWs by police, on facts, created a strong doubt to accept their evidence that they were eyewitnesses — Though these PWs claimed to have suffered injuries in the incident, investigating officer did not say that next morning when he visited the place of occurrence, he found any injury on them — Identification of accused persons in light of a lantern was doubtful — Accused persons included an old man aged about 74 years as well as a boy aged 13 years — Accused neighbours of the informant with whom family of the informant having long-standing dispute — Held, possibility of false implication of accused persons on account of long-standing enmity utilising the incident of dacoity cannot be ruled out — High Court rightly acquitted the accused — Identification at night —*

Identification by lantern light — Telltale signs of — CrPC, 1973, Ss. 161 and 154 (Paras 12 to 21). *Shrishti Narain Jha* v. *Bindeshwar Jha*, (2009) 6 SCC 457: (2009) 2 SCC (Cri) 1091.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

[9860] — S. 396 — Dacoity with murder committed by breaking open door at midnight — Husband killed and wife and others receiving injuries — *FIR lodged without delay — Testimony of the wife, as corroborated by other eyewitnesses, reliable — Accused-appellants having old enmity with deceased and his associates — Held on facts, conviction of the appellants proper — Mere fact that none of the looted properties could be recovered from any of the appellants, immaterial. Om Prakash* v. *State of U.P.*, (1983) 2 SCC 358: 1983 SCC (Cri) 475: AIR 1983 SC 431: 1983 Cri LJ 831: 1983 ALJ 830.

Bench Strength 2. Coram: *V.D. Tulzapurkar* and **A. Varadarajan**, JJ. [Date of decision: 11-3-1983]

[9861] — S. 396 — Identification in court corroborated by identification in TI parade by the same PW — *Moreover, dacoity having taken place in the house for about 25 minutes in the house in which the PW sustained several injuries while resisting the dacoits, he had ample opportunity to clearly notice the appearance and physical features of the accused as there was sufficient light — Held on facts, genuineness and truthfulness of testimony of the PW cannot be doubted — Conviction can be based on the testimony of that PW alone*

It was submitted on behalf of the State that even in the absence of the test identification parade the conviction of the appellant would be fully justified on the basis of the evidence of PW 4 alone who identified him in court. In this case, however, his identification in court was corroborated by his identification in the test identification parade.

Held :

There is considerable force in the submission. This is not a case where the testimony of PW 4 in court is not corroborated by an earlier identification in test identification proceeding. Since there was no irregularity or unfairness in the holding of the test identification parade, it must be held that the evidence of PW 4 was amply corroborated by the result of the test identification proceeding. Moreover, the occurrence did take place in the house of PW 5. PW 4 was an eyewitness, being a relative of PW 5, residing with him. There was sufficient light to enable the witnesses to identify the dacoits. The presence of PW 4 cannot be disputed because he bore the brunt of the attack by the dacoits having suffered three incised wounds and two other injuries. No reason has been suggested why this witness should have falsely implicated the appellant. The dacoity took place for about 25 minutes and PW 4, being in the forefront of the defence, had ample opportunity to notice the appearance and physical features of the culprits. So far as the appellant is concerned, PW 4 categorically stated that he had attempted to hit him with an iron rod. This fact he also stated before the Magistrate who conducted the test identification proceeding. Therefore, there is no reason to suspect the truthfulness and credibility of this witness. He appears to be a witness on whom the Court can place implicit reliance. The courts below have found his evidence to be reliable after critical scrutiny of his testimony. The traumatic experience of that fateful day in which a young girl lost her life within his view, must have left the faces of the assailants imprinted in his memory which certainly would not have diminished or got erased within a period of only 30 days. There is, therefore, no reason to doubt either the genuineness of the test identification proceeding or the veracity of the witness. (Para 23). *Pramod Mandal* v. *State of Bihar*, (2004) 13 SCC 150: 2005 SCC (Cri) 75.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and **B.P. Singh**, JJ. [Date of decision: 17-9-2004]

[9862] — S. 396 — Identification of accused at night — *Culprits known to the witnesses — Presence of two electric poles near the place of occurrence established — High Court erred in holding that as the accused were in khaki uniform and wearing hats they could not be identified by the eyewitnesses — FIR lodged while dacoity was being committed in the village — First informant stating in the FIR that he had identified two of the dacoits because of electric lights — Held, in the circumstances of the case, High Court was not justified in holding that the witnesses could not identify the culprits. State of U.P.* v. *Bhoora*, (1998) 1 SCC 128: 1998 SCC (Cri) 265: AIR 1998 SC 254: 1998 All LJ 86: 1998 Cri LJ 478.

Bench Strength 2. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 23-10-1997]

[9863] — S. 396 — In case of dacoity at night court should examine evidence of test identification parade carefully — For admissibility of such evidence, the accused should be unknown to the prosecution witness before the test identification and the test identification should be held with reasonable promptitude after the occurrence — *Facts that accused residing in village in the close vicinity of the village of the prosecution witness and that accused and the prosecution witness had been students of the same institution* *indicated that accused were known to the prosecution witness — Moreover test identification parade held four months after the occurrence of dacoity with murder — Hence evidence of test identification unreliable — Accused entitled to benefit of doubt*

The evidence establishing the identity of the culprits assumes particular materiality in a case, as here, of a dacoity occurring in the darkness of the night. The evidence of the test identification would then call for a careful scrutiny. In the present case the fact that the prosecution witness could reasonably be expected to have known some of the accused-appellants as residents of villages in close vicinity of his village and as students of the same institution in which he was a student is a statable probability and that his feigned ignorance of any prior familiarity with identity of the accused becomes irreconcilable with what are incidents of ordinary human intercourse. The omission to disclose their identity in the FIR would raise a reasonable doubt about their complicity in the crime. Moreover, there was a serious lapse on the part of the prosecution in putting up the suspected culprits for a test identification after a lapse of four months after their arrest without any explanation for the delay. The benefit of this wholly unexplained lack of promptitude in holding the test identification enures to the accused-appellants. The evidence of test identification lacks the requisite element of reassurance to support the conviction. A reasonable doubt therefore, arises. *Hari Nath* v. *State of U.P.*, (1988) 1 SCC 14: 1988 SCC (Cri) 14: AIR 1988 SC 345: 1988 Cri LJ 422.

Bench Strength **2**. Coram: *A.P. Sen* and **M.N. Venkatachaliah**, JJ. [Date of decision: 6-11-1987]

[9864] — S. 396 and Ss. 141 to 143 & 149 — When can less than five accused persons be convicted under S. 396 for dacoity, after acquittal of some of the accused out of total number of five or more accused charged initially — *Held, less than five accused can be convicted when complicity of five or more persons is proved or not disputed but some of them had been given benefit of doubt only because their identity could not be established — But when they were acquitted because of doubt in regard to their participation in the crime, remaining accused less than five in number cannot be convicted*

For recording conviction of an offence of dacoity, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the *factum* of five or more persons is either not disputed or is clearly established, but the court may not be able to record a finding as to identity of all the persons said to have committed the dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons—or even one—can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity. A similar situation arises in dealing with cases of "unlawful assembly" as defined in Section 141 IPC and the liability of every member of such unlawful assembly for an offence committed in prosecution of common object under Section 149 IPC. (Paras 21 and 22)

In this case there were six accused. Out of those six accused, two were acquitted by the trial court without recording a finding that though offence of dacoity was committed by six persons, identity of two accused could not be established. They were simply acquitted by the court. Therefore, as per settled law, four persons could not be convicted for an offence of dacoity, being less than five which is an essential ingredient for commission of dacoity. Moreover, all of them were acquitted for an offence of criminal conspiracy punishable under Section 120-B IPC as also for receiving stolen property in the commission of dacoity punishable under Section 412 IPC. The conviction of the appellant herein for an offence punishable under Section 396 IPC, therefore, cannot stand and must be set aside. (Para 35). *Raj Kumar* v. *State of Uttaranchal*, (2008) 11 SCC 709: (2008) 3 SCC (Cri) 888: (2008) 5 All LJ 637.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 7-4-2008]

Ram Lakhan v. State of U.P., (1983) 2 SCC 65: 1983 SCC (Cri) 339; Saktu v. State of U.P., (1973) 1 SCC 202: 1973 SCC (Cri) 307; Dalip Singh v. State of Punjab, AIR 1953 SC 364: 1954 SCR 145; Mohan Singh v. State of Punjab, AIR 1963 SC 174: 1962 Supp (3) SCR 848; Krishna Govind Patil v. State of Maharashtra, AIR 1963 SC 1413: (1964) 1 SCR 678; Ram Bilas Singh v. State of Bihar, (1964) 1 SCR 775; Maina Singh v. State of Rajasthan, (1976) 2 SCC 827: 1976 SCC (Cri) 332; Ram Dular Rai v. State of Bihar, (2003) 12 SCC 352: 2004 SCC (Cri) Supp 408, relied on

Ram Shankar Singh v. State of U.P., AIR 1956 SC 441; Shyam Behari v. State of U.P., AIR 1957 SC 320; Ramdeo Rai Yadav v. State of Bihar, (1990) 2 SCC 675: 1990 SCC (Cri) 413; Anshad v. State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204, distinguished

[9865] — Ss. 396 and 302 — Dacoity with murder — Death sentence — When not justified — *Trial court holding the appellant individually responsible for the death of only one of the two deceased persons — High Court wrongly proceeding on the basis that the trial court held the appellant individually responsible for killing two* *innocent persons — Judgment of the High Court to that extent vitiated — Finding of the trial court that the appellant was leader of the dacoits not supported by evidence on record — Held, in the circumstances of the case, courts below not justified in differentiating the case of the appellant from that of other accused — Death sentence reduced to imprisonment for life — CrPC, 1973, S. 354(3)* (Para 5). *Jagdish Yadav* v. *State of Bihar*, (1999) 9 SCC 99: 1999 SCC (Cri) 464.

Bench Strength **2**. Coram: **G.T. Nanavati** and *N. Santosh Hegde*, JJ. [Date of decision: 27-1-1999]

[9866] — Ss. 396 and 302 — Incongruities in prosecution version — Dacoity and murder at midnight — Though the incident occurring on the night of August 1 during which the eyewitnesses claiming to have identified the accused-appellants but no case registered against appellants next day and written complaint which became the basis of FIR reaching the Magistrate only on Aug. 3 and as such the argument that the case against the appellants was registered only on Aug. 3 cannot be ruled out — *Names of appellants not mentioned in any of the papers prepared by investigating officer including general diary on Aug. 2 and police also raiding the house of appellants only on Aug. 3 from which it could be reasonably presumed that the investigating officer had not come to know appellants' names till then — Neither any article which was alleged to have been robbed nor any weapon used in the dacoity and murder recovered — Appellants surrendering in court on their own initiative but investigating officer not interrogating them — Even though according to prosecution case appellants killed one of the victims because he had seen them but why appellants had come to commit the dacoity without covering their faces not explained — Man who was said to have set fire to the haystack in the light of which the appellants were identified, not examined — Held on facts, involvement of appellants in the crime doubtful and it was possible that names of appellants were mentioned by PWs out of suspicion — If the inmates of the robbed house could not identify any of the dacoits but later they suspected that the appellants were behind the dacoity, there can certainly be the possibility of implicating the appellants out of suspicion. Rang Bahadur Singh* v. *State of U.P.*, (2000) 3 SCC 454: 2000 SCC (Cri) 703: AIR 2000 SC 1209: 2000 Cri LJ 1718: 2000 All LJ 860.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.C. Lahoti*, JJ. [Date of decision: 7-3-2000]

[9867] — S. 396 and S. 302 r/w S. 149 — Appreciation of evidence — Conviction set aside — *Appellant-accused variously armed alleged to have entered the house of deceased at about 11 p.m. and assaulted inmates of the house — A-2 alleged to have fired at the deceased resulting in his death — Animosity between parties and litigation pertaining to land dispute pending between them — PWs 5, 6, 7 and 9 were the eyewitnesses and closely related to deceased, their relations with appellants being inimical — They stating that they had seen the incident and recognised the appellants either in the torchlight or in the lantern light which was burning at their house — But, neither the torch nor the lantern was seized by the IO during the course of investigation, nor were they produced before the court — Hence, identification of appellants in such circumstances difficult to believe — PW 2, who was related to the deceased and reached the place of occurrence immediately after the incident, stating that PW 9 (informant) and others had specifically told him that they did not identify the persons who had committed the dacoity — PW 7 also stating that the persons who had committed dacoity at their residence had tied gamochha on their faces — Moreover, eyewitnesses categorically stating that guns and country-made pistols were used by appellant-accused in commission of the crime but no pellets, cartridges or bullets seized from place of occurrence and neither the gun or country-made pistol recovered from appellant-accused by IO — Besides, no pellet or cartridge was found in the body of deceased by the doctor — Further, prosecution had alleged that PW 9 had received an head injury and was examined by the doctor but no medical evidence produced in regard thereto — Besides, all the eyewitnesses have categorically stated that the deceased was injured by the use of firearm, whereas the medical evidence specifically indicates that no firearm injuries were found — Moreover, IO stating that neither any bloodstained clothes were produced before him, nor any list of stolen articles given, nor the fact that kerosene had been poured on PW 6 told to him — In the light of the fact that there was a previous enmity between the parties and the eyewitnesses examined are related to the deceased and are interested witnesses; and that in the absence of the lantern or the torch, the prosecution case is full of doubts, and as such the appellant-accused are entitled to benefit of doubt* (Paras 4, 14, 19 to 22, 27 and 28). *Kapildeo Mandal* v. *State of Bihar*, (2008) 16 SCC 99: AIR 2008 SC 533: 2008 Cri LJ 730.

Bench Strength **2**. Coram: **P.P. Naolekar** and *D.K. Jain*, JJ. [Date of decision: 29-11-2007]

Mohinder Singh v. State, AIR 1953 SC 415: 1950 SCR 821; Mani Ram v. State of U.P., 1994 Supp (2) SCC 289: 1994 SCC (Cri) 1242; Thaman Kumar v. State of Union Territory of Chandigarh, (2003) 6 SCC 380: 2003 SCC (Cri) 1362, considered and relied on

Ramanand Yadav v. Prabhu Nath Jha, (2003) 12 SCC 606: 2004 SCC (Cri) Supp 526; Mange v. State of Haryana, (1979) 4 SCC 349: 1979 SCC (Cri) 985; State of U.P. v. Krishna Gopal, (1988) 4 SCC 302: 1988 SCC (Cri) 928, relied on

[9868] — Ss. 396, 302/34 and 149 — Dacoity with murder — Murder committed by one of the dacoits during the commission of dacoity — Liability of other members of the gang — *Held, all the other dacoits are liable under S. 396 although they may have no participation in the murder — Prosecution need not establish that the other dacoits shared the common intention or common object with the person who committed the murder*

Under Section 396, if anyone of the dacoits "commits murder in so committing dacoity" everyone of the dacoits is liable to be punished either with death or imprisonment for life or rigorous imprisonment for a term which may extend to 10 years. If a dacoit in the progress of, and in pursuance of, the commission of a dacoity commits a murder, all of his companions, who are participating in the commission of the same dacoity may be convicted under this section, although they may have no participation in the murder beyond the fact of participation in dacoity. It is not necessary that the murder should have been within the contemplation of all or some of them when the dacoity was planned, nor is it necessary that they should have actually taken part in, or abetted, its commission. Indeed they may not have been present at the scene of murder, or may not have known even that murder was going to be, or had in fact been, committed. But nonetheless they all will be liable for enhanced punishment, provided a person is in fact murdered by one of the members of the gang in the commission of the dacoity.

It is not necessary for the prosecution in such a case to establish either any common intention envisaged in Section 34 or common object contemplated in Section 149 of IPC. If one of the dacoits committed murder during the commission of dacoity all the other members of the gang will be liable to be punished under Section 396 and then it would be immaterial that the other dacoits did not share the intention with the person who committed murder. *Kalika Tiwari* v. *State of Bihar*, (1997) 4 SCC 445: 1997 SCC (Cri) 600: AIR 1997 SC 2186: 1997 Cri LJ 2531.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K.T. Thomas**, JJ. [Date of decision: 25-3-1997]

[9869] — Ss. 396 and 394 — 12 persons, out of 16, committed to Sessions acquitted — *No finding by the High Court that the appellants committed dacoity with others numbering more than 16 — Validity of conviction under S. 396*

The learned Additional Sessions Judge had found that accused Chottan, Taru Mahton and Shorai Mahton along with the others numbering more than 16 committed dacoity in the house of Budhan. If this finding is accepted conviction under S. 396 was not wrong. But as there is no such finding by the High Court we are converting the conviction to one under S. 394, IPC. *Chottan Mahton* v. *State of Bihar*, (1969) 3 SCC 727.

Bench Strength **3**. Coram: **S.M. Sikri**, *R.S. Bachawat* and *V. Ramaswami*, JJ. [Date of decision: 24-4-1969]

[9870] — Ss. 396 and 395 — Dacoity at midnight — Delay in holding TI parade and in recovery/identification of stolen property — Effect — *Held, in such cases it takes time for the prosecution to collect evidence — It is also likely that witnesses fear dacoits and shirk to come out and support the prosecution case — Hence, delay in holding test identification parade, or delay in recovery or identification of stolen property not fatal to prosecution* (Para 9). *Narayan Prasad* v. *State of M.P.*, (2005) 13 SCC 247: (2006) 2 SCC (Cri) 161: AIR 2006 SC 204: 2006 Cri LJ 123.

Bench Strength **2**. Coram: *Arun Kumar* and **A.K. Mathur**, JJ. [Date of decision: 8-11-2005]

[9871] — Ss. 396 and 395 — Dacoity with murder — Appreciation of evidence — *Recovery witnesses turning hostile — Accused identified by the complainant (husband of the deceased) at the TI parade — Test identification memos identifying stolen articles recovered from various places, pursuant to disclosure made by accused, proved — Recovery effected at the instance of accused not claimed by them, except one N who claimed that those were purchased by him under receipt — No possibility of planting the case against accused by the police — Testimony of the prosecution witnesses found creditworthy and held, taken together establishes guilt of accused, despite recovery witnesses turning hostile* (Para 9). *Narayan Prasad* v. *State of M.P.*, (2005) 13 SCC 247: (2006) 2 SCC (Cri) 161: AIR 2006 SC 204: 2006 Cri LJ 123.

Bench Strength **2**. Coram: *Arun Kumar* and **A.K. Mathur**, JJ. [Date of decision: 8-11-2005]

[9872] — Ss. 396, 395, 391, 390 & 302 — Murder during retreat after fruitless dacoity — Dacoity ended on retreat when no property carried away — *Dacoits attempting robbery but required to flee without any booty on a hue and cry being raised and* *chase given by villagers — Murder of one of the chasing villagers — Held, not covered by S. 396 but S. 302 even though charge under S. 396 framed*

Accused and his companions numbering more than five persons attempted to commit dacoity. Since a large number of villagers collected they took to their heels without collecting any property. Villagers chased them. During the course of the chase the accused shot and killed one of the villagers. It was contended by the appellant that an offence under S. 396 was not committed since they were not carrying any stolen property and so the murder was not part of the dacoity.

Held :

On a plain reading of S. 391, it would appear that in order that a dacoity can be said to have been committed it is necessary that five or more persons conjointly commit a robbery or attempt to commit a robbery. If a robbery was committed, the dacoits would have the booty with them but if the matter rested only with an attempt to commit a robbery there would be no question of the dacoits having any booty with them. There was in the circumstance of the present case a clear attempt at robbery but it did not comprise the carrying away or attempting to carry away property obtained by theft. No theft was committed nor were the dacoits engaged in carrying away or attempting to carry away the property obtained by the theft so that the transaction of dacoity stopped short at the mere attempt to commit robbery. The transaction of dacoity had ended the moment the dacoits took to their heels and another and a separate transaction took place when the appellant shot at *M* and, therefore, the appellant could not be convicted of having committed the offence under S. 396, IPC.

But the appellant, on facts, is liable to be convicted for murder. The charge under S. 396, comprised of two ingredients — (1) the commission of the dacoity, and (2) the commission of the murder in so committing the dacoity. The first ingredient was proved without any doubt and was not challenged by the learned counsel for the appellant. The second ingredient also was proved in any event as regards the commission of the murder because the attention of the accused was focussed not only on the commission of the offence while committing the dacoity but also on the individual part which he took in the commission of that murder. So far as he was concerned, he knew from the charge which was framed against him that he was sought to be made responsible not only for the commission of the dacoity but also for the commission of the murder in committing such dacoity. The evidence which was led on behalf of the prosecution specifically implicated him and he was named by the prosecution witnesses as the person who shot at *M*. His examination under S. 342 of the Criminal Procedure Code also brought out that point specifically against him and he was questioned in that behalf. Both the Courts below recorded their concurrent findings of fact in regard to the part taken by the appellant in the commission of the murder of *M*. Under these circumstances it could not be urged that the appellant could not be convicted of the offence under S. 302, Indian Penal Code if such a charge could be made out against him. Therefore the appellant can be held guilty under S. 302, IPC and convicted for the same. *Shyam Behari* v. *State of U.P.*, AIR 1957 SC 320: 1957 Cri LJ 416, 418, 419.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and **N.H. Bhagwati**, *Syed Jafer Imam, S.K. Das* and *P. Govinda Menon*, JJ. [Date of decision: 5-10-1956]

AIR 1955 All 420: 1955 Cri LJ 1144 and AIR 1932 Cal 818: 33 Cri LJ 722, approved

For conviction under S. 302, W. Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291, followed

***Distinguished** in Raj Kumar v. State of Uttaranchal, (2008) 11 SCC 709*

[9873] — Ss. 396, 395 and 397 — Test identification parade — Fairness — *Bus robbery and murder of one passenger committed by masked men in a hilly terrain area at night in insufficient light — Accused arrested on the evening of June 3 but kept in police station till June 5 when remand order obtained from court and Test identification parade held on June 18 — Accused with fetters on their legs connected with an iron rod mixed up with unfettered undertrial prisoners — Held, Test identification parade unfair and evidence unreliable — Entire prosecution case being based on this evidence, the accused entitled to benefit of doubt — Evidence Act, 1872, S. 9. Tahir Mohd.* v. *State of M.P.*, 1993 Supp (2) SCC 697: 1993 SCC (Cri) 760: AIR 1993 SC 931: 1993 Cri LJ 193.

Bench Strength **3**. Coram: *S. Ratnavel Pandian, Kuldip Singh* and *R.M. Sahai*, JJ. [Date of decision: 12-2-1992]

[9874] — Ss. 396, 397, 450 and 397/149 — Death sentence — When not justified — Dacoity — *Death of 4 persons — Appellants, armed with firearms, remaining outside the house and causing death of two persons outside the house — Occurrence taking place more then a decade ago — Held, death sentence not warranted. Brij Mohan* v. *State of Rajasthan*; (1994) 1 SCC 413: 1994 SCC (Cri) 527: AIR 1994 SC 739: 1994 Cri LJ 922: (1994) 1 Crimes 288.

Bench Strength **2**. Coram: *Dr A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 16-12-1993]

[9875] — Ss. 396, 397, 450 and 397/149 — Identification — Dacoity at night — Prosecution to satisfy that witnesses were in a position to identify the culprits — *Claim of identification by witnesses has to be examined with reference to the circumstances of a particular case — Village having electric connections in houses and on road — Non-mention of source of light in FIR and statements made by witnesses during investigation not fatal to prosecution case — Evidence Act, 1872, S. 9*

In cases relating to dacoity, the identification by the witnesses is the main evidence, as such the prosecution has to satisfy, that the witnesses were in a position to identify the culprits, during the commission of the dacoity. This claim is later tested at the test identification, which although not a substantive evidence but is a mode to verify the claim of the witnesses before they identify the accused persons in court. Any such claim that the witnesses identified the culprits during the commission of the crime, has to be examined by the court with reference to the circumstances of a particular case. The court has to be satisfied that there was not only ample opportunity for the witnesses to identify the culprits but they had identified them with the help of some light either in the house or outside.

In the present case, all the witnesses have asserted that electric light was there in the house, as well as on the road, when the dacoity was committed. The claim of the witnesses regarding identification of the culprits in the electric light, cannot be rejected merely on the ground that this fact was not mentioned in the first information report or in the statements made during investigation. It appears that as the village had electricity in the houses and on roads, the informant as well as the witnesses proceeded on the assumption that they were not required to disclose the means of identification by them because that was not at all a relevant fact, necessary to be mentioned, in the first information report or in their statements before the police. In villages where there is no electricity and a claim is made regarding identification of the culprits during commission of dacoity, witnesses are expected to disclose the source of light by which they have identified the culprits during the night. *Brij Mohan* v. *State of Rajasthan*, (1994) 1 SCC 413: 1994 SCC (Cri) 527: AIR 1994 SC 739: 1994 Cri LJ 922: (1994) 1 Crimes 288.

Bench Strength 2. Coram: *Dr A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 16-12-1993]

[9876] — S. 396 or Ss. 411/412 — If conviction for dacoity under S. 396, sustainable — Only evidence is recovery of some stolen clothes from appellant — Presumption under S. 114, Illustration (a) — Applicability of S. 412, IPC — Conviction altered to one under S. 411, IPC

That the presumption arising under S. 114, Illustration (*a*) of the Evidence Act can only make Sheonath guilty of either theft or as receiver of stolen property. (S. 411, IPC)

The recovery of only two articles from him, absence of his name in the FIR and non-identification of him by the eyewitnesses, point only to the conclusion that he was not a participant in the dacoity.

Sheonath cannot be guilty of S. 412, IPC as the prosecution failed to prove that he knew or had reason to believe that the property had been transferred to him by the commission of dacoity. *Sheonath* v. *State of U.P.*, (1969) 3 SCC 116: 1970 SCC (Cri) 15: AIR 1970 SC 535: 1970 Cri LJ 601.

Bench Strength 2. Coram: **S.M. Sikri** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 15-10-1969]

[9877] — Ss. 396 and 412 — Dacoity — Prosecution case mainly based on uncorroborated testimony of four witnesses who claimed to have seen the occurrence — Their testimony found to be unreliable and untrustworthy — *Held, conviction cannot be based solely on such testimony of the witnesses. Mahmood* v. *State of Bihar*, (2000) 9 SCC 35: 2000 SCC (Cri) 1157: AIR 2000 SC 1059: 2000 Cri LJ 1442.

Bench Strength 2. Coram: *G.T. Nanavati* and **Y.K. Sabharwal**, JJ. [Date of decision: 16-2-2000]

Prem Singh v. State of Punjab, (1976) 1 SCC 805: 1976 SCC (Cri) 194, relied on

[9878] — Ss. 396 and 412 — Dacoity with murder and recovery of looted articles — *Occurrence taking place during dark night — Witnesses claiming to have identified the accused from a distance of 150 feet with the help of light emanating from straw-fire at a distance of 80 feet and also the torches carried by the accused — Evidence not acceptable — No satisfactory evidence also produced to connect the accused-respondent so as to incriminate him with offence under S. 412 — Hence reversal of trial courts judgment and acquittal recorded by High Court need not be interfered with. State of U.P.* v. *Hardeo*, 1993 Supp (1) SCC 473: 1993 SCC (Cri) 261: AIR 1992 SC 1854.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and *Kuldip Singh*, JJ. [Date of decision: 6-3-1992]

[9879] — Ss. 396 and 436 r/w S. 34 — Testimony of sole witness when could be relied upon to convict the accused — Dacoity and murder — *Appellants assaulting the father-in-law and the husband of PW 6 and setting fire to dalan in which they were sleeping — Conviction based on evidence of sole eyewitness, PW 6 — Evidence of PW 6* *assailed on the ground that she was suffering from mental illness and therefore she could not have identified the appellants and that too in the dead of night — Facts brought before the court that the investigation was not properly conducted by PW 7 for which departmental proceedings were initiated against him and that the FIR was forwarded to court very late — PW 6 not only saw the appellants, who were her neighbours, in the light of burning flames of dalan but also heard them at the time of occurrence — Evidence showing that PW 6 got relieved of the psychological problems after her treatment — Hence, when the courts below accepted the evidence of PW 6 as competent and truthful, held on facts, there is no need to look for any other evidence to prove the guilt of the convicted accused persons — Arms Act, 1959, S. 27*

The appellants along with some others barged into the house of *K* with an intention of causing dacoity and in the said process caused the death of *K* and his son *S* by assaulting them and ultimately setting fire to the dalan in which the deceased were sleeping. The prosecution, during the course of trial, had relied upon the evidence of PW 6, who is the wife of deceased *S* and the sole eyewitness to the incident. The trial court placing reliance on the evidence of PW 6 convicted the appellants under Sections 396, 436 r/w Section 34 IPC and Section 27 of the Arms Act. Aggrieved by the said conviction and its confirmation by the High Court, the appellants, 3 out of the 5 accused persons convicted by the trial court, had challenged the judgment of the courts below on the ground that the courts below had erred in placing reliance on the evidence of PW 6 as the incident in question had occurred in the dead of night without there being any light to identify the assailants and so the appellants as well as the other convicted accused persons, who were the neighbours of *K* and were not having cordial relations with *K*, were falsely implicated in the murder in question. Further, it was contended by the appellants that since PW 6 was suffering from mental illness, her evidence could not have been relied upon by the courts below for convicting them.

Dismissing the appeals,

Held :

Even assuming that the evidence of all other prosecution witnesses is doubtful in view of the contradictions found in their evidence, if the evidence of PW 6, the sole eyewitness to the incident, is acceptable as competent and truthful, there is no need to look for any other evidence to prove the guilt of the convicted accused persons. (Para 4)

It is possible that having seen the gruesome incident in which PW 6 lost her husband and father-in-law, she could have suffered a shock which might have given rise to certain psychological problems and this could have happened only after the incident in question. But there is evidence to the effect that PW 6 got relieved of the said problem after she got treatment in the hospital. (Para 4)

PW 6 identified the appellants by seeing their faces in the light of burning flames of dalan as well as hearing them when they prevented her from providing water to her father-in-law. (Para 4)

Having perused the evidence of PW 6, it is evident that she was competent to give evidence in the court and her evidence is trustworthy enough to be relied upon. In spite of the lengthy cross-examination, nothing material to discard her evidence has been made out. The inconsistencies pointed out in her examination are trivial in nature and are not so grave or substantial to have any adverse effect on the prosecution case. (Para 4). *Sumesh Lal* v. *State of Bihar*, (2002) 3 SCC 27: 2002 SCC (Cri) 511: AIR 2002 SC 968: 2002 Cri LJ 1477.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *Doraiswamy Raju*, JJ. [Date of decision: 4-2-2002]

[9880] — Ss. 396, 506, 341 and 379 — Conviction under, whether justified — Theft of vehicle and use thereof in committing robbery with murder — *Testimony of PWs reliable and acceptable — Accused identified through TI parade — Recovery of crime object made on the basis of information given by accused — Conclusion of trial court convicting the accused, as affirmed by High Court, held on facts, does not suffer from any infirmity hence, no interference therewith called for. Amitsingh Bhikamsingh Thakur* v. *State of Maharashtra*, (2007) 2 SCC 310: (2007) 1 SCC (Cri) 582: AIR 2007 SC 676: (2007) 50 AIC 6 (SC): 2007 Cri LJ 1168.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 5-1-2007]

[9881] — S. 396 r/w Ss. 34 and 201 r/w S. 34 — Sentence — *Pre-planned dacoity with cold-blooded and cruel murder of four persons committed by accused — Bodies buried with a view to cause evidence of crime to disappear — Sentence of lie imprisonment and of six years' RI (to run concurrently) imposed by trial court and confirmed by High Court in appeal — In the circumstances, plea for reduction of the sentences to the period already undergone rejected by Supreme Court. Lalli* v. *State of W.B.*, (1986) 2 SCC 409: 1986 SCC (Cri) 174: AIR 1986 SC 990: 1986 Cri LJ 1083: 1986 ALJ 768.

Bench Strength **2**. Coram: **D.P. Madon** and *B.C. Ray*, JJ. [Date of decision: 11-3-1986]

[9882] — Ss. 396/34 — Sentence — Dacoity with murder — *In view of long lapse of time and also because of facts and circumstances of the case, death sentence not called for — Judgment and order of trial court restored but sentence reduced to imprisonment for life. State of U.P.* v. *Bhoora*, (1998) 1 SCC 128: 1998 SCC (Cri) 265: AIR 1998 SC 254: 1998 All LJ 86: 1998 Cri LJ 478.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 23-10-1997]

[9883] — Ss. 396/149 — Circumstantial evidence — Murder of driver and cleaner of a lorry carrying fertilizer — *Boarding of five accused persons in the lorry established from the facts that the accused persons sustained injuries when the lorry met with an accident and they had got themselves admitted in hospital for treatment — Pursuant to disclosure statements made by the accused, incriminating materials such as wrist-watch belonging to the deceased driver, the fertilizer bags and a wooden katta (alleged to have been used in murdering both the deceased) stained with human blood, recovered — However, in their statements under S. 313 CrPC accused denying these established facts in toto and offering a false answer — Held, this denial provided an additional link in the chain of circumstances to complete the chain — The chain of circumstances unerringly led to the only conclusion of guilt of the accused* (Paras 9 to 14). *Anthony D'Souza* v. *State of Karnataka*, (2003) 1 SCC 259: 2003 SCC (Cri) 292: AIR 2003 SC 258.

Bench Strength **3**. Coram: *R.C. Lahoti, Brijesh Kumar* and **H.K. Sema**, JJ. [Date of decision: 30-10-2002]

[9884] — Ss. 396/149 or Ss. 396/34 — Murder of driver and cleaner of a lorry — Out of five accused trial of one juvenile accused was splited and tried separately from the remaining four accused-appellants — *Evidence of owner of the lorry showing that the juvenile accused had disclosed to him that all the five accused had participated in murder of the deceased persons — Held, trial court was right in convicting the four accused appellants under S. 396 r/w S. 149 and High Court erred in convicting them instead under S. 396 r/w S. 34* (Para 17). *Anthony D'Souza* v. *State of Karnataka*, (2003) 1 SCC 259: 2003 SCC (Cri) 292: AIR 2003 SC 258.

Bench Strength **3**. Coram: *R.C. Lahoti, Brijesh Kumar* and **H.K. Sema**, JJ. [Date of decision: 30-10-2002]

— S. 397 *See also* Ss. 149, 300 and 397

See also Ss. 149, 326/34, 324/34, 427/34, 450 and 392, 395 and 397

See also under Ss. 299 to 304

See also Ss. 363, 366, 376, 397 and 302

See also Ss. 380, 392, 397 and 414

See also Ss. 392, 394 and 397

See also Ss. 392 and 397

See also Ss. 392 and 397 and 302

See also Ss. 392, 397 and 394

See also Ss. 392, 397 and 452 r/w S. 34

See also Ss. 392/34, 397 and 302

See also Ss. 394, 395, 397 and 411

See also Ss. 394 and 397

See also Ss. 395, 396 and 397

See also Ss. 395, 396, 397 and 449

See also Ss. 395 and 397

See also Ss. 395, 397, 400 and 302

See also Ss. 395, 397 and 450

See also Ss. 396, 395 and 397

See also Ss. 396, 397, 450 and 397/149

See also Ss. 449, 458, 459, 392, 397, 302, 307

[9885] — S. 397 — Applicability — Use of deadly weapon — Proof of — *Word "uses" occurring in S. 397 — Construction of — If the weapon with which the offender was armed was within the vision of the victim so as to be capable of creating terror in the mind of the victim, held, that is sufficient to satisfy the word "uses" for the purposes of S. 397 — It need not be further shown to have been actually used for cutting, stabbing, shooting, as the case may be* (Para 8). *Ashfaq* v. *State (Govt. of NCT of Delhi)*, (2004) 3 SCC 116: 2004 SCC (Cri) 687: AIR 2004 SC 1253: 2004 Cri LJ 936: (2004) 3 MPLJ 361: (2004) 3 Mah LJ 581.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 10-12-2003]

Phool Kumar v. Delhi Admn., (1975) 1 SCC 797: 1975 SCC (Cri) 336, followed

Followed in Dilawar Singh v. State of Delhi, (2007) 12 SCC 641

[9886] — S. 397 — Applicability of — Weapons used in offence, if, were deadly — *Mere allegation of use of "bamboo sticks" and "lathis" without any other description, held, is not enough to make the weapons lethal or deadly — In absence of any grievous hurt having been inflicted or attempted to be inflicted on the inmates, sentence of appellants reduced to rigorous imprisonment for 4 years. Dhanai Mahto* v. *State of Bihar*, (2001) 10 SCC 657: 2003 SCC (Cri) 1040: AIR 2000 SC 3602 (1).

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 26-7-2000]

[9887] — S. 397 — Appropriate sentence under — Reduction by High Court of minimum sentence of 7 years' RI awarded by trial court to period already undergone, of four months and twenty-four days, held, impermissible — *Sentence restored to 7 years' RI — Order of High Court strongly deprecated — Held, it cannot be understood how High Court reduced period of sentence to less than the minimum prescribed under the statute — This shows either complete non-application of mind or passing of the order for extraneous considerations. State of M.P.* v. *Phool Chand*, (2005) 12 SCC 199.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 14-2-2005]

[**Ed.**: See also (2005) 8 SCC 1 and 8, in this regard.]

[9888] — S. 397 — "Knife", held, is a deadly weapon for the purposes of (Para 9). *Ashfaq* v. *State (Govt. of NCT of Delhi)*, (2004) 3 SCC 116: 2004 SCC (Cri) 687: AIR 2004 SC 1253: 2004 Cri LJ 936: (2004) 3 MPLJ 361: (2004) 3 Mah LJ 581.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 10-12-2003]

[9889] — S. 397 — Offence under, whether proved — Complaint not alleging robbery — *Questions put to the accused not relating to commission of robbery — Suggestion relating to commission of robbery not made even while recording of statement of accused under S. 313 CrPC — Therefore, commission of robbery, on facts, per Ganguly, J., was not proved*

Per Ganguly, J.

From the question put to the appellant, it cannot be said that he committed robbery. But the High Court reached a finding that the appellant committed robbery. Conviction on charges of robbery was not proved and on the alleged conviction on robbery no sentence was awarded to the appellant. The appellant has to be convicted on other charges. However, his conviction does not automatically lead to his death sentence. Instead of death sentence a sentence of rigorous imprisonment for life will serve the ends of justice. With the aforesaid modification of the sentence, the appeal needs to be dismissed to the extent indicated above. (Paras 60 to 62, 119 and 120)

In the complaint, which was filed by the father of the deceased girl, there is no allegation of robbery. In the evidence led in this case and on which adverse circumstances have been formulated against the appellant, it appears that the deceased girl went with the appellant on her own. In the circumstances noted against the appellant, there is no allegation of robbery against the appellant. In his statement under Section 313, the accused was not told that he has committed robbery. Only in some of the questions it was put to him that the deceased girl was wearing golden earrings and silver anklets. It was never put to him that he has committed any robbery. Even then the High Court after assessment of the evidence in this case and while confirming the death sentence reached its finding that the appellant has committed robbery. (Paras 60 and 61). *Rameshbhai Chandubhai Rathod* v. *State of Gujarat*, (2009) 5 SCC 740: (2009) 2 SCC (Cri) 881.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat**[1] and **A.K. Ganguly**[2], JJ. [Date of decision: 27-4-2009]

[9890] — S. 397 — Robbery or dacoity with attempt to cause death or grievous hurt — Applicability — "Offender" — *Five accused, including the appellant **R** and three Sikhs, variously armed alleged to have entered the temple where complainant was working as a priest, tied him with a rope and ran away with the donation box which contained cash of about Rs 5000 — Held, "offender" refers to culprit who actually used deadly weapon — Other accused are not vicariously liable for acts of co-accused under S. 397 — Further held, use of weapon by offender for creating terror in mind of victim is sufficient — It need not be further shown to have been actually used for cutting, stabbing or shooting, as the case may be — In instant case no injury was inflicted — Evidence of complainant on basis of which conviction was recorded not consistent as regards weapon carried by appellant — Besides, S. 397 contemplates something more than merely being armed with deadly weapon — Hence, conviction of appellant under S. 397 unsustainable* (Paras 19 to 22). *Dilawar Singh* v. *State of Delhi*, (2007) 12 SCC 641: (2008) 3 SCC (Cri) 330: AIR 2007 SC 3234: (2007) 58 AIC 72 (SC): 2007 Cri LJ 4709.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-9-2007]

Phool Kumar v. Delhi Admn., (1975) 1 SCC 797: 1975 SCC (Cri) 336; Ashfaq v. State (Govt. of NCT of Delhi), (2004) 3 SCC 116: 2004 SCC (Cri) 687, followed

[9891] — S. 397 — Sentence — Appellant technically guilty of the offence — Minimum sentence of 7 years' RI impossible — *Because of the several mitigating circumstances court recommending executive clemency under S. 432, CrPC, 1973. Ram Shankar* v. *State of M.P.*, 1980 Supp SCC 470: 1981 SCC (Cri) 378: AIR 1981 SC 644: 1981 Cri LJ 162.

Bench Strength **2**. Coram: *R.S. Sarkaria* and *O. Chinnappa Reddy*, JJ. [Date of decision: 23-9-1980]

[9892] — S. 397 and S. 302 — Circumstantial evidence — Aquittal by High Court — Interference, if warranted — *Murder and theft of earstuds and gold chain worn by deceased — Prosecution case based on circumstantial evidence viz. accused had shown two eartops to PW 3 at bus-stop, had mentioned about the eartops and chain to PW 2 and the dead body was recovered from his field on the basis of disclosure statement made by him — Circumstances found by High Court either not established or found insufficient to prove the guilt of the accused — Held, Supreme Court would not interfere with findings of the High Court based on proper appreciation of evidence, particularly in an appeal against acquittal. State of Kerala* v. *V. Baby,* (2005) 11 SCC 270: AIR 2005 SC 3010: 2005 Cri LJ 2565.

Bench Strength **2**. Coram: *B.P. Singh* and *S.B. Sinha*, JJ. [Date of decision: 13-4-2005]

[9893] — Ss. 397 and 302 — Robbery — Where credible evidence exists on record to establish guilt of the accused, it is not necessary to find out the motive of the crime (Para 7). *State of Karnataka* v. *David Rozario*, (2002) 7 SCC 728: 2002 SCC (Cri) 1852: AIR 2002 SC 3272.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Arijit Pasayat**, JJ. [Date of decision: 17-9-2002]

[9894] — Ss. 397 and 302 — Robbery with murder — Only electronic article stolen leaving articles of higher value untouched — *In view of credible evidence of recovery of the stolen article and weapon of murder, conviction by trial court restored*

The plea that for an article of very small value, no one would kill an old lady, particularly when the articles of higher value were not touched, is really based on suppositions. Robbery can be made of articles which are easy to be disposed of. Articles of a particular category, for example, electronic goods may be preferred. It is on record that the accused-respondents were arrested in another case of theft of a TV set. Without going into the merits of that case, it can only be said by way of illustration that there may be fascination for selling goods of a particular category which are easy to carry and are easily disposable. In view of the credible evidence on record, it is not necessary to fathom as to what was in the mind of the accused or find out why valuable articles were not lifted. (Para 7)

The High Court was clearly in error in directing the acquittal. The impugned order of the High Court is set aside, and that of the trial court is restored. (Para 7) . *State of Karnataka* v. *David Rozario*, (2002) 7 SCC 728: 2002 SCC (Cri) 1852: AIR 2002 SC 3272.

Bench Strength **2**. Coram: *U.C. Banerjee* and Arijit **Pasayat**, JJ. [Date of decision: 17-9-2002]

[9895] — Ss. 397 and 302 — Robbery with murder — Proof of — Fact discovered in consequence of information received from accused — *Information must be given by accused while in custody of police — Such information which results in discovery of a fact should be recorded and proved — Discovery of an object is not discovery of fact — Expressions "fact discovered", "so much of such information" — Meaning — Object of the provision — It is based on the doctrine of confirmation by subsequent events — Prosecution case not only based on evidence in terms of S. 27 but also on other evidence — On facts held, accused liable to be convicted under S. 302 — Evidence Act, 1872, S. 27*

The deceased, whose children were residing abroad, was staying alone in her house. On the evening of 20-12-1986, the fateful day, the deceased's maidservant saw the deceased sitting on a chair with a head injury which was bleeding. She was admitted to hospital where she died. Information was gathered by the investigating officer about one tape recorder of foreign make, gifted to the deceased by her daughter, which was missing from the house. Some days after the date of the incident the accused persons were arrested in another case of theft of a TV set. Accused 2 led the investigating officer and others to a shop where PW 21 the owner of the shop was asked by A-2 to bring the tape recorder which he had sold to him after redeeming the same from the pawnbroker PW 8. PW 21 stated that in the evening of 21-12-1986 A-2 had approached him with an offer that he and A-1 intended to sell a tape recorder which was pledged with PW 8. They also showed him the pawn ticket. He gave Rs 240 to one of the accused and the other one was asked to sit in the shop so that the first one could go and bring the tape recorder. After finding that the same was in good condition the extra amount of Rs 15 was given to them. Thereafter, Ext. P-18 was prepared and it was signed by one of the accused on the stamp paper and was attested by the other. He identified the tape recorder which was sold by the accused. PW 8 who runs a pawnbroker shop stated that the accused were frequently visiting his shop and on 20-12-1986 they pledged a tape recorder which was redeemed on 21-12-1986. Sale receipt was produced. PW 16 is an employee of PW 8 who stated that the tape recorder was pledged on 22-12-1986 and was redeemed by A-1. Evidence showed that the tape recorder belonged to the deceased. On the basis of the information given by the accused persons recovery was made of the weapon i.e. an iron rod. The evidence also showed that the deceased was wrapped in a shawl, when she first found her bleeding on account of injuries. The weapon used in the assault for causing injuries on the deceased and the bloodstained shawl were sent for forensic examination. Forensic reports disclosed that the blood group found on the weapon was the same as was found on the shawl. The trial court on the basis of evidence on record found the accused guilty under Section 302 r/w Section 34 and Section 392 r/w Section 34 IPC. They were sentenced to imprisonment for life and 5 years' RI respectively for the aforesaid two offences. The High Court set aside the conviction.

Allowing the appeal,

Held :

The High Court was clearly in error in directing the acquittal. The impugned order of the High Court is set aside, and that of the trial court is restored. (Para 7)

The first question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused. Section 27 of the Evidence Act is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. (Para 5)

The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. Under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in the custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. (Para 5)

It is now well settled that recovery of an object is not discovery of a fact envisaged in the section. The "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given. (Para 5)

This is not a case where the prosecution case rests only on the evidence in terms of Section 27 of the Evidence Act. That was only one of the pieces of evidence. It is, therefore, not necessary to decide the question as to whether conviction can be recorded only on the basis of such recovery. (Para 7). *State of Karnataka* v. *David Rozario*, (2002) 7 SCC 728: 2002 SCC (Cri) 1852: AIR 2002 SC 3272.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Arijit Pasayat**, JJ. [Date of decision: 17-9-2002]

Delhi Admn. v. Bal Krishan, (1972) 4 SCC 659: AIR 1972 SC 3; Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828: 1976 SCC (Cri) 199; Pulukuri Kottaya v. Emperor, AIR 1947 PC 67: 48 Cri LJ 533: 74 IA 65; State of Maharashtra v. Damu, (2000) 6 SCC 269: 2000 SCC (Cri) 1088, relied on

[9896] — Ss. 397 and 342 — Evidence corroborated and charge proved by presence of fingerprints. *Phool Kumar* v. *Delhi Admn.*, (1975) 1 SCC 797: 1975 SCC (Cri) 336: AIR 1975 SC 905: (1975) 3 SCR 917: 1975 Cri LJ 778.

Bench Strength **2**. Coram: *A. Alagiriswami* and **N.L. Untwalia**, JJ. [Date of decision: 13-3-1975]

[9897] — Ss. 397 and 395 — *Identification of torch and currency notes, recovered from accused's possession, not satisfactorily proved as forming part of the corpus delicti — Accused could not be identified in TI parade — In the circumstances, conviction under Ss. 397 and 395 set aside. Bhure Khan* v. *State of M.P.*, (1982) 2 SCC 445: 1982 SCC (Cri) 469: AIR 1982 SC 948(2): 1982 Cri LJ 818.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *A.P. Sen*, JJ. [Date of decision: 12-2-1982]

[9898] — Ss. 397 and 395/398 — Dacoity — Absence of material to show that the appellants participated in the dacoity or caused injuries to the inmates of the house including the witnesses — *Explanation given by the accused not liable to be rejected outright — No recovery effected from them — Conviction set aside. Latel* v. *State of M.P.*, AIR 1994 SC 763: 1994 Cri LJ 1122.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 18-8-1992]

[9899] — Ss. 397 and 398 — Words "uses" in S. 397 and "is armed" in S. 398 — Distinction

The anomaly created by the use of the words "uses" in S. 397 and "is armed" in S. 398 is resolved if the two terms are given identical meaning. There seems to be a reasonable explanation for the use of the two different expressions in the sections. When the offence of robbery is committed by an offender being armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery. On the other hand, if an offender was armed with a deadly weapon at the time of attempting to commit a robbery, then the weapon was not put to any fruitful use because it would have been of use only when the offender succeeded in committing the robbery.

If the deadly weapon is actually used by the offender in the commission of the robbery such as in causing grievous hurt, death or the like then it is clearly used. But even if the weapon was used for the purpose of producing such an impression upon the mind of a person that he would be compelled to part with his property, that would amount to 'using' the weapon within the meaning of S. 397.

Here the appellant was carrying a deadly weapon open to the view of the victims sufficient to frighten or terrorise them. Any other overt act, such as, brandishing of the knife or causing of grievous hurt with it was not necessary to bring the offender within the ambit of S. 397. *Phool Kumar* v. *Delhi Admn.*, (1975) 1 SCC 797: 1975 SCC (Cri) 336: AIR 1975 SC 905: (1975) 3 SCR 917: 1975 Cri LJ 778.

Bench Strength **2**. Coram: *A. Alagiriswami* and **N.L. Untwalia**, JJ. [Date of decision: 13-3-1975]

Chandra Nath v. Emperor, AIR 1932 Oudh 103: 33 Cri LJ 926; Nagar Singh v. Emperor, AIR 1933 Lah 35: 34 Cri LJ 45; Inder Singh v. Emperor, AIR 1934 Lah 522: 36 Cri LJ 253 and Govind Dipaji More v. State, AIR 1956 Bom 353: 1956 Cri LJ 700, approved

State v. Chand Singh, AIR 1970 P & H 532: ILR (1970) 2 P & H 108 (FB), overruled

***Followed in** Dilawar Singh v. State of Delhi, (2007) 12 SCC 641*

[9900] — Ss. 397 and 412 — Connection with the dacoity, held, not established by mere recovery of empty cartridges from scene of occurrence after six days which cartridges could have been fired from appellant's licensed gun — *But articles recovered at the instance of the appellant were connected with the dacoity — Conviction and sentence altered to that under S. 412. Chhote Lal Singh* v. *State of M.P.*, (1979) 1 SCC 131: 1978 SCC (Cri) 572: AIR 1978 SC 1390: 1978 Cri LJ 1411.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 27-2-1978]

[9901] — S. 397 r/w S. 34 — Conviction under — Legality — *Provision under S. 397, held, postulates only the individual act of the accused to be relevant to attract S. 397 — It inevitably negates the use of the principle of constructive or vicarious liability engrafted in S. 34 — Where all the accused were wielding a deadly weapon of their own, held, it fulfilled the ingredients of S. 397 — So, conviction under S. 397 r/w S. 34 altered to S. 397* (Para 9). *Ashfaq* v. *State (Govt. of NCT of Delhi)*, (2004) 3 SCC 116: 2004 SCC (Cri) 687: AIR 2004 SC 1253: 2004 Cri LJ 936: (2004) 3 MPLJ 361: (2004) 3 Mah LJ 581.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 10-12-2003]

Shravan Dashrath Datrange v. State of Maharashtra, 1998 Cri LJ 1196 (Bom), distinguished on facts

[9902] — S. 397 r/w S. 392 — Plea bargaining — Neither the trial court nor the High Court has the jurisdiction to bypass on the basis of a plea-bargain the minimum sentence prescribed by law — *Contention rejected that it was not open to trial court to enhance the sentence for conviction under Ss. 392 r/w 397 Penal Code, 1860 to rigorous imprisonment for seven years because the practice of plea-bargaining had been adopted at the trial — High Court was within jurisdiction in confirming the minimum sentence of 7 years awarded by the trial court— CrPC, 1973, Ss. 229, 241 and 368, 399 and 401* (Para 4). *Kirpal Singh* v. *State of Haryana*, (1999) 5 SCC 649: 1999 SCC (Cri) 1025.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 10-5-1999]

Thippaswamy v. State of Karnataka, (1983) 1 SCC 194: 1983 SCC (Cri) 160, distinguished

[9903] — S. 397 r/w Ss. 395 & 396, S. 307 r/w S. 34 and S. 376 — Appreciation of evidence — Guilt established — *A-1 to A-6 variously armed, alleged to have brutally murdered five members of a family and raped two (one being a young girl aged 15 years) — Testimonies of PWs 1 & 8, who survived the brutal attempt found cogent and credible — Minor discrepancies of trivial nature found inconsequential — TI parade held following due formalities, wherein all the accused identified — Medical evidence establishing allegations of rape — Hence, held, conviction of accused sustainable. Ankush Maruti Shinde* v. *State of Maharashtra*, (2009) 6 SCC 667: (2009) 3 SCC (Cri) 308.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 30-4-2009]

[9904] — S. 397 r/w Ss. 395 & 396, S. 307 r/w S. 34 and S. 376 — Sentence — Death sentence — "Rarest of rare" category — Aggravating circumstances — *Five members of family brutally murdered, who were unknown to accused, and against whom they had no animosity — Some of the victims were of tender age, who were defenceless against the attack which was without any provocation — Minor girl aged about 15 years was dragged to open field, gang-raped, and done to death — Held, case falls under "rarest of rare" category and all the six accused deserve death sentence — There was no reason to adopt a different yardstick for A-2, A-3 & A-5 who were convicted for murder and sentenced to life imprisonment, and A-1, A-4 and A-6 convicted for rape and murder and sentenced to death*

A-1 to A-6 were alleged to have entered house of *T* at about 10.30 p.m. on 5-6-2003 and threatened family members demanding money and valuables from them. The accused also snatched ornaments worn by them. Thereafter they went out of hut and consumed liquor. After some time they re-entered the hut, armed variously to rob further. They started assaulting the family members, and tied hands and legs of all, except PWs 1 and 8. Three of the dacoits then dragged *S*, a young girl aged fifteen years out of the hut to a guava garden and gang-raped her. She was brought back dead in naked condition with injuries on her body. PW 8 was also dragged towards the well and raped by one. She was brought back grievously injured. The dacoits thereafter raised the volume of recorder, put on their shoes and walked on the injured, who were unconscious, thinking that all of them were dead. However, PWs 1 and 8 survived, who were eyewitnesses to occurrence. In the occurrence five persons were murdered and two raped.

The accused were convicted under Section 307 read with Section 34, Section 397 read with Sections 395 & 396 and sentenced to death. The High Court by impugned judgment while upholding conviction and death sentence of A-1, A-2 & A-4, sentence in respect of A-3, A-5 & A-6 was altered to life imprisonment with fine. A-1, A-2 & A-4 were also convicted under Section 376(2)(*g*), while A-3, A-5 & A-6 were acquitted thereunder. High Court held that those who were guilty of rape and murder deserved death sentence, while those who were convicted for murder only were to be awarded life sentence. The High Court noted that the whole incident was extremely revolting, shocking the collective conscience of the community, and the aggravating circumstances outweighed the mitigating circumstances in case of Accused 1, 2 and 4; but held that in the case of others the sentence was to be altered to life sentence.

The accused filed criminal appeals, while State filed appeals challenging alteration of sentence from death to life imprisonment, and also acquittal of three accused under Section 376(2)(*g*).

Dismissing appeals filed by accused, and allowing appeals filed by the State,

Held :

TI parade of A-1 to A-5 was held on 25-7-2003. PW 1 had identified all the five accused persons, PW 8 had identified A-1, A-3, A-4 and A-5. Subsequently, A-6 was arrested on 7-10-2004 and the TI parade was held immediately thereafter where PWs 1 and 8 identified him. It is to be noted that first TI parade was held on 25-7-2003 in the jail premises where all the five accused persons were made to stand in a queue in the parade hall. PW 25 who was the Magistrate and conducted the TI parade clearly stated that he found the dummies to be acceptable and respectable persons selected by the police, and they were assessed by him and found to be reliable. There is no reason discernible to discredit their evidence. (Paras 19 and 20)

Further, if potholes were to be ferreted out from the proceedings of the Magistrate holding such parades, possibly no TI parade could escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every TI parade would become unusable. TI parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting TI parade is twofold. First is to enable the witnesses to satisfy themselves that the person whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. (Para 21)

Further, PWs 1 and 8 were the two eyewitnesses to the occurrence. Few discrepancies of trivial and minor nature in their evidence cannot be a reason to discard their evidence. Evidence of PWs 9 and 15 (medical officers) clearly establish allegations of rape. PWs 1 and 8 were grievously injured and were under medical treatment for one and one-and-a-half months respectively. The medical evidence clearly shows that if they had not received medical treatment, both of them would have died. (Paras 22 and 24 to 26)

The murders were not only cruel, brutal but were diabolic. Five members of a family were brutally murdered, they were not known to the accused and there was no animosity towards them. Four of the victims were of tender age, defenceless and the attack was without any provocation. Some of them were so young that they could not resist any attack by the accused. A minor girl of about fifteen years was dragged to the open field, gang-raped and done to death. Hence, there can be no doubt that the case at hand falls under the rarest of rare category. There was no reason to adopt a different yardstick for A-2, A-3 and A-5. In fact, A-3 was the main person. He assaulted PW 1 and took the money from the deceased. Therefore, A-2, A-3 & A-5 also awarded death sentence. In essence all the six accused persons deserve death sentence. (Paras 32, 33 to 35). *Ankush Maruti Shinde* v. *State of Maharashtra*, (2009) 6 SCC 667: (2009) 3 SCC (Cri) 308.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 30-4-2009]

Amitsingh Bhikamsingh Thakur v. State of Maharashtra, (2007) 2 SCC 310: (2007) 1 SCC (Cri) 582; Malkhan Singh v. State of M.P., (2003) 5 SCC 746: 2003 SCC (Cri) 1247; Devender Pal Singh v. State of (NCT of Delhi), (2002) 5 SCC 234: 2002 SCC (Cri) 978; State of M.P. v. Munna Choubey, (2005) 2 SCC 710: 2005 SCC (Cri) 559; Bantu v. State of U.P., (2008) 11 SCC 113: (2009) 1 SCC (Cri) 353; Union of India v. Devendra Nath Rai, (2006) 2 SCC 243: (2006) 1 SCC (Cri) 487, relied on

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, followed

— S. 397 r/w S. 396 *See also* Ss. 397 r/w Ss. 395 and 396, S. 307 r/w S. 34 and S. 376

— Ss. 397/120-B *See also under* Ss. 299 to 304

— Ss. 397/149 *See also under* Ss. 299 to 304

See also Ss. 396, 397, 450 and 397/149

[9905] — Ss. 397/511 and 307 — Robbery with attempt to cause death — *Appellants demanding money from the witnesses and on their refusal firing at them — Witnesses neither injured nor the appellants succeeding in taking any money from them — Evidence of prosecution witnesses corroborated by recovery of a pistol along with empties and missed cartridges — Held, guilt established — Offence falls under S. 397/511 and not under S. 397 simpliciter — Sentence of 10 years' RI reduced to minimum sentence of 5 years' RI prescribed under S. 3, TADA Act — Arms Act, 1959, S. 25 — TADA Act, 1987, S. 3. Sukhwinder Singh* v. *State of Punjab*, 1994 Supp (3) SCC 727: AIR 1994 SC 764: 1994 Cri LJ 1117.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 23-3-1993]

— S. 398 *See also* Ss. 120-B, 398 or 302

See also Ss. 302/34, 457(1), 398, 120-B and 449

See also Ss. 397 and 398

[9906] — Ss. 398 and 307 — Appellant along with his companions, entering the house of the complainant, ransacking the house as if committing robbery and causing injuries with a big knife to the inmates of the house — Some of the injuries found to be serious and on vital parts — *No property removed from the house and nothing belonging to the complainants recovered from the accused — Held, in the circumstances, conviction under S. 398 not sustainable — Mere scattering of the articles of the house presenting a scene of ransacking not enough — But in view of number and nature of injuries and weapon used sentence of 3 years' RI for offence under S. 307 awarded by the lower court cannot be reduced. Chinnadurai* v. *State of T.N.*, 1995 Supp (3) SCC 686: 1995 SCC (Cri) 1147: AIR 1996 SC 546.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 11-1-1995]

[9907] — S. 398 and S. 307 r/w S. 34 — Sentence of life imprisonment — Imposition of — Leniency in sentence — Prayer for — *Appellant naxalites in a large group attacking police station to commit dacoity of arms and ammunition and to kill policemen — Held, such activities have to be dealt with with a strong hand — Plea for leniency not acceptable — Arms Act, 1959, S. 3 r/w S. 25 — TADA Act, 1987, Ss. 3 and 4* (Para 8). *Kishore* v. *State of Maharashtra*, (2005) 12 SCC 569.

Bench Strength **2**. Coram: *Arun Kumar* and *A.K. Mathur*, JJ. [Date of decision: 20-9-2005]

[9908] — S. 399 — Preparation to commit dacoity — Dialogue between two accused, one reminding the other of the sequence to be followed in the operation i.e. first to loot the belongings and then to abduct the victim — *Dialogue overheard by a police officer who was then in guise of a tea vendor — Held, it cannot be said to be an artificial introduction of a dialogue — Hence reliance can be placed on evidence of the police officer and on that basis conviction under S. 399 justified* (Paras 9 and 10). *Chandrasekhar Sureshchandra Bhatt* v. *State of Maharashtra*, (2000) 10 SCC 582: 2001 SCC (Cri) 1504.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 29-3-2000]

[9909] — Ss. 399 and 402 — Appellant sentenced to five years' imprisonment under Ss. 399 and 402 IPC — Occurrence took place twenty-nine years ago — *Appellant remained in custody for a period of more than six months — Appeal allowed in part — Sentence of imprisonment reduced to that undergone — Arms Act, 1959, S. 25(1)(a) — Constitution of India, Art. 21. Nasir* v. *State of U.P.*, (2010) 13 SCC 251.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 14-7-2009]

[9910] — Ss. 399 and 402 — Assembling and making preparation to commit dacoity — *Held, not proved by mere fact of assembling by eight persons in a school compound near a market place at 1 a.m. and recovery of a gun and cartridges from them — Though possibility of intention to commit some other offence present, the conviction under Ss. 399 and 402 cannot stand. Chaturi Yadav* v. *State of Bihar*, (1979) 3 SCC 430: 1979 SCC (Cri) 502: AIR 1979 SC 1412: 1979 Cri LJ 1090.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 9-3-1979]

[9911] — Ss. 399 and 402 — Attempt to commit dacoity — Appreciation of evidence — Glaring inconsistencies found in prosecution case — *Discrepancies also found in examination-in-chief and cross-examination of PW — Non-examination of material witnesses by prosecution for untenable reasons and alleged arrest of accused on the spot without any resistance on their part giving rise to adverse inference — Having regard to other contradictions, circumstances of the case and evidence on record showing that order of acquittal of accused was reasonably possible — Held, no interference with the conclusion arrived at by High Court called for* (Para 11). *State of U.P.* v. *Punni*, (2008) 11 SCC 153: AIR 2008 SC 932: (2008) 62 AIC 122 (SC): 2008 Cri LJ 1028: (2008) 105 Cut LT 361.

Bench Strength **2**. Coram: *C.K. Thakker* and **Tarun Chatterjee**, JJ. [Date of decision: 4-1-2008]

Kashiram v. State of M.P., (2002) 1 SCC 71: 2002 SCC (Cri) 68; Kunju Muhammed v. State of Kerala, (2004) 9 SCC 193: 2004 SCC (Cri) 1425, distinguished

[9912] — Ss. 399 and 402 — Dacoity — *Conviction also under S. 25(a) of Arms Act — Appeal allowed by High Court — Supreme Court reversing High Court — Sessions Judge's verdict upheld. State of U.P.* v. *Rajju*, (1971) 3 SCC 174: 1971 SCC (Cri) 263: AIR 1971 SC 708: 1971 Cri LJ 642.

Bench Strength **3**. Coram: **S.M. Sikri**, *V. Bhargava* and *I.D. Dua*, JJ. [Date of decision: 6-1-1971]

[9913] — Ss. 399 and 402 — Disposal of appeal by High Court without hearing appellant's counsel — *Held, one appeal against conviction and sentence of imprisonment is the sine qua non for deprivation of the liberty of a citizen — Since counsel of appellant not appearing before court due to their failure to notice the date of hearing, one more chance to argue the appeal afforded to appellant — Matter remitted for disposal afresh — CrPC, 1973, Ss. 386 and 374. Ajay* v. *State of Haryana*, (2001) 10 SCC 182.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 15-1-2001]

[9914] — Ss. 399 and 402 — Making preparation and assembling for purpose of committing dacoity — Allegation that the accused persons were planning to rob a petrol pump and for that purpose they assembled in a Dharamshala with arms and ammunition — *Evidence of Head Constable that he had gone near the Dharamshala and heard conversation amongst the accused found unreliable — Conviction of appellants for offences under Ss. 399 and 402 set aside — However, as regards possession of arms and ammunition evidence of all the witnesses found consistent — Hence their conviction under S. 5 TADA Act and S. 25 Arms Act maintained — TADA Act, 1987 — S. 5 — Arms Act, 1959 — S. 25. Suleman* v. *State of Delhi*, (1999) 4 SCC 146: 1999 SCC (Cri) 515: AIR 1999 SC 1707.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 10-2-1999]

[9915] — Ss. 399 and 402 — Trial for more than one offence — *Different offences committed in a series of acts constituting one transaction — Held, S. 220 CrPC is an enabling provision and no illegality is committed where court chooses to try the offences separately — Arms Act, 1959, S. 25 — TADA Act, 1987, Ss. 5 and 3 — CrPC, 1973, S. 220. Mohinder Singh* v. *State of Punjab*, (1998) 7 SCC 390: 1998 SCC (Cri) 1638: AIR 1999 SC 211.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 24-9-1998]

[9916] — Ss. 399, 402 and 307/149 & 148 — Arms Act, 1959 — S. 25(1)(a) — Allegation of making preparations to commit dacoity in a village — *A-6 and A-7 belonging to the same village — Attack on police party not alleged against them — Recovery of only a stick from possession of A-7 and an unlicensed firearm from A-6 — Held, A-7 entitled to acquittal of all the charges — But conviction of A-6 under S. 25(1)(a) of Arms Act confirmed — However, in view of old age and long lapse of time sentence reduced to the period already undergone. Nasru* v. *State of U.P.*, 1994 Supp (2) SCC 493: 1994 SCC (Cri) 51.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 8-10-1993]

[9917] — Ss. 399 and 500 — Bailable offence — Forfeiture/Cancellation of bail granted by Magistrate under S. 482 CrPC on ground of violation of principles of natural justice — Bail cancelled on ground that complainant's right of being heard not complied with by Magistrate while granting bail — Sustainability — *Magistrate in an alleged offence under Ss. 399 and 500 IPC for defamatory remarks made by accused against complainant on a TV channel granting bail the very same day by noticing that offences alleged to have been committed were bailable — High Court cancelling bail on the ground that opportunity of hearing was not given to the complainant, held, unsustainable — CrPC, 1973, Ss. 482, 436 and 81*

The respondent filed a complaint case against the appellant-accused on the ground that the appellant-accused gave a defamatory interview against him on a TV channel. When the appellant-accused approached the Magistrate for grant of bail, the same was granted the very same day without hearing the respondent complainant by noticing that the offences alleged to have been committed were bailable offences under Sections 499 and 500 IPC. The High Court in a Section 482 CrPC petition filed by the respondent complainant cancelled the bail of the appellant-accused on the ground that the principles of natural justice had not been followed in as much as the complainant was not heard on the issue of grant of bail. Aggrieved thereagainst, the appellant-accused invoked the remedy under Article 136 of the Constitution of India.

Allowing the appeal,

Held :

The bail granted to the appellant for alleged commission of bailable offence could not have been cancelled by the High Court on the ground that the respondent complainant was not heard by the Magistrate while granting bail and that the principles of natural justice were violated. Principles of natural justice are not a "mantra" to be applied in a vacuum in all cases. The question as to what extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case. They are not required to be complied with when it will lead to an empty formality. Therefore, the order of the High Court cancelling the bail granted to the appellant is hereby set aside and the order passed by the Magistrate is restored. (Paras 19 to 21)

The right to claim bail granted by Section 436 CrPC in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in Section 436 instead of taking bail from him. (Paras 10 and 9)

The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing (*sic* unwilling) to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by the accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him. (Para 10). *Rasiklal* v. *Kishore*, (2009) 4 SCC 446: (2009) 2 SCC (Cri) 338: AIR 2009 SC 1341: (2009) 2 ECrN 1045 (SC): 2009 Cri LJ 1887.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 20-2-2009]

State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364: 1996 SCC (L&S) 717; Karnataka SRTC v. S.G. Kotturappa, (2005) 3 SCC 409: 2005 SCC (L&S) 484, relied on

[9918] — Ss. 399/402 — Appellant a young man and student convicted under — *On facts, held, to be a fit case where instead of imprisonment the appellant should be released on probation on furnishing surety bonds — U.P. First Offenders Probation Act, 1938 (6 of 1938). Moti Lal* v. *State of U.P.*, (1979) 4 SCC 343: 1979 SCC (Cri) 979: AIR 1979 SC 1690: 1979 ALJ 982: 1980 Cri LJ 800.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 18-1-1979]

— S. 400 *See also* Ss. 395, 397, 400 and 302

See also Ss. 395 and 400

— S. 401 *See also* Ss. 410 and 401

— S. 402 *See also* Ss. 399 and 402

See also Ss. 399, 402 and 307/149 and 148

— S. 403 *See also* Ss. 120-A, 120-B, 403 and 477-A

See also Ss. 196, 199, 120-B, 403, 406 and 418

See also Ss. 378, 403, 405, 415 and 425

See also Ss. 405, 420, 403 and 415

See also Ss. 410, 411, 403 and 405

See also Ss. 461, 379, 403, 342, 166 and 167

[9919] — S. 403 — Criminal misappropriation of property — *Accused collected an amount as entry fee for crossword competition being a service of such competition business — Spent a portion of the amount collected on advertisement, etc., and appropriated the balance to meet the losses of the previous crossword competitions — Held, accused is not guilty under S. 403, IPC*

The accused used to carry on prize competitions as the proprietor of the "Lotus Cross Word". Certain persons who paid moneys in connection with the prize competition complained that they had not received their prize money though it had been announced that they had competed for the prize offered. It was found that the accused had collected more than rupees one lakh from the public and after spending about rupees nineteen thousand on advertisement, etc., had saved a little over ninety-six thousand rupees. He spent this amount in making payments to the claimants of the previous competitions and in this way meeting the losses of those competitions. The persons participating in competition filed the complaint.

Held :

There was no specific provision in any statute or other law that the money collected by way of entry fees, should be reserved for payment to the prize winners in that very competition. There being no duty to make appropriation in a particular way, the appellant could not be held guilty of having misappropriated the amount which was the net collection of the competition. There is no evidence that the accused appropriated any amount out of this collection to his own personal use. Whatever amount he had been collecting, he had been applying to running his business. The appellant cannot be criminally liable for being reckless or unwise in carrying on his business. Thus misappropriation has not been made out either on evidence or as a matter of law. *Ramaswamy Nadar* v. *State of Madras*, AIR 1958 SC 56: 1958 SCR 739: 1958 Cri LJ 228, 231.

Bench Strength 3. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 11-10-1957]

[9920] — S. 403 — Dishonest misappropriation — Ingredients of

Per majority (Agrawal and Pasayat, JJ.)

To establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. (Para 365)

Per Shah, J. (dissenting)

What is punishable under Section 403 is dishonest misappropriation or conversion to his own use any movable property. Further, as per the Explanation, dishonest misappropriation for the time being or for a short time is also misappropriation within the meaning of the section. Hence, for establishing the offence it is required to be proved that:

1. The property belongs to a person other than the accused,

2. The accused appropriated the said property or converted it to his own use, and,

3. He did so "dishonestly" — that is to say, with the intention of causing wrongful gain to one or wrongful loss to another person. (Para 258). *Ram Narayan Popli* v. *CBI*, (2003) 3 SCC 641: 2003 SCC (Cri) 869: AIR 2003 SC 2748.

Bench Strength 3. Coram: **M.B. Shah**[1], *B.N. Agrawal*[2] and **Arijit Pasayat**[2], JJ. [Date of decision: 14-1-2003]

Jaikrishnadas Manohardas Desai v. State of Bombay, AIR 1960 SC 889: 1960 Cri LJ 1250, relied on

[9921] — S. 403 — Dishonest misappropriation of movable property — Ingredients of the offence — *Property in question must belong to a person other than the accused so as to constitute offence under S. 403*

The basic requirements for attracting the section are: (*i*) the movable property in question should belong to a person other than the accused; (*ii*) the accused should wrongly appropriate or convert such property to his own use; and (*iii*) there should be dishonest intention on the part of the accused. Here again the basic requirement is that the subject-matter of dishonest misappropriation or conversion should be someone else's movable property. When NEPC India owns/possesses the aircraft, it obviously cannot "misappropriate or convert to its own use" such aircraft or parts thereof. Therefore Section 403 is also not attracted. (Para 20). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[9922] — S. 403 — Dishonest misappropriation of property — Partner choosing to use partnership assets for his own purposes — *Does not commit misappropriation*

It is obvious that an owner of property, in whichever way he uses his property and with whatever intention will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. A partner has, undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. *Velji Raghavji Patel* v. *State of Maharashtra*, AIR 1965 SC 1433: (1965) 2 SCR 429: (1965) 2 Cri LJ 431, 434.

Bench Strength **2**. Coram: *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 11-12-1964]

[9923] — S. 403 — Essential ingredients of offence under

In order to sustain a conviction under S. 403, Indian Penal Code, the prosecution has to prove (1) that the property said to have been misappropriated, belonged to the complainant or to someone other than the accused, (2) that the accused misappropriated that property and converted it to his own use, and (3) that he did so dishonestly. If any one of these three elements is wanting, the prosecution must be held to have failed in bringing the charge of misappropriation home to the accused. *Surendra Bahadur Singh* v. *State of U.P.*, Crl. Appeal No. 59 of 1955.

Bench Strength **2**. Coram: **B.P. Sinha** and **Vivian Bose**, JJ. [Date of decision: 4-11-1957]

Ramaswamy Nadar v. State of Madras, 1958 SCR 739: AIR 1958 SC 56: 1958 Cri LJ 228, followed

[9924] — S. 403 — Misappropriation — What is

A person can be said to have misappropriated some property including money, if he has used it in a way different from what he was bound to do by virtue of a contract or as a result of a legal relationship created through some process of law. *Surendra Bahadur Singh* v. *State of U.P.*, Crl. Appeal No. 59 of 1955.

Bench Strength **2**. Coram: **B.P. Sinha** and **Vivian Bose**, JJ. [Date of decision: 4-11-1957]

[9925] — Ss. 403 and 405 — Territorial jurisdiction to investigate offences under — Magistrate's direction under S. 156(3) CrPC to police for conducting investigation in a case involving criminal misappropriation or criminal breach of trust — Magistrate's territorial jurisdiction if restricted by S. 181(4) CrPC — *Held, direction for investigation given by Magistrate under S. 156(3) CrPC is not restricted by territorial limit laid down in S. 181(4) CrPC — Direction for investigation under S. 156(3) CrPC can therefore be given by Magistrate irrespective of territorial limit for enquiry or trial under S. 181(4) CrPC — CrPC, 1973, Ss. 156(3) and 181(4)* (Paras 25 and 26). *Rasiklal Dalpatram Thakkar* v. *State of Gujarat*, (2010) 1 SCC 1.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-11-2009]

[9926] — Ss. 403, 405 and 415 r/w S. 34 — Abuse of the process of law — Ingredients of offence not in the complaint — *Allegation against appellant that lesser salary was being paid to the complainant with signatures for higher amount — Complaint petition itself stating bona fide reasons for deductions such as repayment at the time of retirement, etc. — Contradictory stand by the complainant in S. 33-C(2) petition under Industrial Disputes Act, 1947 — High Court's conclusion that deductions were made without any rhyme or reason, held, was without any basis — The complaint was nothing but an abuse of the process of law — CrPC, 1973 — S. 482*

A complaint was filed on 13-1-2006 alleging commission of offence punishable under Sections 403, 405 and 415 read with Section 34 IPC. The

Judicial Magistrate took cognizance and issued process. In fact, the respondent had filed petition in terms of Section 33-C(2) of the ID Act and also filed writ petition claiming parity in salary which was disposed of by giving the direction to consider the respondent's case. In the petition under Section 33-C(2) the respondent had stated that lesser amounts were paid and signatures for higher amounts were taken. The High Court by the impugned order dismissed the 482 CrPC petition.

Allowing the appeal,

Held :

The complaint was nothing but an abuse of the process of law. Close reading of the complaint reveals that the ingredients of Sections 403, 405 and 415 IPC did not exist. The statements made in the complaint were contrary to the averments made in the petition in terms of Section 33-C(2), ID Act. High Court came to the conclusion that deductions were made without any rhyme and reason and without any basis. That was not the case of the complainant. On the other hand, it tried to make out a case that the deduction was made with an object. It was stated in the complaint that the complainant was given to understand that certain amounts were being deducted for repayment at the time of retirement or cessation of his job. In the writ petition before the High Court there was no mention about any deduction. In the notice issued on 23-11-2004, there was no mention about it either. (Paras 9, 7 and 3). *K.L.E. Society* v. *Siddalingesh*, (2008) 4 SCC 541: (2008) 1 SCC (L&S) 1071: (2008) 2 SCC (Cri) 455: AIR 2008 SC 1702: (2008) 64 AIC 124 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 3-3-2008]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89; R.P. Kapur v. State of Punjab, AIR 1960 SC 866, relied on

[9927] — Ss. 403, 406, 420 and 120-B — Essential ingredients of S. 403 — *Held, words "dishonestly" and "misappropriate" used in S. 403 are the necessary ingredients of the said section — Neither of these ingredients satisfied where a contractor having received payments for works completed failed to pay his sub-contractor, the complainant — Order taking cognizance of the offences under Ss. 403, 406, 420 and 120-B IPC, held, was therefore not proper — CrPC, 1973, Ss. 190(1)(a), 200 and 204*

Bokaro Steel Plant awarded a contract of certain works to TCPL company. But, TCPL instead getting the said work done by the complainant company after entering into a separate contract with it. On completion of the said work, TCPL failed to pay the balance amount due under the contract to the complainant. Hence, a complaint under Sections 403, 406, 420 and 120-B IPC was filed against the appellants alleging therein that TCPL misappropriated the money received from Bokaro Steel Plant instead of paying it to the complainant company. The Magistrate concerned took cognizance of the alleged offences and issued summons to the appellants. The High Court declined to interfere in the said order.

Allowing the appeals,

Held :

Section 403 IPC uses the words "dishonestly" and "misappropriate". These are necessary ingredients of an offence under the said section. (Para 7)

The rights and obligations of the parties i.e. the complainant and TCPL are to be governed by the contract between them for which the contract between TCPL and Bokaro Steel (SAIL) has no relevance. Therefore, even if Bokaro Steel has made the payment to TCPL under its contract with the latter, it will not give rise to plea of misappropriation of money because that money is not money or movable property of the complainant. Thus, it cannot be said that there is any dishonest intention on the part of the appellants nor can it be said that TCPL or the appellants have misappropriated or converted the movable property of the complainant to their own use. (Paras 6 and 8)

Since the basic ingredients of Section 403 are not satisfied, the impugned orders of the High Court as well as of the Chief Judicial Magistrate are hereby ordered to be quashed. (Para 8). *U. Dhar* v. *State of Jharkhand*, (2003) 2 SCC 219: 2003 SCC (Cri) 490: AIR 2003 SC 974: 2003 Cri LJ 1224.

Bench Strength **2**. Coram: *M.B. Shah* and **Arun Kumar**, JJ. [Date of decision: 20-1-2003]

[9928] — Ss. 403 and 409 — Partner's dominion over partnership property — When entrustment liable to action under S. 409 — *Use for one's own purpose not liable under S. 403 — Partnership Act, 1932 — S. 15*

Upon the plain reading of S. 405, IPC it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law, etc.

Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of S. 405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. Therefore, the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been "entrusted" with dominion over partnership properties.

Also a partner has undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. *Velji Raghavji Patel* v. *State of Maharashtra*, AIR 1965 SC 1433: (1965) 2 SCR 429: (1965) 2 Cri LJ 431.

Bench Strength **2**. Coram: *Raghubar Dayal* and **J.R. Mudholkar** , JJ. [Date of decision: 11-12-1964]

However, see AIR 1962 SC 1821 not noticed in this case. The former case followed in (1970) 1 SCC 521

— S. 403 Expln. 1 *See also* Ss. 409, 405, 403 Explns. 1 and 21

[9929] — S. 403 Expln. 1 and S. 409 — Criminal misappropriation for some time — Deposit of money after detection of crime — *Effect*

It is no answer to a charge of criminal misappropriation that the money was subsequently, after the matter had been reported to the higher authorities, disbursed for the purpose for which it had been entrusted. According to Explanation I to S. 403, Indian Penal Code, a dishonest misappropriation for a time only is "misappropriation" within the meaning of that section. *Khandu Sonu Dhobi* v. *State of Maharashtra*, (1972) 3 SCC 786: 1972 SCC (Cri) 854: AIR 1972 SC 958: (1972) 3 SCR 510: 1972 Cri LJ 593.

Bench Strength **3**. Coram: *J.M. Shelat*, *P. Jaganmohan Reddy* and **H.R. Khanna** , JJ. [Date of decision: 15-2-1972]

— S. 403 Expln. 2 *See also* Ss. 409, 405, 403 Explns. 1 and 2

— S. 404 *See also* Ss. 302 and 404

See also Ss. 302, 404 and 201

See also Ss. 302/34, 396, 460 and 404

See also Ss. 376, 302 and 404

See also Ss. 394, 404 and 218

See also Ss. 411 and 404

[9930] — Ss. 404 and 201 — Conviction — *Recovery of cash and jewellery of deceased from possession of accused 1 not proved — Pledging of some ornaments to pawn broker and recovery of cash and jewellery from the person of the accused after his arrest in the shop of the pawn broker also not proved beyond reasonable doubt — No independent corroboration adduced — On a conspectus of facts and circumstances of the case as well as assessment of evidence, held, prosecution failed to prove charges under S. 404 read with S. 201 against accused 1 and under S. 404 against accused 2 — Hence orders of conviction passed by High Court as well as trial court set aside — Evidence Act, 1872, S. 27. Mallela Seetharmaiah* v. *State of A.P.*, 1989 Supp (1) SCC 74: 1989 SCC (L&S) 177: AIR 1989 SC 421: 1989 Cri LJ 968.

Bench Strength **2**. Coram: **B.C. Ray** and *N.D. Ojha*, JJ. [Date of decision: 2-11-1988]

[9931] — Ss. 404 and 302 — Removal of deceased's ornaments after committing his murder — *Recoveries allegedly made pursuant to the statement of the accused — Even assuming that evidence led by the prosecution is reliable, still, considering its nature it cannot be made the sole basis for conviction even for the offence under S. 404. Preetam* v. *State of M.P.*, (1996) 10 SCC 432: 1996 SCC (Cri) 1343: AIR 1997 SC 445.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *G.B. Pattanaik*, JJ. [Date of decision: 26-3-1996]

Ss. 405-409: CRIMINAL BREACH OF TRUST

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See also Ss. 477-A and 409

(1) Generally — Nature, Scope and Applicability

[9932] — Ss. 406, 494 and 498-A — Nature of offences under — *Held, offences under aforesaid sections are triable by a Magistrate, First Class and as all these offences are punishable with imprisonment for a term exceeding two years, cases have to be tried as warrant cases* (Para 17). *K. Neelaveni* v. *State*, (2010) 11 SCC 607: AIR 2010 SC 3191: 2010 Cri LJ 2819: (2010) 2 ECrN 541 (SC): (2010) 88 AIC 58 (SC).

Bench Strength 2. Coram: *D.K. Jain* and **C.K. Prasad**, JJ. [Date of decision: 22-3-2010]

(2) Ss. 405-409 and other provisions

[9933] — Ss. 406 and 420 — Quashing of FIR — Scope of jurisdiction of High Court — Tests — Offences of fraud, cheating, etc. alleged — *Whether offences alleged in FIR prima facie made out — Whether criminal proceedings initiated only to cause harassment to accused and continuance thereof would amount to abuse of process of court — Disputed question of fact not required to be gone into by Court — But documents of unimpeachable character can be taken into consideration — Although Court should not encourage the practice of initiating criminal proceedings when large number of disputes could ordinarily be determined by civil courts, but Court cannot go beyond its jurisdiction to interfere with the criminal proceedings otherwise genuine — Plausible defence of accused not good enough for exercise of inherent powers — FIR lodged by appellant on charges under Ss. 406, 420 and 436 IPC alleging that blank cheques were issued by appellant to respondents which were later fraudulently used by respondents — Respondents after issuing notice on appellant filed complaint* *petition under Ss. 138 and 141 of Negotiable Instruments Act alleging dishonour of certain cheques issued by appellant and also filed application under S. 482 for quashing of FIR — Quashing application allowed by High Court taking the view that FIR was lodged only to pre-empt respondents from filing the complaint petition — Held, on facts, High Court erred in going into merits of the case and interfering with the criminal proceedings — However, since allegedly the blank cheques were earlier given to respondents for use for business purposes when relation between the parties were good but the alleged fraudulent use took place few years thereafter when dispute arose between them, S. 420 IPC not attracted as fraudulent inducement must be there at the inception and not at a later stage to attract S. 420 IPC — But S. 406 IPC was invocable — Hence investigation should be confined to charge under S. 406 IPC only — CrPC, 1973 — S. 482*

The private parties were Directors of the appellant Company and were closely related. The Company had two units. The Managing Director of the Company was one *L*. Allegedly, pursuant to negotiations between *L* on the one hand and Accused 2 and 3 Directors on the other, signed blank cheques were handed over by *L* to the said accused persons during period 2000 to 2004 as process for obtaining cheques from the Managing Director had been taking considerable time. However, dispute between the parties arose in 2005. A company petition was filed before the High Court. A scheme for arrangement submitted by the parties was approved, pursuant whereto one unit was transferred to Accused 1 and the other unit to *L*. For that purpose the units were demerged. *L* allegedly made oral requests to Accused 2 and 3 to return the unused signed blank cheques. However, allegedly on the premise that Respondents 2 and 3 entered into a conspiracy to misuse the said cheques *L* filed an informal complaint with the police in 2006 with an endorsement that there was no role for the police at that stage. The respondents thereafter issued a letter stating that with a view to repay a part of the institutional liability of Respondent 1 a cheque had been drawn by the appellant in favour of Respondent 1 which had been deposited for collection. A first information report was then lodged by the appellant alleging that the blank signed cheques issued in the year 2001-2002 had been fraudulently used. Legal notices were, however, issued by Respondent 1 upon the appellant with regard to dishonour of three cheques. On or about 13-11-2006 an application was filed before the High Court for quashing the first information report. On 6-12-2006, a complaint petition was filed by Respondent 1 under Sections 138 and 141 of the Negotiable Instruments Act against the appellant and also its Chairman and Managing Director. The High Court not only considered the ingredients for the offences under Sections 406, 420 and 463 IPC but also the background facts leading to the dispute between the parties so as to enable it to ascertain whether the ingredients thereof stood satisfied or not. It proceeded on the basis that in view of the demerger scheme, the conduct of the appellant in keeping mum for a long time for getting the unused blank cheques returned is tell tale. It entered into the question as to whether the complaint petition was filed only with a view to pre-empt the respondents herein to take recourse to the remedies available to them to initiate a criminal proceeding under Section 138 of the Negotiable Instruments Act or the complaint petition in effect and substance should be permitted to be raised only by way of defence. It was held that the said complaint petition was filed on the basis whereof the first information report was directed to be lodged only to pre-empt the accused from filing a complaint petition under Section 138 of the Negotiable Instruments Act and that even taking the allegations in the complaint to be true and correct, they did not make out a prima facie case of cheating or criminal breach of trust or forgery. Accordingly, the High Court held that continuation of the proceedings amounted to abuse of process of the Court.

Allowing the appeal in part,

Held :

In this case what has failed to attract the attention of the High Court was that maintainability of a criminal proceeding like the present one should not be determined only upon raising a presumption in terms of Section 139 of the Negotiable Instruments Act, it being a rebuttable one. (Para 23)

The High Court should have further taken into consideration the fact that in the event, the defence of the appellant is accepted in the criminal case, it will have no remedy to prosecute the respondents again. To contend that the acquittal of the appellant would have been the springboard for filing a complaint will not be correct. Nobody knows when the criminal case would come to an end. In a given situation, even it may become barred by limitation. It must also be borne in mind that commercial expediencies may lead a person to issue blank cheques. The course of action in the aforementioned situation, which could be taken recourse to was to make an attempt to find out as to whether the complaint petition even if given face value and taken to be correct in its entirety constitutes an offence under Sections 420, 406 and 463 of the Penal Code or not. (Para 24)

Ingredients of cheating are:

(*i*) deception of a person either by making a false or misleading representation or by other action or omission; and

(*ii*) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. (Para 25)

Sections 415 read with Section 420 IPC indicates that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage. In this case blank cheques were handed over to the accused during the period 2000-2004 for use thereof for business purposes but the dispute between the parties admittedly arose much thereafter i.e. in 2005. Thus no case for proceeding against the respondent under Section 420 of the Penal Code is, therefore, made out. (Paras 26 to 28)

Filling up of the blanks in a cheque by itself would not amount to forgery. Whereas in the complaint petition, allegations have been made that it was Respondents 2 and 3 who had entered into a conspiracy to commit the said offence as indicated hereinbefore, in the counter-affidavit, it has been alleged that the employees of the respondent Company did so. (Para 29)

Although, Section 120-B IPC has been added, there does not exist any averment that Respondents 2 and 3 had entered into any conspiracy with their employees. No case for proceeding with the offence of forgery against the respondents has, thus, also been made out. (Para 30)

However, a case for proceeding against the respondents under Section 406 IPC has been made out. A cheque being a property, the same was entrusted to the respondents. If the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 IPC may be found to have been made out. It may be true that even in a proceeding under Section 138 of the Negotiable Instruments Act, the appellant could raise a defence that the cheques were not meant to be used towards discharge of a lawful liability or a debt, but the same by itself would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed. (Para 31)

The respondents were keeping watch over the matter. As soon as a first information report was lodged, a notice was immediately sent. A quashing application was filed within a few days of the lodging of the first information report. The investigation was not allowed to take place at all. Whereas it would have been the duty of the court to uphold and/or to protect the personal liberty of an accused in a case, but where the first information report prima facie discloses commission of a cognizable offence, the High Court, ordinarily, should not have interfered with investigation thereof by the statutory authority. (Para 32)

Investigation by IO may now be confined to the charge under Section 406 IPC. (Para 33). *Suryalakshmi Cotton Mills Ltd.* v. *Rajvir Industries Ltd.*, (2008) 13 SCC 678: AIR 2008 SC 1683: (2008) 63 AIC 146 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 9-1-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Indian Oil Corp. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776; B. Suresh Yadav v. Sharifa Bee, (2007) 13 SCC 107, relied on

(3) The charge and Ss. 405-409

[9934] — S. 406 — Original charge under S. 406, IPC as to entrustment of money — In appeal High Court's direction to amend the charge to include the entrustment of goods purchased with said moneys — If direction legal — *Powers of appellate court under S. 423, CrPC — Sustainability of special leave*

There was no new trial as such, as the Magistrate was merely directed to record the evidence on the amended charge and send back the records. There was no prejudice caused to the appellant as he was allowed to let in any further evidence.

The power of the appellate court under S. 423, CrPC was wide and empowered it even to make any amendment or any consequential or incidental order that may be just or proper.

The offence with which the appellant is now charged alternatively is the same under S. 406, IPC but as the entire transaction was one and indivisible, he is not only required to answer the charge of misappropriation of money but in the alternative misappropriation of goods which the complainant Bank contends became their as soon as the accused purchased them with the money in advance. No prejudice is caused or is likely to be caused to the accused by the amendment of the charge as directed by the High Court.

The appellant took no objection to the framing of the original charge at the trial. He cannot object at this stage to the framing of an alternate charge, on the same allegation in the complaint. *Kantilal Chandulal Mehta* v. *State of Maharashtra*, (1969) 3 SCC 166: 1970 SCC (Cri) 19: AIR 1970 SC 359: 1970 Cri LJ 510: (1970) 2 SCR 742.

Bench Strength **2**. Coram: *S.M. Sikri* and **P. Jaganmohan Reddy**, JJ. [Date of decision: 10-10-1969]

[9935] — Ss. 406 and 409 — Charge only under S. 406 and appellant acquitted of the same — But High Court while disposing of the appeals preferred by the complainant recording conviction under S. 409 without any notice and sentencing for the major offence — *Held, High Court committed an illegality in doing so. Suresh T. Kilachand* v. *Sampat Shripat Lambate*, 1994 Supp (1) SCC 543: 1994 SCC (Cri) 407: AIR 1994 SC 583: 1994 Cri LJ 611: (1993) 3 Crimes 531.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 24-9-1993]

[9936] — S. 408 — Criminal breach of trust — Prosecution in doubt as to when the idea of embezzlement took root — *Prosecution justified in filing a charge-sheet taking the plea that the place of embezzlement was uncertain — Venue of enquiry or trial in a case when the place of embezzlement is uncertain is primarily to be determined by the averment contained in the complaint or charge-sheet — Ordinarily where the facts contained in the complaint or charge-sheet are disproved the court where the charge-sheet or complaint is filed has to proceed with it. State of M.P.* v. *K.P. Ghiara*, AIR 1957 SC 196: 1957 Cri LJ 322, 323: 1957 MPLJ 230.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 19-9-1956]

[9937] — Ss. 408, 420 and 420/511 r/w S. 120-B — Conviction for offences under, by trial Court — *Conviction for offence under S. 409 r/w S. 109, IPC, by High Court an offence for which appellant was never charged — Legality*

The act of wrong identification committed by the appellant cannot amount to the offence of cheating by personation. There was no charge at all relating to any cheating or attempting to cheat the Oath Commissioner. No doubt there was mention of commission of forgery of affidavits; but the mention of the commission of that offence could not possibly lead the appellant to infer that he was liable to be convicted for abetting the offence of cheating the Oath Commissioner. *Ram Jas* v. *State of U.P.*, (1970) 2 SCC 740: 1970 SCC (Cri) 516: AIR 1974 SC 1811: (1971) 2 SCR 178: 1974 Cri LJ 1261.

Bench Strength **2**. Coram: **V. Bhargava** and *I.D. Dua*, JJ. [Date of decision: 11-9-1970]

[9938] — S. 409 — Charge of criminal breach of trust — Offence not proved — *However evidence indicated abetment of offence under S. 409 — But in view of peculiar circumstances of case — Conviction of accused not altered and accused acquitted*

Where the original charge of criminal breach of trust could not be proved against the accused, but the evidence indicated the abetment of the offence of criminal breach of trust by the accused officer it was held to be unfair in the circumstances to alter the accused's conviction under S. 409, IPC into one of abetment thereof since such an alteration would imply a definite finding of guilt against another (accused's officer) who was not present before the Court. *Bhagat Ram* v. *State of Punjab*, AIR 1954 SC 621: 1954 Cri LJ 1645, 1654.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 9-2-1954]

[9939] — S. 409 — Mode of committing crime not stated — Charge not vague — *CrPC, 1898 — Ss. 537 & 531*

The charge is with respect to one offence, though the mode of committing it is not stated precisely. If it be complained that the charge framed under S. 409, IPC, is vague because it does not specifically state one particular mode in which the offence was committed, the vagueness of the charge will not make the trial illegal, especially when no prejudice is caused to the accused. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1832: (1963) 1 SCR 253, 274: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 5-4-1962]

[9940] — Ss. 409 & 120-B — Charge under Ss. 120-B and 409, IPC — Conviction under S. 409 simpliciter, the charges under S. 120-B having failed, is valid

If the charge of conspiracy to commit criminal breach of trust is followed by a substantive charge of criminal breach of trust in pursuance of such conspiracy there is nothing to prevent the Court convicting an accused under the second charge even if the prosecution fails to establish conspiracy. In any event, there was no prejudice caused to him as he was aware that there was a substantive charge under S. 409 against him.

Therefore the contention that the prosecution having failed to establish conspiracy the appellant could not be convicted of the offence under S. 409, IPC simpliciter is without substance. *Madan Lal* v. *State of Punjab*, AIR 1967 SC 1590: (1967) 3 SCR 439: 1967 Cri LJ 1401, 1404.

Bench Strength **2**. Coram: *R.S. Bachawat* and **J.M. Shelat**, JJ. [Date of decision: 5-4-1967]

AIR 1963 Ker 68: 1963 (1) Cri LJ 180, overruled

[9941] — Ss. 409 & 405 and Ss. 415 & 420 — Charges framed only under Ss. 415 & 420 — No charge framed under S. 409, though offence, if any, was that under S. 409 — Effect — *CrPC, 1973, Ss. 215, 216, 218, 221 and 222*

Appellant was a Branch Manager of State Bank of India. He and some of his colleagues were prosecuted under Sections 415 and 420 read with Section 120-B IPC, and Section 13(1)(*d*) of the Prevention of Corruption Act, 1988, for permitting discounting of local cheques to some customers of the Bank. Accused 4 and 5 were bank officials while Accused 1 to 3 were private parties having account with the Bank.

The issues involved were whether the bank officials and the customers had entered into criminal conspiracy to commit the offence of cheating against the Bank under Sections 415 and 420 IPC, and whether the accused persons had obtained any illegitimate advantage, warranting punishment under the Prevention of Corruption Act.

Trial court convicted the accused persons. High Court upheld their conviction. The Supreme Court however took note of the fact that there was no evidence on record to prove that there was an intention to cheat the Bank. On the other hand, there was evidence on record that appellant had stopped cheque discounting facility and he had resumed it only after verbal instructions from a superior officer, PW 20. Moreover, the bank officials appeared to have acted in the overall interest of the Bank for the purpose of promoting its business, though there might have been some irregularity in doing so.

Allowing the appeals,

Held:

One of the ingredients of cheating, as defined in Section 415 IPC, is existence of an intention to cheat at the time of making initial promise or existence thereof from the very beginning of formation of contract. The complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. (Paras 41 and 42)

The offence, if any, was committed under Section 409 IPC but the accused persons have not been charged under Section 409 IPC; even Accused 1 to 3 have not been charged for entering into a conspiracy with Accused 4, 5 and 6 in respect of commission of offences under the Prevention of Corruption Act. It is in the aforementioned situation, the judgment of conviction and sentence cannot be upheld. (Para 51)

The conclusions can be summarised as follows:

(*a*) The prosecution did not lay down any foundational facts to arrive at a finding of dishonest intention on the part of the appellants, nor has any such finding has been arrived at by the trial court or the High Court.

(*b*) The circumstances which were considered sufficient to bring home the charges against the appellants were: the cheques of Accused 1, 2 and 3 were discounted after purchasing cheques; cheques were deposited after a gap of one to four days; only later were the amounts deposited in the account, which circumstances are not sufficient to hold the appellants guilty for commission of offence under Section 420 IPC as all the actions on the part of the bank officers were in consonance with the long-standing banking practice.

(*c*) Accused 4 had taken care of having adequate security to ensure that the bank does not suffer any loss, the gain if any was caused to the bank.

(*d*) The appellants acted on instructions by the higher authority.

(*e*) The prosecution evidence does not establish any conspiracy on their part vis-à-vis Accused 1, 2 and 3. (Para 55). *S.V.L. Murthy* v. *State*, (2009) 6 SCC 77: (2009) 2 SCC (Cri) 941.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Sharon Michael v. State of T.N., (2009) 3 SCC 375: (2009) 2 SCC (Cri) 103, relied on

[9942] — Ss. 409 and 430 — Charge under S. 409 — Allegations in charge-sheet justified a charge under S. 420 as well — *Trial Court and appellate Court competent to record a conviction under S. 420, IPC. Sunil Kumar Paul* v. *State of W.B.*, AIR 1965 SC 706: (1964) 7 SCR 70: (1965) 1 Cri LJ 630.

Bench Strength **3**. Coram: *K. Subba Rao, K.C. Das Gupta* and **Raghubar Dayal** , JJ. [Date of decision: 6-3-1964]

See fully CrPC, 1898, Ss. 236 & 237
See also AIR 1958 SC 56: 1956 Cri LJ 228

[9943] — Ss. 409 & 477-A — Accused charged for 3 offences under S. 409 and one under S. 477-A — Offences arising out of the same acts and forming part of the same transaction — *There is no violation of S. 234, CrPC, 1898 — Case is governed by S. 234, CrPC, 1898 — Case is also saved by S. 537, CrPC, 1898 as no prejudice is shown. Chandi Prasad Singh* v. *State of U.P.*, AIR 1956 SC 149: (1955) 2 SCR 1035: 1956 Cri LJ 322: (1956) 1 MLJ (SC) 88: 1956 ALJ 153.

Bench Strength **2**. Coram: *Vivian Bose* and **T.L. Venkatarama Aiyar** , JJ. [Date of decision: 7-12-1955]

(4) Ingredients of criminal breach of trust

Synopsis

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(iii) Property — What is **826**
(iv) Entrustment of or dominion over property **829**
(v) Misappropriation, use, disposal, etc. **839**
(vi) Temporary deprivation or retention of property/Suffering of loss **844**
(vii) Violation of direction of law or express or implied legal contract **846**
(viii) Wilfully suffers another to commit criminal breach of trust **851**

(i) Broadly

[9944] — S. 405 — Criminal breach of trust — Essentials of

To constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do. It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. *C.M. Narayan Ittiravi Nambudiri* v. *State of Travancore-Cochin*, AIR 1953 SC 478: 1954 Cri LJ 102: 1953 Ker LT 173.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and **B.K. Mukherjea** , *S.R. Das, Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 10-11-1952]

1952 Cri LJ 766, reversed

[9945] — S. 405 — Criminal breach of trust — Ingredients reiterated (Para 21). *Asoke Basak* v. *State of Maharashtra*, (2010) 10 SCC 660.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 8-10-2010]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; R. Venkatkrishnan v. CBI, (2009) 11 SCC 737: (2010) 1 SCC (Cri) 164, relied on

[9946] — S. 405 — Essential ingredients of

The necessary ingredients of S. 405 are:

(1) The accused must be entrusted with property or dominion over property;

(2) The person so entrusted must —

(*a*) dishonestly misappropriate or convert to his own use that property, or

(*b*) dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation

(*i*) of any direction of law prescribing the mode in which such trust is to be discharged, or

(*ii*) of any legal contract made touching the discharge of such trust. *Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575, 577-78.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon** , JJ. [Date of decision: 11-1-1957]

[9947] — Ss. 405 and 24 — Criminal breach of trust — Nature and scope of offence — *Terms of S. 405, held, are very wide — They apply to one who is in any manner entrusted with property or dominion over property — S. 405 does not require that trust should be in furtherance of any lawful object — It merely provides that a person commits criminal breach of trust if such a person dishonestly misappropriates or converts to his own use the property entrusted to him* (Para 143). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507; Jaikrishnadas Manohardas Desai v. State of Bombay, AIR 1960 SC 889, relied on

[9948] — Ss. 405 to 409 — Criminal breach of trust — Essential ingredients of — *Person to whom a property is entrusted, if allows others to misappropriate the same, commits the offence — Entrustment of property and failure in breach of an obligation to account for the property may in the circumstances of the case, lead to an inference of dishonest misappropriation or conversion — Dishonest misappropriation of the property entrusted, even with the intention to restore the property in future, would attract the offence — "Entrustment" — Import of — Held, on facts (per majority, Shah, J. contra), Accused 1, 3 and 5 committed offence of criminal breach of trust*

Per majority (Agrawal and Pasayat, JJ.)

To constitute an offence of criminal breach of trust, there must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract; and the misappropriation or conversion or disposal must be with a dishonest intention. When a person allows others to misappropriate the money entrusted to him, that amounts to a criminal breach of trust as defined by Section 405. The section is relatable to property in a positive part and a negative part. The positive part deals with criminal misappropriation or conversion of the property and the negative part consists of dishonestly using or disposing of the property in violation of any direction and of law or any contract touching the discharge of trust. (Para 361)

The term "entrustment" is not necessarily a term of law. It may have different implications in different contexts. In its most general signification all it imports is the handing over possession for some purpose which may not imply the conferring of any proprietary right at all. (Para 363)

To establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. (Para 365)

Sections 407 to 409 make special provisions for various cases in which property is entrusted to the enumerated categories of persons who commit the offence. The offence of breach of trust and dishonest misappropriation are sufficient to constitute an offence under the relevant provisions. (Para 360)

Section 409 deals with criminal breach of trust by a public servant or by a banker, merchant or agent. Section 405 defines criminal breach of trust. The offence like the offence of criminal misappropriation is characterized by an actual fraudulent appropriation of property. There is not originally wrongful taking or moving as in the case of theft but the offence consists in wrongful appropriation of property, consequent upon a possession which is lawful. The offence is distinguishable from criminal misappropriation because subject of it is not the property which by some casual act or otherwise, but without criminal means, comes into the offender's possession; but the property which is entrusted to the offender by the owner or by others' lawful authority and which the offender holds subject to some duty or obligation to apply it according to the trust. (Para 359)

When a person misappropriates to his own use the property that does not belong to him, the misappropriation is dishonest even though there was an intention to restore it at some future point of time. (Para 364)

When the factual background highlighted is considered in the light of the various provisions, it is clear that the offences under the Indian Penal Code alleged have been established against the accused persons. Accused 1, 3 and 5 were therefore, rightly convicted. (Para 378)

Per Shah, J. (dissenting)

What is punishable under Section 403 is dishonest misappropriation or conversion to his own use any movable property. Further, as per the Explanation, dishonest misappropriation for the time being or for a short time is also misappropriation within the meaning of the section. Hence, for establishing the offence it is required to be proved that:

1. The property belongs to a person other than the accused,

2. The accused appropriated the said property or converted it to his own use, and,

3. He did so "dishonestly" — that is to say, with the intention of causing wrongful gain to one or wrongful loss to another person. (Para 258)

(4)(i) Broadly *(contd.)*

Further, essential ingredients required to be proved under Section 405 are:

1. Accused must be entrusted with some property or with any dominion over property,

2. He dishonestly misappropriates or dishonestly converts to his own use that property, or

3. Dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, or

4. Wilfully suffers any other person to do so. (Para 260)

Allegations in this case are that firstly, the accused appropriated cheques issued by Canara Bank in favour of Grindlays Bank to himself. Secondly, that appropriation was misappropriation, and thirdly, it was dishonest. (Para 259)

In the investment policy or lending policy as per the guidelines framed by MUL in 1989 use of the phrase "through scheduled banks" or "directly" appears to be intentional. "Through scheduled bank" would indicate that the amount is not invested "with the bank". A PW has admitted that the name of the broker did not figure or reflect on the record of MUL in the event of transaction of investment being through the broker. In any case, A-1 and A-2 who are sought to be prosecuted are not responsible for the said policy. The policy is framed by the Board and as per the said policy the Sub-Committee headed by the Chairman and the Managing Director of MUL and the Financial Director has passed appropriate resolutions. It appears that they were in the know of the entire investments, but for reasons best known to the prosecution, they are not prosecuted or examined as witnesses even though they were interrogated by the investigating officer. A-1 and A-2 were promoted for their efficiency and good work. The same stand was taken by MUL before JPC despite knowing that there was so-called investigation by CBI. MUL has not suffered any loss. On the contrary, it has received substantial interest for short-term investment for a few days. UCO Bank has also earned commission which is reflected in its account. If there was any dishonest intention on the part of A-3, he would not have credited the earned commission for the transactions in the account books of the Bank. No loss to UCO Bank. Neither MUL nor UCO Bank has lodged any FIR for the so-called misappropriation or fraud. The prosecution has not even suggested that Accused 1, 2, 3 or 4 got any pecuniary advantage or gain by such transactions. Evidence led by the prosecution discloses that it was the practice of the Bank to issue BRs for such type of transactions. It was the duty of the prosecution to carry out necessary investigation whether the BRs were backed by the units or not. If the investigating officer fails to discharge its duty, no inference can be drawn that BRs were not backed by security/units. The prosecution has miserably failed to prove that A-3 issued BRs without holding units as security or that BRs were not backed by units. The Chief General Manager (Finance) of MUL has stated that looking at the BRs of UCO Bank, no suspicion would arise and that issuance of the BRs necessarily indicates that the bank issuing it would be holding the security covered under the BR. The Divisional Manager of UCO Bank at the Bombay office at the relevant time has produced on record a letter dated 8-1-1991 written by him stating resumption of switch transaction after discussing the subject with various authorities including the Zonal Manager, General Manager and Dy. Manager of UCO Bank. On the evidence as it is, at the highest it was a failure on the part of A-1, A-2 and A-3 to perform their duties or observe rules of procedure in appropriate manner and may at the most be an administrative lapse. There is no evidence against A-2 and A-4 to connect them with the crime. A-4 is prosecuted without collecting any evidence against him that he was responsible for crediting the amount in the account of A-5. The prosecution has erroneously proceeded as if the amount of pay orders issued in favour of Grindlays Bank was directly deposited in the account of A-5. For A-5, it is to be held that he gave loan to MUL in the first transaction and borrowed the amount in the last four transactions. These transactions were carried out through UCO Bank. Therefore, assuming that those transactions were against the guidelines issued by RBI, it would not mean that A-5 has misappropriated the amount. He repaid the amount on fixed dates with stipulated interest. Question of payment of interest would arise in cases of loan transaction and normally the Bank would not borrow the amount at such a high rate of interest. The Bank has issued BRs and there is no evidence that BRs were not backed by the units. On the contrary, the defence has led evidence to suggest that units were given as security. For A-3 also, the investigating officer has not bothered to verify properly because admittedly A-3 was transferred from Hamam Street Branch at Bombay to Hingha Branch, near Nagpur at the relevant time when the 5th transaction was carried out between 2-5-1991 to 7-5-1991. (Para 281)

Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. (Para 281)

In the present case, it is very important to determine who is the controlling agent behind the act of the Company (MUL). If the Board of MUL or the management of the Bank were fully aware of such transactions, subordinates who carry out the transactions could not be held guilty, because for the offences for which the accused are charged *mens rea* must be proved. Therefore, those who are responsible for taking such decision could be prosecuted, but not those who are only carrying out directions on the basis that it is a commercial policy of the Company (MUL) or the Bank. As stated before the JPC, it was an effort to maximise the yield or surplus funds of MUL and there was no need for the Company to take any action against the officers. (Para 281)

Further, the case is required to be decided on the touchstone of ingredients of the offence punishable under IPC and there cannot be any doubt that those who are found guilty should be punished, but the conviction must be on the basis of the established criminal jurisprudence and not on moral or equitable ground or impression created or gathered by the prosecuting agency. It is also true that in the present case, dealing in public funds was there to a large extent but that would not by itself be a sufficient ground for drawing any inference in favour of the prosecution, particularly when there is no evidence on record that MUL or UCO Bank suffered any loss or any of Accused 1 to 4 gained anything. On the contrary, there is evidence on record that UCO Bank got commission from the said transactions. (Para 250)

Hence the prosecution has failed to prove its case against the accused. (Para 281). *Ram Narayan Popli* v. *CBI*, (2003) 3 SCC 641: 2003 SCC (Cri) 869: AIR 2003 SC 2748.

Bench Strength 3. Coram: **M.B. Shah**[1], *B.N. Agrawal*[2] and **Arijit Pasayat**[2], JJ. [Date of decision: 14-1-2003]

Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575: 1956 Cri LJ 1116; Jaikrishnadas Manohardas Desai v. State of Bombay, AIR 1960 SC 889: 1960 Cri LJ 1250, relied on

[9949] — Ss. 405 & 409 — Criminal breach of trust — Two distinct parts under

There are, two distinct parts involved in the commission of the offence of criminal breach of trust. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created. *Supdt. & Remembrancer of Legal Affairs* v. *S.K. Roy*, (1974) 4 SCC 230: 1974 SCC (Cri) 399: AIR 1974 SC 794: (1974) 3 SCR 348: 1974 Cri LJ 678: 1974 (11) ACC 199.

Bench Strength 3. Coram: **M.H. Beg**, *Y.V. Chandrachud* and *R.S. Sarkaria*, JJ. [Date of decision: 12-2-1974]

[9950] — S. 409 — Applicability of — Proof — Nature and burden of — *Held, prosecution to prove that property in question was entrusted with the accused — Once the same is proved, it is for the accused to prove as to how the property entrusted was dealt with — Actual mode of entrustment need not be proved — Accused appointed as Unit Manager on deputation in Kerala State Civil Supplies Corporation (KSCSC) at Punalur — After he was relieved to his parent department, a special audit conducted on direction of Managing Director of KSCSC — Certain quantities of boiled rice, palmolein and free-sale sugar found short — Accused's liability fixed at Rs 1,70,640 — Accused undertook to remit Rs 1,63,770 being the value of the shortage of 72 quintals of palmolein, 102 quintals of rice and 39 quintals of sugar — Deposited Rs 50,000 in part-payment — On facts, held, entrustment proved — No material placed by accused to prove as to how the property entrusted was dealt with — Conviction and sentence under S. 409, held, proper — Evidence Act, 1872, Ss. 101 and 103*

The accused-appellant was appointed on deputation as Unit Manager of the Kerala State Civil Supplies Corporation (in short "the Corporation") at Punalur vide order dated 14-4-1983 passed by the Regional Manager of the Corporation posted in Thiruvananthapuram. By a letter dated 4-11-1986, the Managing Director of the Corporation directed the Regional Manager to relieve the accused to his parent department on 30-11-1986. Pursuant to the said direction, the Regional Manager issued an order dated 29-11-1986 relieving the accused. The said order was directed to be effective from the afternoon of 29-11-1986. Since the accused did not attend the office on 29-11-1986, the Regional Manager by an order dated 1-12-1986 permitted PW 3 to assume charge of the Punalur depot. Accordingly, PW 3 took the said charge. The stock of the Punalur Depot was partly stored in the Warehousing Corporation godown at Punalur and partly in the godown attached to the office, referred to by the witnesses as self-godown. Though PW 3 assumed charge, the accused had not handed over the keys of the godown

(4)(i) Broadly *(contd.)*

or verified the stock. The accused reported in the depot on 13-12-1986 and in the presence of the then Assistant Manager (Accounts) (PW 2) in the regional office of the Corporation, brought the keys and opened the godown. He also undertook in writing the handing over of the charge on 13-12-1986, 15-12-1986 and 16-12-1986. In the presence of the accused the items found in the godown were verified. Only the stocks of 21.875 quintals of MP boiled rice and 84 kg of tamarind were found in the self-godown. The Managing Director of the Corporation directed a special audit to be conducted by PW 1. On audit, the actual stock of boiled rice, palmolein and free sale sugar was found short. PW 1 assessed the total value of shortage of rice at Rs 33,150, that of palmolein at Rs 1,08,000 and sugar at Rs 22,620. He also reported that the accused had withdrawn loading and transporting charges for these articles. PW 1 fixed accused's liability including infructuous expenses on transporting and cost of missing empty barrels at Rs 1,70,640. On 29-12-1986 the accused undertook to remit Rs 1,63,770 being the value of the shortage of 72 quintals of palmolein, 102 quintals of rice and 39 quintals of sugar and in part-payment, deposited Rs 50,000 in the Punalur Depot on that day. By Ext. P-17 he undertook to deposit half the amount by 2-1-1987 and the balance by 31st March next year. Thereafter, the matter was reported to the authorities concerned and consequent to which the accused was suspended from service. The Managing Director of the Corporation wrote to the Director of Vigilance (Investigation) along with a copy of audit report. The Director of Vigilance (Investigation) sanctioned registration of a case. The Inspector of the Kollam Vigilance Unit I (PW 11) conducted the investigation and sent a report to his higher authorities. In the meantime, the accused retired from service on 28-2-1992. The trial court on consideration of materials held the accused guilty and convicted him of the offences punishable under Section 5(2), Prevention of Corruption Act, 1947 and Section 409 IPC. The High Court in appeal confirmed the conviction and sentence.The accused challenged the said conviction and sentence by filing the instant appeal before the Supreme Court. Since the accused died during pendency of the appeal, his legal representatives were allowed to be impleaded.

Before the Supreme Court, the LRs of the accused submitted that in the absence of a sanction for the prosecution the whole proceeding was non est and the trial was vitiated. The prosecution had acted unfairly in taking advantage of the position that after retirement sanction was not necessary under the Prevention of Corruption Act. In any event, in respect of a retired employee sanction was necessary in terms of Section 197 CrPC. Additionally, it was submitted that the prosecution had not established any misappropriation and/or mens rea of the alleged crime and, therefore, both the trial court and the High Court had acted contrary to law. It was further submitted that both the courts below proceeded on mere surmises and conjectures to hold that the accused had committed misappropriation. The essential ingredients necessary to prove the accusations under Section 409 IPC were squarely absent. It was also submitted that both the trial court and the High Court had attached undue importance to the fact that the accused-appellant had agreed to pay the differential amount. It was contended that even if the accused had agreed to pay the amount, that was not material while considering the issue whether the ingredients had been established by the prosecution. Finally, it was submitted that taking note of the small amount involved and the fact that the accused had already deposited the amount, the benefit available under the Probation of Offenders Act, 1958 could be extended.

Dismissing the appeal preferred by the accused,

Held :

It is fairly well-settled position in law that actual mode of entrustment or misappropriation is not to be proved by the prosecution. Once entrustment is proved, it is for the accused to prove as to how the property entrusted was dealt with. It was not only on the basis of the undertaking that the conviction was recorded, but the other evidence on record also unerringly proved entrustment. Therefore, it was for the accused to prove as to how the property entrusted with him was dealt with. No material was placed in that regard. Therefore, the courts below correctly held entrustment to have been proved. The concurrent findings of fact recorded by the courts below relating to entrustment and misappropriation are well merited and fully justified on the basis of evidence on record and do not suffer from any perversity or patent error of law to warrant interference. (Para 13). *N. Bhargavan Pillai* v. *State of Kerala*, (2004) 13 SCC 217: 2005 SCC (Cri) 142: AIR 2004 SC 2317: 2004 Cri LJ 2494.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat** , JJ. [Date of decision: 20-4-2004]

Jiwan Dass v. State of Haryana, (1999) 2 SCC 530: 1999 SCC (Cri) 288, distinguished on facts

[9951] — S. 409 — Prosecution must prove factum of entrustment and of misappropriation of the entrusted articles before a conviction can be recorded under — *Overseer convicted under for shortage of some articles from open godowns which were in physical charge of Chowkidars — Physical charge of the articles not shown to have been made over to the Overseer after being regularly counted in the godowns — Also no evidence to show misappropriation by the Overseer — Goods being open and accessible to all and sundry, possibility of the goods having been pilfered or stolen by others exists — Thus both the ingredients not having been proved, the conviction cannot be sustained. Janeshwar Das Aggarwal* v. *State of U.P.*, (1981) 3 SCC 10: 1981 SCC (Cri) 616: AIR 1981 SC 1646: 1981 ALJ 887.

Bench Strength 3. Coram: *S. Murtaza Fazal Ali, Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 25-3-1981]

[9952] — Ss. 409, 467 and 471 — Criminal breach of trust by public servant — Proof — Essential requirements — *Existence of mens rea, held, must be proved — Recurring deposit accounts in a sub-post office — Misappropriation of amounts of, by employees of that post-office — Conviction of employees A-1 and A-2 (appellants) and A-3 (who did not prefer appeal) — A-1 and A-2 passing vouchers put up by A-3 — No evidence of criminal conspiracy — Nothing to show that A-1 and A-2 had knowledge that the vouchers were fabricated by A-3 — Held, it could not be said that A-1 and A-2 acted with a criminal intent — It might be that they acted in a negligent manner — But, that by itself would not constitute an offence under S. 409 though it may expose them to disciplinary action under the relevant rules — Held, offences under Ss. 409, 467, and 471 IPC and the one under Prevention of Corruption Act, not proved — A-1 and A-2 acquitted — Prevention of Corruption Act, 1947, Ss. 5(1)(c) and (d) r/w 5(2)*

Allowing the appeals filed by the accused persons (A-1 and A-2),

Held :

For the offence under Section 409 IPC it must be proved that a person entrusted with property or with any dominion over property, in his capacity as public servant commits criminal breach of trust in respect of such property, as defined in Section 405 IPC, meaning thereby that he dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. The crucial word used in Section 405 IPC is "dishonestly" and, therefore, it implies the existence of mens rea, that is to say, a guilty mind. (Para 9)

If there is no evidence to show that the appellants (A-1 and A-2) had knowledge that the vouchers were fabricated by A-3, it cannot be said that they acted with a criminal intent. It may be that they acted in a negligent manner and if they had taken due care they would have detected the fraud, but they failed to do so. However, that by itself would not constitute an offence under Section 409 IPC though it may expose the appellants to disciplinary action under the relevant rules. (Para 9)

There is no evidence to show that A-1 and A-2 forged the documents which purported to be a valuable security. The evidence is only to the effect that they had negligently put their signatures on those vouchers while passing the vouchers for payment. (Para 9)

In the absence of any evidence to show that A-3 was acting in conspiracy with A-1 and A-2 or that A-1 and A-2 had knowledge of the fact that A-3 had fraudulently and dishonestly prepared forged vouchers on the basis of which the amounts were sought to be withdrawn, the offences under Sections 467, 471 or 409 IPC are not proved against A-1 and A-2. Consequently, the offence under the provisions of the Prevention of Corruption Act is also not made out. (Para 10). *L. Chandraiah* v. *State of A.P.*, (2003) 12 SCC 670: AIR 2004 SC 252: 2004 Cri LJ 365.

Bench Strength 2. Coram: *B.P. Singh* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 6-11-2003]

(ii) Dishonest intention — Mens rea — Civil dispute(s) only

See also under '(12)(xiii) Quashment/Stay/Civil proceedings', below

See also under 'Ss. 415-420 — Cheating', below

See also under S. 482 CrPC, 1973 in Vol. 18, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 2 of *SC on CrPC and Criminal Trial*

[9953] — S. 405 — Criminal breach of trust — Criminal liability vis-à-vis civil action — *Breach of trust, held, may be a civil wrong but when there is mens rea, it gives rise to criminal liability also* (Para 64). *Sudhir Shantilal Mehta* v. *CBI*, (2009) 8 SCC 1: (2009) 3 SCC (Cri) 646.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

(4)(ii) Dishonest intention — Mens rea — Civil dispute(s) only *(contd.)*

[9954] — S. 405 — Criminal breach of trust as distinguished from mere error of judgment — *Held, error of judgment does not attract criminal liability* (Para 69). *Sudhir Shantilal Mehta* v. *CBI*, (2009) 8 SCC 1: (2009) 3 SCC (Cri) 646.

Bench Strength **2.** Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[9955] — S. 405 — Mens rea — Dishonest intention — *Managing Director of pledgee Bank transferring the securities of pledger Bank in violation of the terms of agreement knowing all the facts — There is mens rea*

The appellant Managing Director of the pledgee Bank raised money on the securities of the pledger Bank which it was not entitled to do and the pledger Bank was deprived of these securities even though not for all times. A deprivation even for a short period is within the meaning of the expression. If he disposed these securities with the intention of causing wrongful loss to the one and wrongful gain to the other, there can be no question that the appellant had the necessary mens rea. *Jaswantrai Manilal Akhaney* v. *State of Bombay*, AIR 1956 SC 575: 1956 SCR 483: 26 Comp Cas 340: 1956 Cri LJ 1116, 1125: (1956) 2 MLJ (SC) 49.

Bench Strength **3.** Coram: *Vivian Bose, B. Jagannadhadas* and **B.P. Sinha** , JJ. [Date of decision: 4-5-1956]

[9956] — Ss. 405 and 24 — Criminal breach of trust vis-à-vis civil breach of trust — Difference, held, lies in dishonest intention

An act of breach of trust simpliciter involves civil wrong of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well. Breach of trust simpliciter is not an offence as it is not associated with an intention which is dishonest. The term dishonestly defined in Section 24 IPC means doing anything with the intention of causing wrongful gain to one person or wrongful loss to another. So the offence is completed when misappropriation of the property has been made dishonestly. Even temporary misappropriation falls within the ambit of the said offence. (Paras 155 and 157)

Accused 6 parted with money of NHB which was entrusted to him so that Harshad Mehta could get it although not entitled therefor in law. The conduct of Accused 6 was therefore dishonest. He is guilty of the offence of criminal breach of trust. With regard to Accused 7, there is not enough evidence to show his involvement in the said transactions. So far as the involvement of Accused 1 to 3 is concerned, they also played an important role in diverting call money from NHB which was meant for UCO Bank to the account of Harshad Mehta. As soon as the cheque for Rs 40 crores was received by UCO Bank, the amount stood entrusted to the officials of UCO Bank. However, Accused 1 to 3 in violation of law and in the absence of any contract, permitted the amount to be transferred to the account of Harshad Mehta who was not entitled to it. Therefore, the offence of criminal breach of trust stands proved against them also. (Para 158). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength **2.** Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

Ram Narayan Popli v. CBI, (2003) 3 SCC 641: 2003 SCC (Cri) 869; S.W. Palanikar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129; Kartikeswar Nayak v. State, 1996 Cri LJ 2253 (Ori), relied on

[9957] — Ss. 405 and 406 — Criminal breach of trust — Ingredients of — *Mens rea, held, is a necessary ingredient without which a breach of trust may not result in criminal breach of trust*

Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well. (Para 8). *S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength **2.** Coram: *D.P. Mohapatra* and **Shivaraj V. Patil** , JJ. [Date of decision: 18-10-2001]

[9958] — Ss. 405 and 406 — Criminal breach of trust — Ingredients of, reiterated — Whether a dispute springing out of a contract having an arbitration clause can also attract S. 406 — *In present case, respondent entrusted with paddy for milling by State Civil Supplies Corpn. Ltd. which respondent could not account for — Dispute referred to arbitrator and arbitrator making an award in favour of the Corporation — High Court upheld acquittal of respondent-accused by trial court since two views possible as to whether allegation made was of a civil or of a criminal nature — Held, approach of High Court in coming to such an abrupt conclusion, after having recorded that a criminal case may arise even when breach of contract is there and there is no bar for prosecution* *under criminal law, erroneous — Hence, matter remitted to High Court for fresh consideration in accordance with law* (Paras 6 to 10). *State of Punjab* v. *Pritam Chand*, (2009) 16 SCC 769.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-2-2009]

Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259: 1999 SCC (Cri) 401; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47, relied on

[9959] — Ss. 405, 420, 403 & 415 — Breach of contract — Filing of criminal complaint — Maintainability

A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not. (Para 12). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran** , JJ. [Date of decision: 20-7-2006]

[9960] — Ss. 406 and 420 — Offences under — Necessary ingredients — *Allegation of intention to cheat and of refusal by appellants to pay price for goods received from complainant — No allegation in complaint however, that at very inception of the contract between the parties, there was any intention to cheat — Held, no criminal offence is disclosed, much less under Ss. 406 and 420 and the case is one purely of civil liability — Not quashing prosecution of the appellants on such a complaint would amount to an abuse of process of court, hence appeal allowed and prosecution quashed — CrPC, 1973, S. 482 — Contract Act, 1872, Ss. 37 and 73. Hotline Teletubes and Components Ltd.* v. *State of Bihar*, (2005) 10 SCC 261: 2005 SCC (Cri) 1515.

Bench Strength **2**. Coram: *B.N. Agrawal* and *Tarun Chatterjee*, JJ. [Date of decision: 4-11-2004]

[9961] — Ss. 406, 420, 465, 468 and 120-B — Cheating — Conspiracy — Ingredients of — Intention — Liability of principal for criminal acts of agent — *P executed sale deed in Respondent 2's favour on appellant's behalf — Land in dispute was earlier sold to different persons by S — S brother of P — P was attesting witness also in sale deeds executed by S — Respondent 2 filed complaint case against appellant alleging deep-rooted conspiracy — Magistrate took cognizance and issued process against appellant — High Court dismissed appellant's petition under S. 482 CrPC holding that P, appellant's vendor, and his brother S, had in conspiracy with each other, sold away entire lands and appellant was also a party to such conspiracy — Held, no link established between sale deeds executed by S in respect of mutated property and appellant — Appellant was not an attesting witness to any of the sale deeds — If Respondent 2 prejudiced by fact that appellant had executed sale deed in his favour in respect of disputed land, he could question such transfer and claim damages in respect thereof from P by way of appropriate damages — No action in criminal court would lie in absence of any intention to cheat — Further held, filing of such a criminal complaint was only to pressurise appellant into making a settlement — CrPC, 1973, S. 482 — Contract Act, 1872, S. 188* (Paras 14 to 18). *Rama Devi* v. *State of Bihar*, (2010) 12 SCC 273.

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 14-9-2010]

[9962] — Ss. 406, 420, 467, 468 and 120-B — Allegation that accused persons transferred shares on the basis of forged and fabricated signatures — *Mere filing of a claim before the Consumer Forum would not make the dispute a civil dispute — CrPC, 1973, S. 190. Ashok Chaturvedi* v. *Shitul H. Chanchani*, (1998) 7 SCC 698: AIR 1998 SC 2796.

Bench Strength **2**. Coram: *Sujata V. Manohar* and **G.B. Pattanaik** , JJ. [Date of decision: 13-8-1998]

[9963] — S. 409 — Absence of dishonest intention — *Accused entrusted with duty to maintain account of certain fund — Accused receiving Rs 166 as subscription which he kept with him — Absence of definite rules as to how he should keep the money relating to the fund — Evidence showing that he might keep the money wherever he liked — Held, the accused could not be convicted for misappropriating the said amount — The circumstance that he borrowed Rs 200 before he produced the amount could not overweigh the fact that the money was produced soon after he was asked to do so. Tulsidas* v. *State of Punjab*, Crl. Appeal No. 100 of 1956.

[Date of decision: 25-8-1958]

(4)(ii) Dishonest intention — Mens rea — Civil dispute(s) only *(contd.)*

[9964] — S. 409 — Dishonest intention — Proof of

The gist of the offence of criminal misappropriation is "dishonest intention", and it is true that mere retention of property entrusted to a person without any dishonest intention is not criminal breach of trust. It is not, however, the law that the prosecution must prove how the accused person actually spent the amount; nor it is necessary in order to establish the dishonesty that the prosecution should establish an intention to retain permanently the property misappropriated. An intention wrongfully to deprive the owner of the use of the property for a time and to secure the use of the property for his own benefit for a time may be sufficient. *State of Punjab* v. *Amar Singh*, Crl. Appeal No. 172 of 1957.

Bench Strength **4**. Coram: **S.R. Das, C.J.** and *N.H. Bhagwati*, *T.L. Venkatarama Aiyar* and **S.K. Das** , JJ. [Date of decision: 21-5-1958]

[9965] — Ss. 409, 467, 471, 477-A and 120-B — Ingredients — Existence of mens rea essential for establishing offences under Ss. 409, 467 and 471 — *Alleged acts of fraudulent misappropriation of fund by encashing TA bills funded by Indian Population Project by making false allotment letters, acquittal rolls, entries in books and receipts in furtherance of criminal conspiracy with dishonest intention — Proof — Essential ingredients of conspiracy under S. 120-B not made out against appellant-accused — Mens rea of appellant-accused for offences under Ss. 409, 467 and 471 not proved, nor essential ingredients of those offences made out — Records established that appellant-accused were not beneficiaries of the misappropriated fund — Held, prosecution failed to prove the offences under Ss. 409, 467, 471 and 477-A r/w S. 120-B IPC and consequently offences under the PC Act also not made out — Prevention of Corruption Act, 1988, Ss. 13(1)(c) & 13(2)*

The prosecution has miserably failed to establish the essential ingredients of the conspiracy under Section 120-B IPC by leading cogent and convincing evidence against the appellants, A-4 to A-7. (Para 15)

For the offence under Sections 409, 467 and 471, the existence of mens rea (guilty mind) must be proved. So far with regard to the offence under Section 467 IPC is concerned, there is no evidence to show that the appellants forged a document which purported to be a valuable security. There is also no evidence that the appellants had knowledge of fact that the allotment letter was a forged letter. Again, for an offence under Section 409 it must be proved that the person entrusted with the property, or any dominion over property in his capacity as a public servant committed criminal breach of trust in respect of such property as defined in Section 405 IPC. The evidence must show that he dishonestly misappropriated or converted to his own use that property or dishonestly used or dispossessed that property in violation of any direction of law prescribing the mode in which such trust is to be discharged. In the present case, there is no evidence that A-4 to A-7 dishonestly misappropriated or converted to their own use the amount of TA. On record it is established that A-4 to A-7 are not the beneficiaries of the misappropriated amount. (Para 16)

In the absence of any evidence to show that A-4 to A-7 (appellants) were acting in conspiracy with other accused persons and that A-4 to A-7 have fraudulently and dishonestly prepared forged bill on the basis of forged allotment letter, the offences under Sections 467, 471, 477-A or Section 409 are not proved against the appellants. Consequently, the offence under the provision of the Prevention of Corruption Act is also not made out. The trial court was, therefore, not justified in convicting A-4 to A-7 under the aforesaid sections of law. (Para 17). *Radha Pisharassiar Amma* v. *State of Kerala*, (2007) 13 SCC 410.

Bench Strength **2**. Coram: **H.K. Sema** and *L.S. Panta*, JJ. [Date of decision: 14-11-2007]

(iii) Property — What is

See also under 'Ss. 415-420 — Cheating', below

[9966] — S. 405 — Criminal breach of trust — Entrustment of property is an essential ingredient of — Mere exercise of "power to allot" petroleum outlets by Minister concerned from out of his discretionary quota cannot constitute "property" within the meaning of S. 405

A trust contemplated by Section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under Section 405. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner. The word "property", used in Section 409 IPC means the property which can be entrusted or over which dominion may be exercised. Mere exercise of "power to allot petrol pumps", and that too under discretionary quota, cannot be treated as "property" within the meaning of Section 405 of the Indian Penal Code, capable of being misutilised or misappropriated. (Paras 168, 171 and 172)

Having regard to the facts of the case and the ingredients of the offence constituting criminal breach of trust, as defined in Section 405, or the offence as set out in Section 409 IPC, it must be held that there was no case made out against the petitioner for any case being registered against him on the basis of the judgment passed by the Supreme Court nor was there any occasion to direct an investigation by CBI in that case. (Para 173). *Common Cause, A Registered Society* v. *Union of India*, (1999) 6 SCC 667: 1999 SCC (Cri) 1196: AIR 1999 SC 2979.

Bench Strength 3. Coram: **S. Saghir Ahmad**, *K. Venkataswami* and *S. Rajendra Babu*, JJ. [Date of decision: 3-8-1999]

*Common Cause, A Regd. Society v. Union of India, (1996) 6 SCC 530; Common Cause, A Regd. Society v. Union of India, (1996) 6 SCC 593, **overruled***

State of Gujarat v. Jaswantlal Nathalal, AIR 1968 SC 700: (1968) 2 SCR 408; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore-Cochin, AIR 1953 SC 478: 1954 Cri LJ 102; CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045; R.K. Dalmia v. Delhi Admn., AIR 1962 SC 1821: (1963) 1 SCR 253, relied on

***See also** Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 .*

[9967] — Ss. 405 and 406 — Criminal breach of trust in respect of a blank cheque — "Property" within the meaning of S. 405 — Cheque is a property — *When blank cheque is issued to a person who misappropriates the same or uses the same for a purpose for which same was not issued, case under S. 406 made out*

The private parties were Directors of the appellant Company and were closely related. The Company had two units. The Managing Director of the Company was one *L*. Allegedly, pursuant to negotiations between *L* on the one hand and Accused 2 and 3 Directors on the other, signed blank cheques were handed over by *L* to the said accused persons during period 2000 to 2004 as process for obtaining cheques from the Managing Director had been taking considerable time. However, dispute between the parties arose in 2005. A company petition was filed before the High Court. A scheme for arrangement submitted by the parties was approved, pursuant whereto one unit was transferred to Accused 1 and the other unit to *L*. For that purpose the units were demerged. *L* allegedly made oral requests to Accused 2 and 3 to return the unused signed blank cheques. However, allegedly on the premise that Respondents 2 and 3 entered into a conspiracy to misuse the said cheques *L* filed an informal complaint with the police in 2006 with an endorsement that there was no role for the police at that stage. The respondents thereafter issued a letter stating that with a view to repay a part of the institutional liability of Respondent 1 a cheque had been drawn by the appellant in favour of Respondent 1 which had been deposited for collection. A first information report was then lodged by the appellant alleging that the blank signed cheques issued in the year 2001-2002 had been fraudulently used. Legal notices were, however, issued by Respondent 1 upon the appellant with regard to dishonour of three cheques. On or about 13-11-2006 an application was filed before the High Court for quashing the first information report. On 6-12-2006, a complaint petition was filed by Respondent 1 under Sections 138 and 141 of the Negotiable Instruments Act against the appellant and also its Chairman and Managing Director. The High Court not only considered the ingredients for the offences under Sections 406, 420 and 463 IPC but also the background facts leading to the dispute between the parties so as to enable it to ascertain whether the ingredients thereof stood satisfied or not. It proceeded on the basis that in view of the demerger scheme, the conduct of the appellant in keeping mum for a long time for getting the unused blank cheques returned is tell tale. It entered into the question as to whether the complaint petition was filed only with a view to pre-empt the respondents herein to take recourse to the remedies available to them to initiate a criminal proceeding under Section 138 of the Negotiable Instruments Act or the complaint petition in effect and substance should be permitted to be raised only by way of defence. It was held that the said complaint petition was filed on the basis whereof the first information report was directed to be lodged only to pre-empt the accused from filing a complaint petition under Section 138 of the Negotiable Instruments Act and that even taking the allegations in the complaint to be true and correct, they did not make out a prima facie case of cheating or criminal breach of trust or forgery. Accordingly, the High Court held that continuation of the proceedings amounted to abuse of process of the Court.

Allowing the appeal in part,

Held :

In this case what has failed to attract the attention of the High Court was that maintainability of a criminal proceeding like the present one should not

(4)(iii) Property — What is *(contd.)*

be determined only upon raising a presumption in terms of Section 139 of the Negotiable Instruments Act, it being a rebuttable one. (Para 23)

The High Court should have further taken into consideration the fact that in the event, the defence of the appellant is accepted in the criminal case, it will have no remedy to prosecute the respondents again. To contend that the acquittal of the appellant would have been the springboard for filing a complaint will not be correct. Nobody knows when the criminal case would come to an end. In a given situation, even it may become barred by limitation. It must also be borne in mind that commercial expediencies may lead a person to issue blank cheques. The course of action in the aforementioned situation, which could be taken recourse to was to make an attempt to find out as to whether the complaint petition even if given face value and taken to be correct in its entirety constitutes an offence under Sections 420, 406 and 463 of the Penal Code or not. (Para 24)

Ingredients of cheating are:

(*i*) deception of a person either by making a false or misleading representation or by other action or omission; and

(*ii*) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. (Para 25)

Sections 415 read with Section 420 IPC indicates that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage. In this case blank cheques were handed over to the accused during the period 2000-2004 for use thereof for business purposes but the dispute between the parties admittedly arose much thereafter i.e. in 2005. Thus no case for proceeding against the respondent under Section 420 of the Penal Code is, therefore, made out. (Paras 26 to 28)

Filling up of the blanks in a cheque by itself would not amount to forgery. Whereas in the complaint petition, allegations have been made that it was Respondents 2 and 3 who had entered into a conspiracy to commit the said offence as indicated hereinbefore, in the counter-affidavit, it has been alleged that the employees of the respondent Company did so. (Para 29)

Although, Section 120-B IPC has been added, there does not exist any averment that Respondents 2 and 3 had entered into any conspiracy with their employees. No case for proceeding with the offence of forgery against the respondents has, thus, also been made out. (Para 30)

However, a case for proceeding against the respondents under Section 406 IPC has been made out. A cheque being a property, the same was entrusted to the respondents. If the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 IPC may be found to have been made out. It may be true that even in a proceeding under Section 138 of the Negotiable Instruments Act, the appellant could raise a defence that the cheques were not meant to be used towards discharge of a lawful liability or a debt, but the same by itself would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed. (Para 31)

The respondents were keeping watch over the matter. As soon as a first information report was lodged, a notice was immediately sent. A quashing application was filed within a few days of the lodging of the first information report. The investigation was not allowed to take place at all. Whereas it would have been the duty of the court to uphold and/or to protect the personal liberty of an accused in a case, but where the first information report prima facie discloses commission of a cognizable offence, the High Court, ordinarily, should not have interfered with investigation thereof by the statutory authority. (Para 32)

Investigation by IO may now be confined to the charge under Section 406 IPC. (Para 33). *Suryalakshmi Cotton Mills Ltd.* v. *Rajvir Industries Ltd.*, (2008) 13 SCC 678: AIR 2008 SC 1683: (2008) 63 AIC 146 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 9-1-2008]

B. Suresh Yadav v. Sharifa Bee, (2007) 13 SCC 107, relied on

[9968] — Ss. 405, 409 and 22 — Word "property" — Meaning of — "Funds" of a company in bank if property

There is no good reason to restrict the meaning of the word 'property' to movable property only when it is used without any qualification in S. 405 or in other sections of the Indian Penal Code. Whether the offence defined in a particular section of the Indian Penal Code can be committed in respect of any particular kind of property will depend not on the interpretation of the word 'property' but on the fact whether that particular kind of property can be subject to the acts covered by the section. It is in this sense that it may be said that the word 'property' in a particular section covers only that type of property with respect to which the offence contemplated in that section can be committed.

The word 'property' is used in the Code in a much wider sense than the expression 'movable property'. It is not therefore necessary to consider in detail what type of property will be included in the various sections of the Indian Penal Code.

The word 'fund' may mean actual cash resources of a particular kind (e.g. money in drawer or a bank), or it may be a mere accountancy expression used to describe a particular category which a person uses in making up his accounts. The words 'payment out of' when used in connection with the word 'fund' in its first meaning connote actual payment, e.g., by taking the money out of the drawer or drawing a cheque on the bank. When used in connection with the word 'fund' in its second meaning they connote that, for the purposes of the account in which the fund finds a place, the payment is debited to that fund, an operation which, of course, has no relation to the actual method of payment or the particular cash resources out of which the payment is made. Thus, if a company makes a payment out of its reserve fund — an example of the second meaning of the word 'fund' — the actual payment is made by cheque drawn on the company's banking account, the money in which may have been derived from a number of sources. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1831: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal** , JJ. [Date of decision: 5-4-1962]

Reg. v. Girdhar Dharamdas, 6 Bom HCR Cr 33 and Jugdown Sinha v. Q.E., 23 Cal 372, ***overruled***

Emperor v. Bishan Pd., 37 All 128: AIR 1915 All 93(2): 16 Cri LJ 54; Ramchandra Gurwala v. Emperor, AIR 1926 Lah 385: 27 Cri LJ 1383; Manchersha Ardeshir v. Ismail Ibrahim, 60 Bom 706: AIR 1936 Bom 167: 37 Cri LJ 577; Daud Khan v. Emperor, AIR 1925 All 673: 27 Cri LJ 17, approved

D.C.M. v. Harnam Singh, AIR 1955 SC 590: (1955) 2 SCR 402, followed

[9969] — Ss. 406 and 34 — Wrongful withholding of company quarters — Criminal complaint for — Maintainability — Authorisation for filing complaint — Bona fides of — Eviction-directed — *Manager, having been authorised by company resolution and power of attorney, filing complaint against retired employee for wrongfully occupying company quarters — Though power of attorney was executed prior to purchase of stamp papers, it was notarised on a date subsequent to execution and purchase of stamp papers — Trial court by wrongly reading rubber stamp date of notarisation as being prior to date of purchase of stamp papers, holding power of attorney as fictitious and therefore, dismissing complaint — Criminal complaint, held, was maintainable and cognizance was rightly taken — Said documents cannot be termed as fictitious or manufactured so as to oust the appellant from the arena of justice — Stamp Act, 1899, S. 17 — Powers of Attorney Act, 1882, Ss. 2 and 4 — Companies Act, 1956, Ss. 630 and 621. Automobile Products India Ltd.* v. *Das John Peter*, (2010) 12 SCC 593: (2010) 158 Comp Cas 69: (2010) 93 AIC 214 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Deepak Verma** , JJ. [Date of decision: 20-7-2010]

(iv) Entrustment of or dominion over property

[9970] — S. 405 — Criminal breach of trust — Essential ingredients for — *Held, where the first ingredient of criminal breach of trust, that is, entrustment is missing, the same would not constitute a criminal breach of trust* (Para 15). *V.R. Dalal* v. *Yougendra Naranji Thakkar*, (2008) 15 SCC 625: (2009) 3 SCC (Cri) 1141: AIR 2008 SC 2793: (2008) 66 AIC 113 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 16-5-2008]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., (2008) 13 SCC 678, relied on

[9971] — S. 405 — Criminal breach of trust — Ingredients — Entrustment of the property or dominion over the property — Property hypothecated to creditor — *Creating only a charge on the property with right in favour of the creditor to take possession in the event of default on the part of debtor-hypothecator — Possession remaining with the debtor-owner and creditor having neither ownership nor beneficial interest in the property — Held, element of entrustment not involved in such hypothecation — Owner-debtor does not hold the property in trust for the creditor — Charge over the property created in favour of the creditor does not create a beneficial interest in the creditor unless he takes possession of the property in exercise of his right under the deed of hypothecation — Whether the deed created a floating charge or a fixed charge inconsequential*

(4)(iv) Entrustment of or dominion over property *(contd.)*

A criminal breach of trust involves the following ingredients: (*a*) a person should have been entrusted with property, or entrusted with dominion over property; (*b*) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; (*c*) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. (Para 22)

The question is whether there is "entrustment" in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession. Both, ownership of the movable property and possession thereof, remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (Note: no opinion is being expressed on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). But there is no "entrustment of the property" or "entrustment of dominion over the property" by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor. (Para 25)

The allegations in the complaints are that aircrafts and the engines fitted therein belong to NEPC India. Possession of the aircraft, neither actual nor symbolic, was delivered to IOC. As the possession of the aircraft remained all along with NEPC India in its capacity as the owner and the deed of hypothecation merely created a charge over the aircrafts with a right to take possession in the event of default, it cannot be said that there was either entrustment of the aircrafts or entrustment of the dominion over the aircrafts by IOC to NEPC India. The very first requirement of Section 405, that is, the person accused of criminal breach of trust must have been "entrusted with the property" or "entrusted with any dominion over property" is, therefore, absent. (Para 27)

It is not possible to accept the contention that *Duncans Agro* decision itself recognises that there can be criminal breach of trust where a beneficial interest exists in the other person, and the offender holds the property in trust for such person and that when the deed of hypothecation was executed by NEPC India in favour of IOC, the hypothecation created a beneficial interest in the property in favour of IOC, and vis-à-vis such "beneficial interest" of IOC, the possession of the property by NEPC India was in "trust". The Supreme Court in *Duncans Agro* specifically held that when goods are hypothecated, the owner does not hold the goods in trust for the creditor. A charge over the hypothecated goods in favour of the creditor cannot be said to create a beneficial interest in the creditor, until and unless the creditor in exercise of his rights under the deed, takes possession. The term "beneficial interest" has a specific meaning and connotation. When a trust is created vesting a property in the trustee, the right of the beneficiary against the trustee (who is the owner of the trust property) is known as the "beneficial interest". The trustee has the power of management and the beneficiary has the right of enjoyment. Whenever there is a breach of any duty imposed on the trustee with reference to the trust property or the beneficiary, he commits a breach of trust. On the other hand, when the owner of a goods hypothecates a movable property in favour of a creditor, no "beneficial interest" is created in favour of the creditor nor does the owner become a trustee in regard to the property hypothecated. The right of the creditor under a deed of hypothecation is the right to enforce the charge created under the deed of hypothecation in the manner specified in the deed and by no stretch of imagination can such right be equated to a beneficial interest of a beneficiary in a property held in trust. Therefore, the contention that a creditor has a beneficial interest in the hypothecated property and the owner is in the position of a trustee with reference to the creditor is liable to be rejected. (Paras 28 and 29)

There is also no basis for the further submission that *Duncans Agro* case dealt with a hypothecation deed creating a floating charge, whereas the case on hand related to a fixed charge and therefore, the principle laid down in *Duncans Agro*, (1996) 5 SCC 591, will not apply. The principle stated in *Duncans Agro* will apply in regard to all types of hypothecations. It makes no difference whether the charge created by the deed of hypothecation is a floating charge or a fixed charge. Where a specific existing property is hypothecated, what is created is a "fixed" charge. The floating charge refers to a charge created generally against the assets held by the debtor at any given point of time during the subsistence of the deed of hypothecation. The principle in *Duncans Agro* is based on the requirement of "entrustment" and not with reference to the "floating" nature of the charge. (Para 30)

Accordingly, it must be held that the basic and very first ingredient of criminal breach of trust, that is, entrustment, is missing and therefore, even if all the allegations in the complaint are taken at their face value as true, no case of "criminal breach of trust" as defined under Section 405 IPC can be made out against NEPC India. (Para 31). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran** , JJ. [Date of decision: 20-7-2006]

Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore Cochin, AIR 1953 SC 478: 1954 Cri LJ 102; Jaswantrai Manilal Akhaney v. State of Bombay, 1956 SCR 483: AIR 1956 SC 575: 1956 Cri LJ 1116, relied on

CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045, applied

CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045, explained

Gobindram C. Motwani v. Emperor, (1938) 39 Cri LJ 509: AIR 1938 Sind 73, distinguished

[9972] — S. 405 — Currency notes taken by police officer while making search of a person found in suspicious circumstances — *Held, amounts to entrustment*

To constitute an offence under S. 405 there must be an entrustment of property and dishonest misappropriation of it. The person entrusted may misappropriate it himself, or he may wilfully suffer another person to do so. In the instant case the respondent, being a police officer was legally entitled to search a person found under suspicious circumstances; and complainant in handing over the bundle of notes to the police officer must have done so in the confidence that he would get back the notes from him when the suspicion was cleared. In these circumstances, there cannot be any difficulty in holding that the currency notes were alleged to have been handed over by the complainant to the respondent for a specific purpose, but were dishonestly misappropriated by the respondent. He was certainly entrusted with the notes within the meaning of S. 405 of the Code. *State of U.P.* v. *Babu Ram Upadhya*, AIR 1961 SC 751: (1961) 2 SCR 679: (1961) 1 Cri LJ 773, 777.

Bench Strength **5**. Coram: *P.B. Gajendragadkar*[2], *A.K. Sarkar*[1], **K. Subba Rao**[1], **K.N. Wanchoo**[2] and J.R. Mudholkar[1], JJ. [Date of decision: 25-11-1960]

[9973] — S. 405 — Dominion over property — *That control over the funds of the company was given but no further steps taken, held, will not nullify the power entrusted to him — Non-exercise of the power will not make the dominion nugatory. R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1834: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das, K. Subba Rao* and **Raghubar Dayal** , JJ. [Date of decision: 5-4-1962]

[9974] — S. 405 — Dominion over property — Partnership assets in the hand of partner — *Mere existence of dominion over property not sufficient — Must be established that dominion was result of entrustment by special agreement between parties*

Upon the plain reading of S. 405, IPC it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law, etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of S. 405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. The prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been "entrusted" with dominion over partnership properties.

If the working partner was authorised to carry on the work of recovery of the dues of the partnership and to spend the money for business of the partnership i.e. if the money was required for the business of partnership it was not obligatory upon the accused to deposit it in the bank. The appellant working partner cannot be said to have been guilty of criminal breach of trust even with respect to the dues realised by him from certain person and in not depositing them in the bank as alleged by the prosecution. *Velji Raghavji Patel* v. *State of Maharashtra*, AIR 1965 SC 1433: (1965) 2 SCR 429: (1965) 2 Cri LJ 431, 433.

Bench Strength **2**. Coram: *Raghubar Dayal* and **J.R. Mudholkar** , JJ. [Date of decision: 11-12-1964]

(4)(iv) Entrustment of or dominion over property *(contd.)*

Bhuban Mohan Das v. Surendra Mohan Das, AIR 1951 Cal 69: 52 Cri LJ 723: ILA (1952) 2 Cal 23, approved

Jagannath v. Emperor, AIR 1932 Bom 57: 33 Cri LJ 317 and Queen v. Okhoy Coomar Shaw, 13 Beng LR 307, overruled

Followed in AIR 1968 SC 700: 1968 Cri LJ 803

[9975] — S. 405 — Expressions "entrusted with property" and "with any dominion over property" — Meaning of — *Ownership or beneficial interest in the ownership of property must be in some person other than the accused and the accused must hold it on account of some person or in some way for his benefit — Floating charge made on goods by way of security to cover up credit facility — Disposal of goods covering the security against credit facility — Offence of criminal breach of trust not made out*

The expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed. *CBI* v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591: 1996 SCC (Cri) 1045: AIR 1996 SC 2452.

Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 9-7-1996]

Applied in Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736

[9976] — S. 405 — Ingredients of — Entrustment

Per Fazal Ali and Mukharji, JJ.

The fundamental core of the offence of criminal breach of trust is that a property must be entrusted and the dominion of the property should be given to the trustee. Where there is a clear allegation of entrustment by the wife against the husband, he could be prosecuted by a criminal court on a complaint filed by the wife.

Per Varadarajan, J.

Section 405 requires a separate specific agreement for entrustment. *Pratibha Rani* v. *Suraj Kumar*, (1985) 2 SCC 370: 1985 SCC (Cri) 180: AIR 1985 SC 628: 1985 Cri LJ 817.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and Sabyasachi Mukharji, JJ. [Date of decision: 12-3-1985]

[9977] — S. 405 — Partner's dominion over partnership property — Nature — Criminal liability on misuse — *Authorisation by partners to collect moneys or property of the firm — Held, amounts to entrustment of dominion over that property liable under S. 405, IPC in case of misappropriation — Partnership Act, 1932, S. 15. R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1837: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal** , JJ. [Date of decision: 5-4-1962]

33 Bom LR 1518: AIR 1932 Bom 57, approved

But see AIR 1965 SC 1433: (1965) 2 SCR 429: (1965) 2 Cri LJ 431

[9978] — Ss. 405 and 406 — Complaint under by stockist against his principals — Earlier notice claiming payment of Rs 15 lakhs — Issuance of summons, if on facts proper — *Neither the complaint nor the statement of witnesses showing that any property was entrusted to any of the accused or that the accused had dominion over any property of the complainant which the accused converted to their own use — In such circumstances, the ingredients of S. 405, held, were not even prima facie satisfied — Hence, the Magistrate was in serious error in issuing process — CrPC, 1973, Ss. 200, 202, 203 and 204*

Under an agreement dated 21-2-1995, Appellant 1 (the Company) appointed Respondent 2 as its consignment stockist subject to certain terms and conditions. The agreement remained in operation up to 31-3-1997. On 3-10-1997, Respondent 2 served a notice on Appellant 1 requesting him to pay a certain amount or in the alternative refer the dispute to arbitration under the arbitration clause contained in the agreement. The notice went in vain. Thereafter, Respondent 2 filed a complaint against the appellants under Sections 406, 420 and 120-B IPC alleging that the appellants, in connivance of each other, had committed the offences of criminal breach of trust and cheating against him. The Magistrate issued summons against the appellants. The appellants filed before the High Court a petition under Section 482 CrPC for quashing the said order of the Magistrate. The High Court dismissed that petition. The appellants contended that the essential ingredients of Sections 405, 415 and 120-B IPC had not been satisfied and, therefore, the Magistrate erred in issuing the process. They added that High Court also failed to exercise its jurisdiction under Section 482 IPC to correct that error. They added that at any rate no case was made out against Appellants 1 to 6 and 8. Partly allowing the appeal,

In the present case, there is nothing either in the complaint and/or in the sworn statements of the complainant and the witnesses that any property was entrusted to any of the appellants at all or the appellants had domain over any of the properties of Respondent 2 which they dishonestly converted to their own use so as to satisfy the ingredients of Section 405 IPC punishable under Section 406 IPC. Further, the agreement also did not require entrustment of any property to the appellants. Taking the complaint and the statements of the witnesses as they are, it cannot be said even prima facie that the appellants committed any offence punishable under Section 406 IPC, since the ingredients of that offence were not satisfied. Hence the Magistrate committed a serious error in issuing process against the appellants for the said offence. (Para 20). *S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521; Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149, followed

[9979] — Ss. 405 and 406 — Criminal breach of trust — A Minister is in a position of a trustee in respect of the public property under his charge and discretion — *He must therefore deal with people's property in just and fair manner, failing which he would be liable for criminal breach of trust. Common Cause, A Registered Society (Petrol pumps matter)* v. *Union of India*, (1996) 6 SCC 530: AIR 1996 SC 3538.

Bench Strength **2**. Coram: **Kuldip Singh** and *Faizan Uddin*, JJ. [Date of decision: 25-9-1996]

***Overruled in** Common Cause, A Registered Society* v. *Union of India*, (1999) 6 SCC 667

[9980] — Ss. 405 and 406 — Criminal breach of trust — Ingredients of — Entrustment/ dominion over property — *Held, there was nothing in complaint which even remotely suggested that respondent IEL had entrusted any property to appellant accused — No evidence that appellants had dominion over any of properties of respondent, which they dishonestly converted to their own use — Complaint quashed — CrPC, 1973, S. 482* (Paras 33 to 38). *V.P. Shrivastava* v. *Indian Explosives Ltd.*, (2010) 10 SCC 361: (2010) 159 Comp Cas 529.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 24-9-2010]

Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507; Common Cause v. Union of India, (1999) 6 SCC 667: 1999 SCC (Cri) 1196; Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575: 1956 Cri LJ 1116; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

[9981] — Ss. 405 and 406 — Criminal breach of trust — Ingredients/prerequisites for offence of — Whether made out at stage of framing of charge — *Entrustment of any property or misappropriation (to, or by in-laws), found lacking — Held, charge under S. 406, not made out*

The facts mentioned in the complaint, taken on their face value, did not make out a prima facie case against the appellants for having dishonestly misappropriated the stridhan of the complainant, allegedly handed over to them, thereby committing criminal breach of trust punishable under Section 406 IPC. The very prerequisite of entrustment of the property and its misappropriation by the appellants were lacking in the instant case. It was also noted in the charge-sheet itself that the complainant had refused to take articles back when this offer was made to her by the investigating officer. The Sessions Judge and the High Court erred in law in coming to the conclusion that a case for framing of charge under Section 406 IPC was made out. (Para 18). *Onkar Nath Mishra* v. *State (NCT of Delhi)*, (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507: (2008) 62 AIC 155 (SC): 2008 Cri LJ 1391.

Bench Strength **2**. Coram: *Ashok Bhan* and **D.K. Jain**, JJ. [Date of decision: 14-12-2007]

Supdt. & Remembrancer of Legal Affairs v. S.K. Roy, (1974) 4 SCC 230: 1974 SCC (Cri) 399, relied on

[9982] — Ss. 405 and 406 — Ingredients of the offence under — *Where the accused company supplied to its consignment stockist goods in a quantity less than that postulated in the agreement but there was no entrustment of any property to the company*

(4)(iv) Entrustment of or dominion over property *(contd.)*

or any of the other accused persons at all nor had the accused persons dominion over any property of the complaint consignment stockist which the accused persons might have dishonestly converted to their own use, held, the ingredients of the offence punishable under Section 406 were not satisfied — Hence, in such a case, the Magistrate ought not to have issued process — CrPC, 1973, Ss. 202 and 203. S.W. Palanitkar v. *State of Bihar,* (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

[9983] — Ss. 405 and 409 — "Allowing", "dominion", "entrustment" — *Prevention of Corruption Act, 1947, S. 5(1)(c) & (2)*

By enacting the Amending Act of 1952 and creating sub-section (4) to S. 5 the legislature specifically stated that the offence under S. 5(1)(*c*) is different from any previous existing offence under any penal statute and there can, therefore, be no scope for speculation about repeal. The words used in sub-section (4) "any other law" made the position quite clear and explicit. Other law does not mean identical law in which case the word 'other' will have no meaning. A comparison of the elements of the offences under S. 405 Indian Penal Code and S. 5(1)(*c*) of the Prevention of Corruption Act would show that an offence under S. 405, Penal Code is separate and distinct from the one under S. 5(1)(*c*). There are three points of difference between S. 405, Penal Code and S. 5(1)(*c*). The dishonest misappropriation contemplated in S. 405, Penal Code is different; whereas that under S. 5(1)(*c*) is either dishonest misappropriation or fraudulent misappropriation. The latter section is much wider in amplitude than the former. In S. 405, Penal Code the words used are "in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied. There are no such expressions in S. 5(1)(*c*). It is clear, therefore, that whereas under S. 405, Penal Code there are three essential ingredients to constitute the offence; each one of them being separate and distinct, in S. 5(1)(*c*) there are only two. Now considering S. 5(1)(*c*) there are certain matters in it which are absent in S. 405, Penal Code. The words 'dominion' and 'entrustment' connote two different things. The word 'dominion' is not in S. 5(1)(*c*). The word 'fraudulently' is not present in S. 405, and in S. 5(1)(*c*) the gist of the offence can also be made out if the offender allows any person so to do, i.e., allows any person to derogate from the law as contemplated in the earlier portion of the section. The meaning put on the word 'allows' would certainly be different from 'dishonest misappropriation' by the offender himself. It may be that the word can mean allowing by negligence or without any volition on the part of the offender. It may also mean that there is some kind of positive and tacit acquiescence necessary to bring home the offence. In any event, allowing other persons so to do does not find a place in S. 405, Penal Code though this section also contemplates "wilfully suffering any other person so to do". There is an essential difference between "allowing" a person and "wilfully suffering" a person to do a certain thing. There can, therefore, be no doubt whatever that S. 5(1)(*c*) of the Prevention of Corruption Act creates a new offence called "criminal misconduct" and cannot by implication displace the offence under S. 405, Penal Code.

In S. 405, Penal Code the offender must wilfully suffer another person to misappropriate the property entrusted, but in S. 5(1)(*c*) if he allows another person to dishonestly or fraudulently misappropriate or otherwise convert for his own use any property so entrusted, then it is an offence. There is a vast difference between wilfully suffering another and allowing a person to do a particular thing and the word "allows" is much wider in its import. Wilfully presupposes a conscious action, while even by negligence one can allow another to do a thing. *Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon**, JJ. [Date of decision: 11-1-1957]

State v. Pandurang, AIR 1955 Bom 451; R. v. V. Satyanarayanmurthy, AIR 1953 Mad 137: 1953 Cri LJ 309; Amarendra Nath Ray v. State, AIR 1955 Cal 236: 1955 Cri LJ 784; Mohd. Ali v. State, AIR 1953 Cal 68: 1953 Cri LJ 1523; Bhup Narain v. State, AIR 1952 All 35: 1952 Cri LJ 236; Gopal Das v. State, AIR 1954 All 80: 1954 Cri LJ 96, approved

State v. Gurcharan Singh, AIR 1952 Punj 89: 1952 Cri LJ 316, ***overruled***

Followed in *State of Punjab v. Shadi Lal, 1960 Cri LJ 539: AIR 1960 SC 397*

[9984] — Ss. 405 and 409 — Dominion over property

In the present case the accused and one *R* could operate on the accounts of a company with the Bank under the powers conferred by the Board of Directors. The accused got blank cheques signed by *R* on the representation that they would be used for the legitimate purposes of the company but he used them for purposes not connected with the company. It was contended by the accused that he could not have committed the offence of criminal breach of trust when he alone had not the dominion over the funds of the company, the accounts of which he could not operate alone.

Held :

The accused did not get dominion over the funds on account of *R*'s signing blank cheques. The signing of the blank cheques merely facilitated *C*'s committing breach of trust. He got control and dominion over the funds under the powers conferred on him by the Board of Directors, by its resolution authorising him and *R* to operate on the accounts of the Insurance Company with the Chartered Bank. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1837, 1: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das, K. Subba Rao* and **Raghubar Dayal** , JJ. [Date of decision: 5-4-1962]

ILR 26 Pat 703: AIR 1949 Pat 69: 50 Cri LJ 108, overruled

21 Suth WR Cr 59, 61: 13 Beng LR FB 307 and 33 Bom LR 1518: AIR 1932 Bom 57 33 Cri LJ 577, approved

[9985] — Ss. 405 and 409 — "Entrusted"

The term "entrusted" found in S. 405, IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust. A mere transaction of sale cannot amount to entrustment. *State of Gujarat* v. *Jaswantlal Nathalal*, AIR 1968 SC 700: (1968) 2 SCR 408: 1968 Cri LJ 803.

Bench Strength **3**. Coram: *S.M. Sikri, J.M. Shelat* and **K.S. Hegde** , JJ. [Date of decision: 23-11-1967]

Satyendra Nath Mukherji v. Emperor, ILR (1947) 1 Cal 97, approved

[9986] — Ss. 405 and 409 — "Entrustment"

No question of entrustment arises when a sum is paid by way of illegal gratification along with some transaction. *C.M. Narayan Ittiravi Nambudiri* v. *State of Travancore-Cochin*, AIR 1953 SC 478: 1954 Cri LJ 102: 1953 Ker LT 173.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and **B.K. Mukherjea** , *S.R. Das, Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 10-11-1952]

[9987] — Ss. 405 and 409 — Entrustment — Mere transaction of sale does not amount to entrustment — *Government selling cement to contractor solely for purpose of using it in connection with specified construction work — Held, there was no entrustment*

The expression 'entrustment' carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further, the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. When the Government sold cement to a contractor for the purpose of being used in connection with a specified construction work, the transaction is not anything other than a sale. After delivery of the cement, the Government had neither any right or dominion over it. Failure to comply with any law on cement control may offend that law but there was no breach of trust and the contractor was not guilty under S. 409 Penal Code. *State of Gujarat* v. *Jaswantlal Nathalal*, AIR 1968 SC 700: (1968) 2 SCR 408: 1968 Cri LJ 803, 805.

Bench Strength **3**. Coram: *S.M. Sikri, J.M. Shelat* and **K.S. Hegde** , JJ. [Date of decision: 23-11-1967]

[9988] — Ss. 405 and 409 — In any manner entrusted — *Securities pledged with the Bank for specific purpose on specified conditions — There is entrustment for the purposes of S. 405*

The contention is that the parties never contemplated the creation of a trust in the strict sense of the term. But when S. 405 which defines "criminal breach of trust" speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust.

It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event. The person who transfers possession of the property to the second party still remains the legal owner of the property and the person in whose favour possession is so transferred has only the custody of the property to be kept or disposed of by him for the benefit of the other party, the person so put in possession only obtaining a special interest by way of a claim for money advanced or spent upon the safe keeping of the thing or such other incidental expenses as may have been incurred by him. Hence the appellant can

(4)(iv) Entrustment of or dominion over property *(contd.)*

be said either to have been entrusted with the property in a derivative sense or to have dominion over the securities as a banker. Thus, in either case, entrustment, the essential condition for application of S. 409, IPC is fulfilled. *Jaswantrai Manilal Akhaney* v. *State of Bombay*, AIR 1956 SC 575: 1956 SCR 483: 26 Comp Cas 340: 1956 Cri LJ 1116, 1124: (1956) 2 MLJ (SC) 49.

Bench Strength **3**. Coram: *Vivian Bose, B. Jagannadhadas* and **B.P. Sinha** , JJ. [Date of decision: 4-5-1956]

Followed in AIR 1968 SC 700: 1968 Cri LJ 803

[9989] — Ss. 405 and 409 — Property entrusted to director of a company — *Held, directors are not only agents but are in some sense and to some extent trustees or in position of trustees. R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1837: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das, K. Subba Rao* and **Raghubar Dayal** , JJ. [Date of decision: 5-4-1962]

[9990] — S. 408 — Criminal breach of trust — Entrustment — Proof of — *No reliable and direct evidence of entrustment of the money to appellant — Also absence of indirect evidence and failure of prosecution to show the manner of keeping accounts — Mere production of entry in books, held, not conclusive — Reasonable explanation by appellant — Conviction set aside*

Absence of evidence on a material and important aspect renders it unsafe to hold that the charge of breach of trust is brought home to the appellant.

There is no direct evidence of entrustment to the appellant. On going through the record there is no indirect evidence of entrustment. All that the prosecution did was to produce the books of account of the head office and of the branch office. There is a debit entry in the books of the branch office showing that a sum of Rs 7000 was given to the appellant on November 10, 1965 for being taken to the head office but the mere entry, unsupported by any oral evidence cannot prove entrustment. Section 34 of the Evidence Act says that entries in books of account, regularly kept in the course of business are relevant but such statements shall not alone be sufficient evidence to charge any person with liability. The prosecution did not examine anyone even to show that the books of account were regularly kept in the course of business nor indeed was any attempt made to lead evidence apart from the production of books of account to prove the entrustment of the amount to the appellant.

In the vague state of record it is impossible to dismiss the explanation of the appellant as unreasonable. There is no evidence of entrustment, no evidence in regard to the mode and manner of keeping the accounts and not even a suggestion that the cash on hand was at any time tallied or checked. *Dadarao* v. *State of Maharashtra*, (1974) 3 SCC 630: 1974 SCC (Cri) 120: AIR 1974 SC 388: 1975 MLJ (Cri) 46: 1975 (12) ACC 9: 1974 Cri LJ 447.

Bench Strength **2**. Coram: *S.N. Dwivedi* and **Y.V. Chandrachud** , JJ. [Date of decision: 20-11-1973]

[9991] — S. 409 — Applicability of — First condition — Securities pledged with bank — Securities continuing to be the property of the pledger bank — *Held, Managing Director holding a power of attorney on behalf of the pledgee bank, can be said to have been entrusted with the property in a derivative sense or to have dominion over the securities as a banker; and thus in either, the first essential condition for the application of S. 409, IPC is fulfilled. Jaswantrai Manilal Akhaney* v. *State of Bombay*, AIR 1956 SC 575: 1956 SCR 483: 26 Comp Cas 340: 1956 Cri LJ 1116, 1124: (1956) 2 MLJ (SC) 49.

Bench Strength **3**. Coram: *Vivian Bose, B. Jagannadhadas* and **B.P. Sinha** , JJ. [Date of decision: 4-5-1956]

[9992] — S. 409 — Criminal breach of trust — Entrustment of money admitted by the accused — Burden lies on him to prove that entrustment has been carried out and the obligation has been discharged — *His explanation has to be examined on preponderance of probabilities — On facts held, defence of accused is probable and he is entitled to benefit of doubt — Case of entrustment of Government money by government servant — Forgery and interpolation in cash book alleged — Evidence Act, 1872, S. 106. Jagat Narayan Jha* v. *State of Bihar*, 1995 Supp (4) SCC 518: 1995 SCC (Cri) 246: 1994 Cri LJ 1100.

Bench Strength **2**. Coram: *M.M. Punchhi* and *S.C. Agrawal*, JJ. [Date of decision: 29-4-1992]

[9993] — S. 409 — Criminal breach of trust — Property of a govt. company purchased by a firm of which A-1, the then CM was a partner — *CM or a Minister not shown to have dominion over the property of the company — Relationship between A-1 and the company not shown to be one of trustee and beneficiary — Held on facts, ingredients of S. 409 not attracted*

The properties in question belonged to a corporation which is a separate and distinct entity from the Government and the properties are held by it as an owner and it has complete control over the same except, when the said properties are to be alienated, approval of the Government has to be obtained as provided under the articles of association of the said Corporation. Indeed there is no material in the whole case to come to the conclusion that any trust has been or deemed to have been created in respect of the said properties and that the relationship between A-1 and the govt. company is one of trustee and beneficiary. There is absolutely no entrustment of the properties in any manner, which allows a dominion over it except approving or disapproving an act on the part of the Corporation either to sell or to alienate the properties. It cannot be said that a public servant who holds a particular portfolio and has an element of supervisory control in certain matters, has a dominion over the property so as to exercise any legal incidents attached to the right of ownership. Therefore, there was no entrustment of the said properties and it cannot be said that A-1 had dominion over the said properties either as the Chief Minister or as the Minister of Industries and in any case, the evidence does not establish the ingredient of dishonest disposal or conversion of property for personal use. Thus the charge under Section 409 is also not established. (Para 53). *R. Sai Bharathi* v. *J. Jayalalitha*, (2004) 2 SCC 9: 2004 SCC (Cri) 377: AIR 2004 SC 692: 2004 Cri LJ 286.

Bench Strength 2. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 24-11-2003]

[9994] — S. 409 — Embezzlement of fund collected by appellant Taxation Clerk from municipal tax payers without depositing the same to the account of Municipal Committee alleged — Onus of proof on appellant — *Appellant admitting receipt of the amount but stating that as per usual practice, he had handed over the amount to the Cashier who had defalcated the same — Cashier neither admitting receipt of the money from appellant not admitting existence of any practice as alleged by appellant — Cashier acquitted by lower appellate court — Held, plea of appellant not acceptable*

The prosecution was successful in proving the charge against the appellant. The entrustment as such is not denied by the appellant. It was for him to discharge the onus that he had discharged the trust as was expected of him. By merely taking the plea that he had passed on the sum to the cashier, the trust cannot be said to have been discharged and could only be done if either the cashier would admit receipt or the appellant had reasonably established that there had been a practice to pass on such money without receipt. No departmental man, least of all the accountant, has come forward to support the existence of such practice. The appellant cannot be permitted to say that whatever he had said in his statement under S. 313, CrPC is the gospel truth. The argument of the appellant that the cashier was wrongly acquitted may be plausible, but in the facts and circumstances that fact alone can be of no help to the appellant. *Bagga Singh* v. *State of Punjab*, 1996 Cri LJ 2883 (SC).

Bench Strength 2. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 13-12-1994]

[9995] — S. 409 — Entrustment — Failure of Tahsildar to deposit in the Treasury amounts of land revenue, fines etc. — *Though Reader of Tahsildar physically receiving the amounts, Tahsildar countersigning the receipts prepared by the Reader — Tahsildar having dominion over the accounts was "entrusted with the money" — Neither office practice and procedure followed nor amounts entered in the account books — Accused, held, guilty of misappropriation of the amounts entrusted to him. Vasant Moghe v. State of Maharashtra, (1979) 3 SCC 771: 1979 SCC (Cri) 868: AIR 1979 SC 1008: 1979 Cri LJ 885.*

Bench Strength 2. Coram: *Jaswant Singh* and **O. Chinnappa Reddy** , JJ. [Date of decision: 27-11-1978]

[9996] — S. 409 — Entrustment of or dominion over property — Bank director not only an agent but a trustee having dominion or control over the bank property which comes into his hand — *Such 'property' is a chose in action — De facto managing director committing misappropriation of property without substituting in lieu thereof securities of equal amount, held, liable under. Shivnarayan Laxminarayan Joshi* v. *State of Maharashtra*, (1980) 2 SCC 465: 1980 SCC (Cri) 493: AIR 1980 SC 439: 1980 Cri LJ 388.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.P. Sen*, JJ. [Date of decision: 10-10-1979]

[9997] — S. 409 — Entrustment of property — Proof — *In absence of legal and independent proof of entrustment partial admission of entrustment obtained by putting a question with regard to entrustment, held, insufficient to prove the charge — Rather, the putting of such question, in the said circumstances, would itself be improper. Jiwan Dass* v. *State of Haryana*, (1999) 2 SCC 530: 1999 SCC (Cri) 288: AIR 1999 SC 1301: 1999 Cri LJ 2034.

Bench Strength 2. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 26-2-1999]

(4)(iv) Entrustment of or dominion over property *(contd.)*

[9998] — S. 409 — Failure by public servant to disburse entrusted amounts to the labour and the contractor, held, established on evidence — *However, in view of the facts that the accused-appellant was likely to lose his service and had already undergone 6½ months' RI out of the total term of 2 years' RI, his sentence reduced to the extent of the imprisonment already undergone and a fine of Rs 1000. Vishnu Datta Mishra* v. *State of M.P.*, (1979) 4 SCC 382: 1979 SCC (Cri) 993: AIR 1979 SC 825: 1979 Cri LJ 565.

Bench Strength **2**. Coram: **Jaswant Singh** and *O. Chinnappa Reddy*, JJ. [Date of decision: 28-11-1978]

[9999] — S. 409 — Giving of charge — *Merely giving keys and that too on a holiday, does not amount to giving charge. Amrut Sakharam Sanap* v. *State of Maharashtra*, (1971) 3 SCC 918: 1972 SCC (Cri) 166.

Bench Strength **2**. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 6-4-1970]

[10000] — Ss. 409 and 405 — Allocation of business amongst Ministers — Thereby no trust of the government properties is created in favour of any Minister — *Merely because a person is elected by the people and is inducted as a Minister, he cannot be said to be holding a trust on behalf of the people — Hence, on that basis it cannot be determined whether he committed offence of criminal breach of trust — Nor can the doctrine of public trust be applied as that doctrine pertains to environmental law — Criminal breach of trust can be determined only under the provisions of the Penal Code — Constitution of India — Art. 77(3)*

In the judgment under review the Court was of the opinion that a person on being elected by the people and on becoming a Minister holds a sacred trust on behalf of the people. This, is a philosophical concept and reflects the image of virtue in its highest conceivable perfection. This philosophy cannot be employed for determination of the offence of "criminal breach of trust" which is defined in the Indian Penal Code. Whether the offence of "criminal breach of trust" has been committed by a person has to be determined strictly on the basis of the definition of that offence set out in the Penal Code. (Para 159)

The Court has also invoked the "Doctrine of Public Trust" which is a doctrine of environmental law under which the natural resources such as air, water, forest, lakes, rivers and wildlife are public properties "entrusted" to the Government for their safe and proper use and proper protection. Public Trust Law recognises that some types of natural resources are held in trust by the Government for the benefit of the public. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The "Doctrine of Public Trust" has been evolved so as to prevent unfair dealing with or dissipation of all natural resources. This doctrine is an ancient and somewhat obscure creation of Roman and British law which has been discovered recently by environmental lawyers in search of a theory broadly applicable to environmental litigation. But this doctrine cannot be invoked in fixing the criminal liability and the whole matter will have to be decided on the principles of criminal jurisprudence, one of which is that the criminal liability has to be strictly construed and offence can be said to have been committed only when all the ingredients of that offence as defined in the statute are found to have been satisfied. (Paras 160 and 161)

Election to the State Legislature or the House of the People are held under the Constitution on the basis of adult suffrage. On being elected as a Member of Parliament, the petitioner was inducted as Minister of State. The Department of Petroleum and Natural Gas was allocated to him. Under the allocation of business rules, made by the President of India, the distribution of petroleum products, inter alia, came to be allocated to the petitioner. This allocation of business under the Constitution is done for smooth and better administration and for more convenient transaction of business of the Government of India. In this way, neither a "trust", as ordinarily understood or as defined under the Trust Act, was created in favour of the petitioner nor did he become a "trustee" in that sense. (Para 163)

It must, therefore, be held that the petitioner does not, on becoming the Minister of State for Petroleum and Natural Gas, assume the role of a "trustee" in the real sense nor does a "trust" come into existence in respect of the government properties. Therefore, the Court's direction regarding investigation by CBI into the offence of criminal breach of trust against the Minister cannot be sustained. (Para 166). *Common Cause, A Registered Society* v. *Union of India*, (1999) 6 SCC 667: 1999 SCC (Cri) 1196: AIR 1999 SC 2979.

Bench Strength **3**. Coram: **S. Saghir Ahmad**, *K. Venkataswami* and *S. Rajendra Babu*, JJ. [Date of decision: 3-8-1999]

Tito v. Waddell (No. 2), (1977) 3 All ER 129; Kinloch v. Secy. of State for India, (1880) 15 Ch D 1, approved

Common Cause, A Regd. Society v. Union of India, (1996) 6 SCC 530; Common Cause, A Regd. Society v. Union of India, (1996) 6 SCC 593, ***overruled***

[10001] — Ss. 409 and 405 — Money obtained by fraud or cheating was 'entrusted' to the accused — *Prevention of Corruption Act, 1947, S. 5(1)(c)*

There can be no doubt before a public servant can be convicted of an offence under S. 5(1)(*c*), P.C. Act or under S. 409, IPC, the property which is said to have been misappropriated must be entrusted to him. Section 405 merely provides, whoever being in any manner entrusted with property or with any dominion over the property, as the first ingredient of the criminal breach of trust. The words 'in any manner' in the context are significant. The section does not provide that the entrustment of property should be by some one or the amount received must be the property of the person on whose behalf it is received. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment and for the benefit of the owner.

The expression 'entrusted' in S. 409 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over. It may be that a person to whom the property is handed over may be an agent of the person to whom it is entrusted or to whom it may belong, in which case if the agent who comes into possession of it on behalf of his principal, fraudulently misappropriates the property, he is nonetheless guilty of criminal breach of trust because as an agent he is entrusted with it. A person authorised to collect moneys on behalf of another is entrusted with the money when the amounts are paid to him, and though the person paying may no longer have any proprietary interest nonetheless the person on whose behalf it was collected becomes the owner as soon as the amount is handed over to the person so authorised to collect on his behalf. Here the employee of Indian Airlines took excess money from passengers and pocketed the same by falsifying the receipts. He was therefore, guilty under S. 409 and Ss. 5(2) and 5(1)(*c*), Prevention of Corruption Act 1947. *Som Nath Puri* v. *State of Rajasthan*, (1972) 1 SCC 630: 1972 SCC (Cri) 359: AIR 1972 SC 1490: (1972) 3 SCR 497: 1972 Cri LJ 897.

Bench Strength **3**. Coram: *J.M. Shelat*, **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 15-2-1972]

In re Ram Soonder Podda, (1878) 2 Cal LR 515; In re Ramappa, (1911) 22 Mad LJ 112: 13 Cri LJ 15; Venkata Raghunatha Sastri, 45 Mad LJ 133: AIR 1923 Mad 597: 24 Cri LJ 452; Crown Prosecutor v. McIver, 69 Mad LJ 681: AIR 1936 Mad 1: 37 Cri LJ 142; State v. Dahyalal Dalpatram, AIR 1960 Bom 53: 1960 CriLJ 217, ***approved***

Surendra Pal Singh v. State, AIR 1957 All 122: 1957 Cri LJ 170, ***overruled***

(v) Misappropriation, use, disposal, etc.

See also under 'Ss. 415-420 — Cheating', below

[10002] — S. 405 — Failure to account for the money proved to be received fatal — *Burden of proof on the accused — Inferences from conduct can be drawn to prove the guilty mind*

It is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him may be treated a strong circumstance against the accused person. In the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss then the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused then he has to prove them. Of course the prosecution has to establish a prima facie case in the first instance. It is not enough to establish facts which give rise to a suspicion and then by reason of S. 106 of the Evidence Act to throw the onus on him to prove his innocence.

The giving of false explanation is an element which the Court can take into consideration. *Krishan Kumar* v. *Union of India*, AIR 1959 SC 1390: (1960) 1 SCR 452: 1959 Cri LJ 1508.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **J.L. Kapur** , JJ. [Date of decision: 21-5-1959]

See also *AIR 1960 SC 889: 1960 Cri LJ 1250*

AIR 1930 Pat 209: 31 Cri LJ 249; AIR 1944 Lah 339, 345: 46 Cri LJ 1 (FB); AIR 1936 Pat 350: 37 Cri LJ 877, approved

AIR 1938 Lah 634: 39 Cri LJ 851; AIR 1938 Mad 172: 39 Cri LJ 1; AIR 1934 Cal 425: 1935 Cri LJ 715; AIR 1934 Sind 22: 36 Cri LJ 818; AIR 1928 Lah 382: 30 Cri LJ 18, distinguished

Rex v. William, (1836) 7 C and P 338 and Reg v. Lynch, (1854) 6 Cox C C 445, relied on

(4)(v) Misappropriation, use, disposal, etc. *(contd.)*

[10003] — S. 405 — 'Misappropriates or converts to his own use' — Hire of motor for appellant's own use — *Hirer writing a letter to owner claiming that agreement was of sale — Owner asserting it to be a hire-purchase agreement — Letter showing no change in use of motor by hirer — Held, the letter cannot result in misappropriation or conversion of motor to his own use by hirer — Real dispute was as to nature of agreement between the parties — Hence the dispute was of a civil nature*

The accused-appellant hired a motor which remained in his use for some time and the hire charges were paid for some months. Then he wrote a letter to the owner of the motor stating that he had purchased the said motor on condition that it should be tried for three months and if it was found to be satisfactory the money would be paid and the purchase completed. He also claimed that he had paid the money and completed the purchase.

On the facts in the present case the motor was handed over to the appellant for his use even according to the case of the owner. Unless, therefore, it can be shown that the appellant by doing something to the motor which he was not entitled to do dishonestly misappropriated or converted the motor to his own use, he cannot be guilty of breach of trust under this part of S. 405. Now the case of the owner is that the appellant must be deemed to have misappropriated or converted to his own use the motor by writing the letter. It is clear, however, that the letter shows no change in the use of the motor, which, according to the owner, the appellant had hired for his own use. Therefore, it cannot be said that merely by writing that letter, the appellant dealt with the motor in such manner as would amount to its misappropriation or conversion to his own use by him. Clearly the appellant was using the motor for his own purpose before that letter and continued to use it in the same way after the letter. That letter, cannot result in the misappropriation or conversion of the motor to his own use by the appellant within the meaning of these words in S. 405 in the circumstances of the present case.

The real dispute between the parties, therefore was as to the nature of the agreement between them when the motor was entrusted to the appellant. That dispute was clearly of a civil nature. *Mohd. Sulaiman* v. *Mohd. Ayub*, AIR 1965 SC 1319: (1965) 2 SCR 398: (1965) 2 Cri LJ 421.

Bench Strength **5**. Coram: *P.B. Gajendragadkar, C.J.* and **K.N. Wanchoo** , *J.C. Shah, N. Rajagopala Ayyangar* and *S.M. Sikri*, JJ. [Date of decision: 9-12-1964]

[10004] — S. 405 — Misappropriation — Proof of — Consequence in event of its failure

If under the law it is necessary or possible for the prosecution to prove the manner in which the goods have been misappropriated then the failure of the prosecution to prove facts it set out to prove would be of little relevance.

The question would only be one of intention of the appellant and the circumstances which have been above set out do show that the appellant in what he has done or has omitted to do was moved by a guilty mind. *Krishan Kumar* v. *Union of India*, AIR 1959 SC 1390: (1960) 1 SCR 452: 1959 Cri LJ 1508, 1512.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **J.L. Kapur** , JJ. [Date of decision: 21-5-1959]

[10005] — Ss. 405, 408 and 409 — Misappropriation — Accused, the cashier, in possession of keys of the safe — *Keys of inner drawers kept sealed inside the safe — Cash disappearing from the safe — Inference is that the accused was party or privy to the extraction of cash from the safe*

Accused was in possession of the keys of the safe, including the keys of the inner drawers of the safe. At least the two keys of the outer lock of the safe were all along with him. Even if someone else was in possession of the keys of the inner drawer he could not open the safe unless the keys of the outer door were made over to him by the accused. Accused's liability as cashier to account for the contents of the safe cannot be disputed. Therefore, the accused was either a party or privy to the extraction of the cash from the safe. In the absence of evidence that he parted with the safe between the period when the cash was last checked and when the loss was detected the accused was under a duty to account for the contents of the safe including the cash. Charge under S. 409 is, therefore, duly brought home to the accused. *Surendra Prasad Verma* v. *State of Bihar*, (1972) 3 SCC 656: 1972 SCC (Cri) 700: AIR 1973 SC 488: 1972 Cri LJ 1202.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **G.K. Mitter** , JJ. [Date of decision: 25-4-1972]

[10006] — Ss. 405 and 409 — Misappropriation by partner covered. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1837: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das, K. Subba Rao* and **Raghubar Dayal** , JJ. [Date of decision: 5-4-1962]

Queen v. Okhoy Coomar Shaw, 21 Suth WR Cr 59: 13 Beng LR (FB) 307, approved

[10007] — Ss. 406 and 34 — Wrongful withholding of company quarters — Criminal complaint for — Maintainability — Authorisation for filing complaint — Bona fides of — Eviction-directed — *Manager, having been authorised by company resolution and power of attorney, filing complaint against retired employee for wrongfully occupying company quarters — Though power of attorney was executed prior to purchase of stamp papers, it was notarised on a date subsequent to execution and purchase of stamp papers — Trial court by wrongly reading rubber stamp date of notarisation as being prior to date of purchase of stamp papers, holding power of attorney as fictitious and therefore, dismissing complaint — Criminal complaint, held, was maintainable and cognizance was rightly taken — Said documents cannot be termed as fictitious or manufactured so as to oust the appellant from the arena of justice — Stamp Act, 1899, S. 17 — Powers of Attorney Act, 1882, Ss. 2 and 4 — Companies Act, 1956, Ss. 630 and 621. Automobile Products India Ltd.* v. *Das John Peter,* (2010) 12 SCC 593: (2010) 158 Comp Cas 69: (2010) 93 AIC 214 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Deepak Verma** , JJ. [Date of decision: 20-7-2010]

[10008] — Ss. 406 and 420 — Supply of goods on credit — *Failure to pay on due date held not covered. A.L. Panian* v. *State of A.P.*, 1990 Supp SCC 607: 1991 SCC (Cri) 84.

Bench Strength **3**. Coram: *A.M. Ahmadi, V. Ramaswami* and *K. Jayachandra Reddy*, JJ. [Date of decision: 12-7-1990]

[10009] — Ss. 406/120-B — Quashment — Relevant considerations — Preventing abuse of process of court or securing ends of justice — Nature of dispute — Quashment of proceedings relating to TDS — *Where proceeding is of civil nature which cannot be adjudicated by criminal court, High Court would be justified in exercising its inherent jurisdiction and quashing the same — High Court erred in refusing to exercise its jurisdiction under S. 482 and passing a cryptic order without assigning any reasons therefor when complaint did not disclose any offence of criminal nature — In face of assertion made by appellants that deduction towards income tax were made from salaries of all employees liable to pay the same in view of statutory provisions of IT Act, appropriate remedy for respondent was to approach authority/officer concerned — Moreover, report of SI had indicated that matter in issue was civil in nature — Proceedings against appellants quashed — IT Act, 1961, Ss. 192, 200, 206, 271-C, 276-B & 276-BB — CrPC, 1973, S. 482*

A private complaint was filed by the respondent before ACJM under Sections 461/468/406 read with Section 120-B IPC against the appellants alleging discrimination by unduly deducting Rs 1640 p.m. from the monthly salary as income tax and a further wrongful deduction of Rs 3050 on account of cooperative loan issued by the appellants/Company. It was also stated in the complaint that the amount so deducted was not deposited with the Income Tax Authority and should be refunded back. The ACJM directed SI to conduct an inquiry into the allegations made in the complaint. On 30-4-2004, the appellants informed that the amount of income tax deducted in consonance with Section 192 of the Income Tax Act being deposited in due course as tax to the credit of the respondent employee in terms of Section 199 of the Income Tax Act as uniformly done in respect of every employee and also produced Form 16 of the respondent for the period from 1-4-2003 to 31-3-2004. The report submitted by SI showed that complaint in issue was civil in nature. However, JM issued summons against the appellants for an offence under Sections 406/120-B of the Penal Code. In response to the summons, the appellants made an application under Section 205 of the Code before the Judicial Magistrate which was rejected. Subsequently, vide order dated 12-9-2005, the Judicial Magistrate issued warrant of arrest against the appellants.

The appellant's application under Section 482 CrPC for quashing the complaint and order dated 12-9-2005 was dismissed by the impugned judgment. Hence, the present appeal.

Allowing the appeal,

Held :

In the complaint, the respondent mentioned about the filing of a writ petition in 1991 before the High Court of Calcutta and the order passed therein in 2003. He also referred to his contempt petition before the High Court. He alleged that due to the direction of the High Court, which was issued at his instance, the officers entered into a criminal conspiracy and with a view to pressurise him for withdrawing the said contempt, started threatening him and illegally deducting Rs 1640 per month from his monthly salary as income tax though he did not fall within taxable income category. It was also pointed out that a sum of Rs 3050 had been deducted from his salary illegally on account of cooperative loan although, in the previous month, the deduction was only to the extent of Rs 50. (Paras 10 to 13)

(4)(v) Misappropriation, use, disposal, etc. *(contd.)*

A perusal of Sections 192, 200, 206, 271, 276-B and 276-BB of the Income Tax Act, makes it clear that it is obligatory on the part of the persons responsible for paying any income chargeable under the head "salaries", at the time of payment, to deduct income tax computed on the basis of the rates in force for the financial year on the estimated income of the assessee and pay the same to the authority concerned. They also make it clear that on failure to deduct tax at source they shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such persons failed to deduct or pay. They also show that failure to pay tax to the credit of the Central Government in certain cases or pay the tax collected at source under Section 276-BB shall be punishable with imprisonment. (Para 23)

In the case on hand, it is the categorical stand of the appellant management that the amount of tax that has been deducted from the respondent's salary as TDS under the head "salaries" in terms of Section 192 is uniformly done in respect of each and every employee of the Company and the amount so deducted is deposited to the credit of the employees including the respondent in terms of Section 199. They also produced a copy of Form 16 being the certificate under Section 203 of the Income Tax Act, 1961 for the tax deducted at source from the income of the respondent. (Para 24)

The JM had forwarded the complaint to SI for conducting an inquiry who had concluded that "the matter is civil in nature" and forwarded the same to the Additional CJM with a request to clarify the same. In spite of that the ACJM after recording stand of complainant had found that there was sufficient ground for proceeding against accused. It is not clear on what grounds ACJM had found so. From the materials placed, particularly, the contents of the complaint, relevant statutory provisions of the Income Tax Act, report of the SI, the complaint does not disclose any case to proceed against the accused persons as arrived at by the Additional CJM. Even if the respondent had some grievance with the appellants about non-promotion, direction of the High Court, pendency of contempt, etc. it is not a case for criminal prosecution. If he is very much interested to vindicate his grievance, the respondent could have very well approached the officer concerned of IISCO or the Income Tax Authority concerned. Though in the complaint, it is stated that the respondent had sent a notice under registered post with acknowledgment due on 17-11-2003, admittedly, no such proof had been placed before the Court. In fact, the appellants stoutly denied the receipt of such a notice. (Paras 26 and 27)

In spite of all the details and materials since the Additional CJM issued summons, the appellants approached the High Court under Section 482 of the Code for quashing the same. The High Court, by the impugned order, without adverting to any of the abovementioned relevant materials passed a cryptic order refusing to exercise its inherent jurisdiction which is unsustainable in law. (Para 28). *Rajeswar Tiwari* v. *Nanda Kishore Roy*, (2010) 8 SCC 442: (2010) 3 SCC (Cri) 915.

Bench Strength **2**. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 19-8-2010]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Sardar Trilok Singh v. Satya Deo Tripathi, (1979) 4 SCC 396: 1979 SCC (Cri) 987; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, considered and relied on

[10010] — S. 409 — Misappropriation — *Appellant, in charge of Mayor's Relief Fund, preparing cheque for payment of dues to a contractor of the Municipal Corporation, but instead of delivering it to the contractor, getting it encashed through peon — Peon informing the Mayor that he had encashed the cheque and paid the amount to the appellant — But appellant keeping quiet on this before the Mayor and later giving a written undertaking to the Mayor that he would make good the amount — On the basis of this evidence courts below finding the appellant guilty of misappropriation — In the circumstances conviction under S. 409 upheld. Vijay Digambar Lanjekar* v. *State of Maharashtra*, 1991 Supp (2) SCC 8: 1991 SCC (Cri) 841.

Bench Strength **3**. Coram: *A.M. Ahmadi*, *V. Ramaswami* and *M. Fathima Beevi*, JJ. [Date of decision: 19-2-1991]

[10011] — S. 409 — Misappropriation — Proof of — Prosecution not obliged to prove precise mode of conversion or misappropriation etc. — *Entrustment and failure to account for the property entrusted proved — Dishonest misappropriation or conversion can be inferred*

Direct evidence to establish misappropriation of the cloth cover which the appellants had dominion is undoubtedly lacking, but to establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made. *Jaikrishnadas Manohardas Desai* v. *State of Bombay*, AIR 1960 SC 889: (1960) 3 SCR 319: 1960 Cri LJ 1250.

Bench Strength **3**. Coram: *Syed Jafer Imam, K.N. Wanchoo* and **J.C. Shah** , JJ. [Date of decision: 16-3-1960]

See also AIR 1959 SC 1390: 1959 Cri LJ 1508

[10012] — Ss. 409, 109 and 14 — Misappropriation — What is — Effect of Expiry of limitation period — *Bars only remedy of suit, appeal or application but does not extinguish right to which the remedy relates — Hence, Bank's right to the debt continued to exist even thereafter which it could enforce by adjusting and appropriating the amount due from the proceeds of the FDR in terms of the security bond executed by the guarantor — Where Bank gave loan to principal debtor on pledging of FDR by guarantor by way of security but principal debtor defaulted in repayment of the loan and suit for recovery of the debt, having not been filed by the Bank within the limitation period, it became barred, held, Bank's right to the debt continued to exist even thereafter which it could enforce by adjusting and appropriating the amount due from the proceeds of the FDR in terms of the security bond executed by the guarantor — Such action in terms of the contract not open to challenge on ground of criminal breach of trust — Hence complaint made by the guarantor alleging commission of offence under Ss. 409, 109 and 114 IPC was frivolous — Contract Act, 1872, S. 128 — Limitation Act, 1963 — S. 3*

The first appellant Bank's branch gave a loan to a person. The respondent and his wife stood as guarantors, executed a 'security bond' and handed over a Fixed Deposit Receipt to the Bank. The security bond inter alia provided: "We authorise you and confirm that the F.D.R. pledged as security for the said loan shall also be security including the surplus proceeds thereof for any other liability and the obligation of person and further in favour of the bank and the bank shall be entitled to retain/realise/utilise/appropriate the same without reference to us." The principal debtor did not repay the debt. The bank as creditor adjusted on maturity of the F.D.R., the outstanding debt due to the bank in terms of the contract and the balance sum was credited to the Savings Bank account of the respondent in terms of the security bond. The respondent lodged a complaint against the Bank impleading the Chairman, the Managing Director of the Bank by name and a host of officers, alleging that the debt became barred by limitation but the first appellant with a dishonest interest to save himself from the financial obligation neglected to recover the amount from the principal debtor and allowed the claim to be barred by limitation and embezzled the amount entrusted by the respondent and that appellants 2 to 6 abetted commission of the crime by converting the amount adjusted from his F.D.R. account to their own use in violation of specific violation of the respondent thereby committing offences under Ss. 409, 109 and 114 IPC. The Magistrate without adverting whether the allegation in the complaint prima facie makes out an offence charged for, in a mechanical manner issued the process against the appellants. The High Court declined to quash the complaint on the finding that the Bank acted prima facie high handedly. Allowing the appeal and quashing the complaint

Held :

The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act only bars the remedy, but does not destroy the right which the remedy relates to. Though the right to enforce the debt by judicial process is barred under S. 3 read with the relevant article in the schedule, the right to debt remains. The time barred debt does not cease to exist by reason of S. 3. Only exception in which the remedy also becomes barred by limitation is that the right itself is destroyed. For example under S. 27 of the Act a suit for possession of any property becoming barred by limitation, the right to property itself is destroyed. Except in such cases which are specially provided under the right to which remedy relates in other case the right subsists so long the debt is not repaid. That right can be exercised in any other manner than by means of a suit. It is not obligatory to file a suit to recover the debt. The creditor when he is in possession of an adequate security, could adjust the time barred debt due from the security in his possession and custody and credit the balance amount to the savings bank account of the respondent. Thereby the appellant did not act in violation of any law, nor converted the amount entrusted to them dishonestly for any purpose. Action in terms of the contract expressly or implied is a negation of criminal breach of trust defined in S. 405 and punishable under S. 409 IPC. It is neither dishonest, nor misappropriation. The bank had in its possession the fixed deposit receipt as guarantee for due payment of the debt and the bank appropriated the amount towards the debt due and payable by the principal debtor. Further, the F.D.R. was not entrusted during the course of the business of the first appellant as a Banker of the respondent but in the capacity as guarantor. The complaint does not make out any case much less prima facie case, a condition precedent to set criminal law in motion. *Punjab National Bank* v. *Surendra Prasad Sinha*, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149: AIR 1992 SC 1815: (1993) 1 An WR 104 (SC).

Bench Strength **2**. Coram: **K. Ramaswamy** and *B.P. Jeevan Reddy*, JJ. [Date of decision: 20-4-1992]

(vi) Temporary deprivation or retention of property/Suffering of loss

[10013] — S. 405 — Dishonest use or disposal — *A deprivation even for a short period is within the meaning of the section. Jaswantrai Manilal Akhaney* v. *State of Bombay*, AIR 1956 SC 575: 1956 SCR 483: 26 Comp Cas 340: 1956 Cri LJ 1116, 1124: (1956) 2 MLJ (SC) 49.

Bench Strength **3**. Coram: *Vivian Bose*, *B. Jagannadhadas* and **B.P. Sinha** , JJ. [Date of decision: 4-5-1956]

[10014] — S. 405 — Misappropriation even if temporary, held, also constitutes criminal breach of trust

An act of breach of trust simpliciter involves civil wrong of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well. Breach of trust simpliciter is not an offence as it is not associated with an intention which is dishonest. The term dishonestly defined in Section 24 IPC means doing anything with the intention of causing wrongful gain to one person or wrongful loss to another. So the offence is completed when misappropriation of the property has been made dishonestly. Even temporary misappropriation falls within the ambit of the said offence. (Paras 155 and 157)

Accused 6 parted with money of NHB which was entrusted to him so that Harshad Mehta could get it although not entitled therefor in law. The conduct of Accused 6 was therefore dishonest. He is guilty of the offence of criminal breach of trust. With regard to Accused 7, there is not enough evidence to show his involvement in the said transactions. So far as the involvement of Accused 1 to 3 is concerned, they also played an important role in diverting call money from NHB which was meant for UCO Bank to the account of Harshad Mehta. As soon as the cheque for Rs 40 crores was received by UCO Bank, the amount stood entrusted to the officials of UCO Bank. However, Accused 1 to 3 in violation of law and in the absence of any contract, permitted the amount to be transferred to the account of Harshad Mehta who was not entitled to it. Therefore, the offence of criminal breach of trust stands proved against them also. (Para 158). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

Ram Narayan Popli v. CBI, (2003) 3 SCC 641: 2003 SCC (Cri) 869; S.W. Palanikar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129; Kartikeswar Nayak v. State, 1996 Cri LJ 2253 (Ori), relied on

[10015] — Ss. 405 and 409 — Suffering of loss not essential for conviction

The officials of UCO Bank and National Housing Bank who helped Harshad Mehta (since deceased) in siphoning off public money of Rs 40 crores were also charged for criminal breach of trust, apart from being charged for criminal conspiracy.

Held :

It is not the law that complaint petition under all circumstances must be made by banks and financial institutions whose money had been the subject-matter of offence. It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction. Criminal law can be set in motion by anybody. The prosecution was initiated on the basis of information received by Central Bureau of Investigation (CBI). CBI is entitled to do so not only in regard to its statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by the Janakiraman Committee. The money involved in transfer is public money belonging to public sector banks. If transaction was illegal, as a result whereof, a private person, who was not expected to reap fruits of "call money" was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to have been committed. It is for the same reason the submission that as nobody ultimately suffered any loss, an offence under Section

409 of the Penal Code was not made out, cannot be accepted. A bank or financial institution may not suffer ultimate loss but if money has been allowed to be used by another person illegally for illegal purpose, ingredients of Section 405 of the Penal Code would get attracted. A case involving temporary embezzlement also attracts ingredients of Section 405 of the Penal Code. (Paras 150, 152 and 153)

When a person allows others to misappropriate property entrusted to him, that also amounts to criminal breach of trust. In the present case, amount of Rs 40 crores was entrusted to Accused 6 to be dealt with in accordance with the provisions of the National Housing Bank Act, 1987. The Act does not permit grant of loan to an individual. Accused 6 in violation of the law handed over the amount to UCO Bank with full knowledge that the amount would be credited to the account of Harshad Mehta. The call money transaction with UCO Bank was only a cover-up. The property which was trusted to Accused 6 was misappropriated by him. The most essential ingredient of criminal breach of trust is misappropriation with dishonest intention. (Para 154). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[10016] — **S. 409 — Conviction of cashier for temporary retention of provident fund money meant to be disbursed** — *On the peculiar facts of the case sentence reduced but fine maintained — Appellant directed to execute bond for good behaviour — Prevention of Corruption Act, 1947 — Ss. 5(1)(c) and 5(2). S. Natarajan* v. *State of Mysore*, (1979) 4 SCC 542: 1979 SCC (Cri) 918: AIR 1980 SC 639: 1980 Cri LJ 447.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision: 23-1-1979]

[10017] — **S. 409 — Public servant after detection depositing the misappropriated sum in the treasury** — *Held, would not absolve him of the offence already committed by putting the money to personal use instead of depositing it — No interference with the conviction therefore called for. Vishwa Nath* v. *State of J&K*, (1983) 1 SCC 215: 1983 SCC (Cri) 173: AIR 1983 SC 174: 1983 Cri LJ 231.

Bench Strength **2**. Coram: *R.S. Pathak* and **A.N. Sen**, JJ. [Date of decision: 5-1-1983]

[10018] — **Ss. 409, 405 and 24 — Criminal breach of trust — Making available public money by bank officials to a private party contrary to statutory provisions and departmental instructions — Dishonest intention evident from facts and circumstances of the case** — *Held, amounted to criminal breach of trust even if the money was subsequently recovered and banks did not suffer any monetary loss — Further held, banks officials were criminally liable even if no departmental action had been taken against them — It also did not matter that prosecution was launched by CBI instead of banks themselves — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946)*

The officials of UCO Bank and National Housing Bank who helped Harshad Mehta (since deceased) in siphoning off public money of Rs 40 crores were also charged for criminal breach of trust, apart from being charged for criminal conspiracy.

Held :

It is not the law that complaint petition under all circumstances must be made by banks and financial institutions whose money had been the subject-matter of offence. It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction. Criminal law can be set in motion by anybody. The prosecution was initiated on the basis of information received by Central Bureau of Investigation (CBI). CBI is entitled to do so not only in regard to its statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by the Janakiraman Committee. The money involved in transfer is public money belonging to public sector banks. If transaction was illegal, as a result whereof, a private person, who was not expected to reap fruits of "call money" was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to have been committed. It is for the same reason the submission that as nobody ultimately suffered any loss, an offence under Section 409 of the Penal Code was not made out, cannot be accepted. A bank or financial institution may not suffer ultimate loss but if money has been allowed to be used by another person illegally for illegal purpose, ingredients of Section 405 of the Penal Code would get attracted. A case involving temporary embezzlement also attracts ingredients of Section 405 of the Penal Code. (Paras 150, 152 and 153)

When a person allows others to misappropriate property entrusted to him, that also amounts to criminal breach of trust. In the present case, amount of Rs 40 crores was entrusted to Accused 6 to be dealt with in accordance with the provisions of the

(4)(vi) Temporary deprivation or retention of property/ Suffering of loss *(contd.)*

National Housing Bank Act, 1987. The Act does not permit grant of loan to an individual. Accused 6 in violation of the law handed over the amount to UCO Bank with full knowledge that the amount would be credited to the account of Harshad Mehta. The call money transaction with UCO Bank was only a cover-up. The property which was trusted to Accused 6 was misappropriated by him. The most essential ingredient of criminal breach of trust is misappropriation with dishonest intention. (Para 154). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[10019] — Ss. 409, 405, 403, Explns. 1 and 21 — Criminal breach of trust by public servant — Temporary misappropriation of public money — *Failure to utilise travelling allowance (TA) and daily allowance (DA) for the purpose for which it was given to a public servant — Appellant, a dog handler in a Dog Squad Team in police, drawing an amount of Rs 12,000 on 4-6-1998 as TA/DA to be utilised by him and other dog handlers for dogs' training commencing from 5-6-1998 — He was on leave from 5-6-1998 to 14-6-1998 but on expiry of leave, appellant not attending training and remaining absent unauthorisedly till 14-7-1998 — During his unauthorised absence, appellant went to his native place and returning the amount on coming back — Trial court convicting appellant under S. 409 — His appeal and criminal revision both dismissed — Sustainability — Appellant had taken money for a particular purpose but did not utilise it for that purpose — Hence, held, there was no scope for interference* (Para 6). *Shabbir Ahmed Sherkhan* v. *State of Maharashtra*, (2009) 5 SCC 22: (2009) 1 SCC (L&S) 1016: (2009) 2 SCC (Cri) 607.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 20-3-2009]

(vii) Violation of direction of law or express or implied legal contract

[10020] — Ss. 405 and 409 — Action in terms of any contract express or implied is not covered — *So action taken by bank authorities in terms of a security bond executed by guarantor for recovery of outstanding debt would not constitute criminal breach of trust. Punjab National Bank* v. *Surendra Prasad Sinha*, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149: AIR 1992 SC 1815: (1993) 1 An WR 104 (SC).

Bench Strength **2**. Coram: **K. Ramaswamy** and *B.P. Jeevan Reddy*, JJ. [Date of decision: 20-4-1992]

[10021] — Ss. 405 and 409 — Criminal breach of trust — Ingredients — Dishonest use or disposal of property in violation of direction of law — *The expression "direction of law", held, even if given literal meaning, includes direction issued by authorities in exercise of their statutory power as also power of supervision — Failure on the part of bank officials to follow instructions issued by RBI and provisions of a departmental manual, held, was violation of direction of law, resulting in criminal breach of trust — UCO Bank Manual of Instructions on Bill Discounting, Para 2.5(b) — RBI Circular* (Para 100). *Sudhir Shantilal Mehta* v. *CBI*, (2009) 8 SCC 1: (2009) 3 SCC (Cri) 646.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[10022] — Ss. 405 and 409 — Criminal breach of trust — Misuse of funds by bank officials in violation of banking practices and/or departmental instructions — Whether a criminal breach of trust — *Terms of S. 405, held, are very wide — It applies to one who is in any manner entrusted with property or dominion over property — S. 405 does not require that trust should be in furtherance of a lawful object — The expression "direction of law" in S. 405, held, includes banking norms, banking practices and directions given in internal departmental instructions of a bank — Held on facts, bank officials who allowed advance credits on banker's cheques to a customer in violation of departmental instructions, acted in violation of direction of law — The officials had dominion over money belonging to Bank and they dishonestly used that money for conferring benefit on the customer — The officials were therefore guilty of offence under S. 409*

Terms of Section 405 IPC are very wide. It applies to one who is in any manner entrusted with property or dominion over property. The section does not require that trust should be in furtherance of any lawful object. (Para 168)

An officer of a bank holds a position of trust. Each one of them, keeping in view the nature and extent of duties required to be performed, is expected to do so not only in terms of statutory directions but also the directions issued by Reserve Bank of India and his own employer. Documents for the purpose of giving credit in the account of a customer would indisputably be required to be prepared on the basis of cheque receipts. It cannot be prepared in anticipation of receipt of a cheque; firstly, because the amount of cheque, the name of drawee and other particulars would not be known to them; secondly, the bank is required to maintain a large number of registers to put in place a sound banking system. All precautions must be taken to prevent a fraud or deceit on the part of a customer. Therefore, the fact that credit and debit vouchers were prepared and other registers were filled up, although the cheques were not in physical possession of the Bank, establishes existence of a criminal conspiracy between ultimate beneficiary, on the one hand, and some of the officers of the Bank, on the other. A debit or credit voucher furthermore is not prepared in piecemeal or in instalments. Bank officers are not supposed to know the immediate requirement of an account-holder. (Para 147)

The offences relating to criminal breach of trust stands established against A-1, A-2 and A-4. They were officers in Funds Department of Andhra Bank. In that capacity, they had been entrusted with the funds of the Bank. In that sense, they had dominion over a thing. The money which was transferred to A-3's account, was the money belonging to the Bank. Only the said accused had the power to transfer it to the account of A-3. The same has been done dishonestly to cause wrongful gain to A-3 and in the process wrongful loss has been caused to the Bank. (Para 173)

The instruments based on which the funds of Andhra Bank were transferred to A-3's account were not physically available with Andhra Bank at the time the accused persons authorised transfer of bank funds to A-3's account. A-3 also utilised the said credit given and accordingly even cheques issued by him were honoured. Had it not been for the credits given on relevant dates, his account would have been overdrawn. Interest was also not charged from A-3 and was not debited to his account and loss was therefore caused to the Bank. (Para 174)

Guidelines for banker's cheques were issued by Head Office. They were issued for the purpose of operation of security transaction at Fort Branch, Bombay of Andhra Bank. The guidelines moreover specify that permission had been granted to A-3 for the purpose of securities transactions. Therefore, these directions were obviously binding on the persons who were working in the Funds Department. These guidelines were exclusively meant for Funds Department for handling securities transactions, and there was no other department or branch of Andhra Bank anywhere in India which was handling such securities transactions. As such, they were binding on the accused persons. (Para 44)

Banking norms and established practices and procedures contain directions of law, prescribing the mode in which trust is to be discharged. The expression "direction of law" in the context of Sections 405 and 409 would include not only legislations pure and simple but directions also, instruments and circulars issued by an authority entitled therefor. The trust in this regard would therefore have to be discharged in terms of such directions. Acting in violation thereof causing wrongful gain to A-3 and loss to the Bank would bring the action within Section 409 IPC. (Para 175)

Established banking norms are binding on an officer of the bank in the matter of discharge of trust i.e. in dealing with the money entrusted to him. He is required to follow the same and that would be an implied term of his contract of service as an officer of the bank. The accused acted in breach of the same. Prosecution has sufficiently proved involvement of A-1, A-2 and A-4 as regards the offence of criminal breach of trust. (Para 176). *Mir Nagvi Askari* v. *CBI*, (2009) 15 SCC 643.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

R. Venkatakrishnan v. CBI, (2009) 11 SCC 737; Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507; State of Punjab v. Pritam Chand, (2009) 16 SCC 769; Sharon Michael v. State of T.N., (2009) 3 SCC 375: (2009) 2 SCC (Cri) 103, relied on

[10023] — Ss. 405 and 415 & 417 — Misuse of facility of payment by instalments granted by High Court — Criminal breach of trust or cheating — *Certain criminal proceedings directed to be initiated by High Court against appellant for acts of cheating and criminal breach of trust, not interfered with*

Appellant 1 had a loan sanctioned in his favour from the respondent Bank. Appellant 2 stood surety for the loan. Appellant 1 borrowed amounts in pursuance of the loan facility. Appellant 1 committed defaults in repayment. Therefore, the respondent Bank seized the premises of the Appellant 1. A public notice for sale of the assets was issued. Appellant 1 filed a writ petition challenging the action of seizure and sale. That writ petition was dismissed and the LPA against that order was also dismissed. But while dismissing the LPA the High Court inter alia directed recovery of debt in instalments on the basis of a statement at the Bar on behalf of the appellant that it would liquidate all the debts of the Bank in instalments within a period of one-and-a-half years in four equal instalments. Appellant 1 filed a special leave petition against this order which came to be dismissed.

The respondent then filed a contempt petition alleging breach of the above directions. The High Court, in the impugned judgment, took note of the fact that, having got the relief of payment of the outstanding debts in instalments from the Court

(4)(vii) Violation of direction of law or express or implied legal contract *(contd.)*

Appellant 1 in connivance with Appellant 2 and other relatives had disposed of almost all the available assets. The High Court then held that the above disclosed not only an act of wilful disobedience of the undertaking but also serious offences of criminal breach of trust and cheating the Bank of public money, and the circumstances did indicate involvement of the then Branch Manager of the Bank. That it is was a fit case for lodgment of a criminal case with CID against the abovenamed two contemnors and others who were involved in the act of cheating and criminal breach of trust and other offences.

The appellants were before the Supreme Court thereagainst by special leave.

Disposing of the appeal in the terms below,

Held :

It is found that no undertaking was given by the appellant either on the date the direction for payment in instalments was given or on a subsequent date. The directions to pay by instalments can at best be treated as a decree. Therefore the contempt proceedings were not the correct remedy. Hence the impugned order is set aside to the extent that it punishes the appellants for contempt and sentences them as stated above. However, it is held that by consent of parties an executable decree was passed in favour of the respondent Bank. The remedy of enforcing the decree can only be by way of execution proceedings. Therefore it will be open to the respondent to take out execution proceedings. (Paras 6 and 7)

However, the facts set out in the impugned order do prima facie indicate that the appellants have misused the facility of payment by instalments granted by the High Court. Whether they committed acts of cheating and criminal breach of trust are matters which must be decided in criminal proceedings. The High Court has directed the Inspector General of Police to file a case. There is no reason to interfere with those directions. Therefore, to that extent, the order of the High Court will stand confirmed. The case registered by the Inspector General of Police shall now proceed. (Para 8). *Anil K. Surana* v. *State Bank of Hyderabad*, (2007) 10 SCC 257: (2007) 3 SCC (Cri) 638.

Bench Strength 2. Coram: *S.N. Variava* and *H.K. Sema*, JJ. [Date of decision: 7-10-2003]

[10024] — Ss. 406/420/120-B and 379 — Held, on facts, offences not made out against financiers in hire-purchase agreement — Recovery of possession of goods by owner-financier as per terms of the hire-purchase agreement, does not amount to a criminal offence — *Such an agreement is an executory contract of sale, conferring no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled — Held, on facts, where respondent hirer had defaulted in instalment payments of motor vehicle and agreement specifically provided that appellant financiers were entitled to repossess the vehicle in case of default and their agents were authorised to enter any premises for the purpose, and appellants had actually recovered possession of the vehicle, no offence was made out against the appellants — High Court erred in dismissing their petition under S. 482 CrPC challenging issue of summons on complaint filed under Ss. 406/420/120-B and 379 IPC — Hire Purchase Act, 1972, Ss. 8 and 20 — CrPC, 1973, S. 482*

The respondent *S*, entered into a hire-purchase agreement dated 3-5-1994 with the appellants, owners of a non-banking financial institution, in respect of a motor vehicle. Rs 3,02,884 was the total consideration agreed to be paid for the vehicle; *S* initially paid Rs 69,308 and agreed to pay the balance in 36 monthly instalments of Rs 8400 each. A dispute developed at some stage and on 3-12-1998 *S* filed a criminal complaint alleging that during the night of 16-9-1996, when the vehicle had been in the custody of a motor mechanic, the appellants had taken it away; they had thus committed offences under Sections 406/420/120-B IPC. Cognizance was taken by the Magistrate and summons issued to the appellants.

The appellants filed a petition under Section 482 CrPC before the High Court seeking to have the proceedings quashed. They averred in the petition that *S* had defaulted in making the instalment payments, that as of 1-9-1996 the outstanding amount was Rs 1,34,887; they had therefore been obliged to terminate the hire-purchase agreement. They also stated that *S* surrendered the vehicle to them. The High Court, however, dismissed the petition under Section 482 CrPC holding that it was possible to make out offences, particularly under Section 379 IPC, on the basis of the allegations in the complaint.

In appeal before the Supreme Court, it was submitted on behalf of the appellant financiers that in recovering possession of the vehicle, they had only exercised their right under the hire-purchase agreement as owners of the vehicle; that no offence could be made out from the allegations in the complaint. The agreement, which was produced in court, contained a clear provision that the appellants could repossess the vehicle in case of default by the hirer-purchaser; the appellants or their agents were also entitled to enter any premises for the purpose of inspection or of repossession and were specifically exempted from civil or criminal liability at the instance of the hirer.

Allowing the appeal,

Held :

Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But as hire-purchase schemes gained in popularity, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into the picture. The finance company would buy the goods from the dealer and let them to the customer under hire-purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire-purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference between the cash price and the hire-purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments. (Para 5)

In the present case agreement executed by the parties is to the effect that the hirer would not become the owner of the property until he pays the entire instalments. (Para 10)

The whole case put forward by the respondent complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken repossession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to repossess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating. (Para 11)

The plea that the appellants have committed theft is without any basis as the appellants have taken repossession of the vehicle in exercise of their right under the agreement. There may be instances where the owner of the goods may commit theft of his own goods as indicated in Illustration (*k*) of Section 378 IPC. But in the instant case, the owner repossessing the vehicle delivered to the hirer under the hire-purchase agreement will not amount to theft as the vital element of "dishonest intention" is lacking. The element of "dishonest intention" which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. (Paras 12 and 13)

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. (Para 17)

In the present case the agreement specifically gave authority to the appellants to repossess the vehicle and their agents to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. (Para 17). *Charanjit Singh Chadha* v. *Sudhir Mehra*, (2001) 7 SCC 417: 2001 SCC (Cri) 1557: AIR 2001 SC 3721.

Bench Strength 2. Coram: *K.T. Thomas* and **K.G. Balakrishnan** , JJ. [Date of decision: 31-8-2001]

R.M. Goode: Hire Purchase Law & Practice, 2nd Edn., p. 846; Sardar Trilok Singh v. Satya Deo Tripathi, (1979) 4 SCC 396: 1979 SCC (Cri) 987; K.A. Mathai v. Kora Bibbikutty, (1996) 7 SCC 212: 1996 SCC (Cri) 281, relied on

[10025] — Ss. 408 and 405 — Criminal breach of trust — What constitutes — Bus conductor — Ticketless travel — *Conductor of State Road Transport Corporation found by inspection team to be carrying several passengers (35 in this case) without ticket even after realising fare from them — Moreover, he obstructing the checking process by threatening and abusing the authorities — Such acts on his part, held, constituted misconduct of serious nature* (Para 6). *U.P. SRTC* v. *Ram Kishan Arora*, (2007) 4 SCC 627: (2007) 2 SCC (L&S) 64: (2007) 3 LLJ 171: (2007) 3 LLN 616: (2007) 3 CLR 347.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 9-5-2007]

(4)(vii) Violation of direction of law or express or implied legal contract *(contd.)*

[10026] — Ss. 409, 109 and 14 — Misappropriation — What is — Effect of Expiry of limitation period — Bars only remedy of suit, appeal or application but does not extinguish right to which the remedy relates — *Hence, Bank's right to the debt continued to exist even thereafter which it could enforce by adjusting and appropriating the amount due from the proceeds of the FDR in terms of the security bond executed by the guarantor — Where Bank gave loan to principal debtor on pledging of FDR by guarantor by way of security but principal debtor defaulted in repayment of the loan and suit for recovery of the debt, having not been filed by the Bank within the limitation period, it became barred, held, Bank's right to the debt continued to exist even thereafter which it could enforce by adjusting and appropriating the amount due from the proceeds of the FDR in terms of the security bond executed by the guarantor — Such action in terms of the contract not open to challenge on ground of criminal breach of trust — Hence complaint made by the guarantor alleging commission of offence under Ss. 409, 109 and 114 IPC was frivolous — Contract Act, 1872, S. 128 — Limitation Act, 1963 — S. 3*

The first appellant Bank's branch gave a loan to a person. The respondent and his wife stood as guarantors, executed a 'security bond' and handed over a Fixed Deposit Receipt to the Bank. The security bond inter alia provided: "We authorise you and confirm that the F.D.R. pledged as security for the said loan shall also be security including the surplus proceeds thereof for any other liability and the obligation of person and further in favour of the bank and the bank shall be entitled to retain/realise/utilise/appropriate the same without reference to us." The principal debtor did not repay the debt. The bank as creditor adjusted on maturity of the F.D.R., the outstanding debt due to the bank in terms of the contract and the balance sum was credited to the Savings Bank account of the respondent in terms of the security bond. The respondent lodged a complaint against the Bank impleading the Chairman, the Managing Director of the Bank by name and a host of officers, alleging that the debt became barred by limitation but the first appellant with a dishonest interest to save himself from the financial obligation neglected to recover the amount from the principal debtor and allowed the claim to be barred by limitation and embezzled the amount entrusted by the respondent and that appellants 2 to 6 abetted commission of the crime by converting the amount adjusted from his F.D.R. account to their own use in violation of specific violation of the respondent thereby committing offences under Ss. 409, 109 and 114 IPC. The Magistrate without adverting whether the allegation in the complaint prima facie makes out an offence charged for, in a mechanical manner issued the process against the appellants. The High Court declined to quash the complaint on the finding that the Bank acted prima facie high handedly. Allowing the appeal and quashing the complaint

Held :

The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act only bars the remedy, but does not destroy the right which the remedy relates to. Though the right to enforce the debt by judicial process is barred under S. 3 read with the relevant article in the schedule, the right to debt remains. The time barred debt does not cease to exist by reason of S. 3. Only exception in which the remedy also becomes barred by limitation is that the right itself is destroyed. For example under S. 27 of the Act a suit for possession of any property becoming barred by limitation, the right to property itself is destroyed. Except in such cases which are specially provided under the right to which remedy relates in other case the right subsists so long the debt is not repaid. That right can be exercised in any other manner than by means of a suit. It is not obligatory to file a suit to recover the debt. The creditor when he is in possession of an adequate security, could adjust the time barred debt due from the security in his possession and custody and credit the balance amount to the savings bank account of the respondent. Thereby the appellant did not act in violation of any law, nor converted the amount entrusted to them dishonestly for any purpose. Action in terms of the contract expressly or implied is a negation of criminal breach of trust defined in S. 405 and punishable under S. 409 IPC. It is neither dishonest, nor misappropriation. The bank had in its possession the fixed deposit receipt as guarantee for due payment of the debt and the bank appropriated the amount towards the debt due and payable by the principal debtor. Further, the F.D.R. was not entrusted during the course of the business of the first appellant as a Banker of the respondent but in the capacity as guarantor. The complaint does not make out any case much less prima facie case, a condition precedent to set criminal law in motion. *Punjab National Bank* v. *Surendra Prasad Sinha*, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149: AIR 1992 SC 1815: (1993) 1 An WR 104 (SC).

Bench Strength **2**. Coram: **K. Ramaswamy** and *B.P. Jeevan Reddy*, JJ. [Date of decision: 20-4-1992]

(viii) Wilfully suffers another to commit criminal breach of trust

[10027] — Ss. 405 and 409 — "Allowing", "dominion", "entrustment" — *Prevention of Corruption Act, 1947, S. 5(1)(c) & (2)*

By enacting the Amending Act of 1952 and creating sub-section (4) to S. 5 the legislature specifically stated that the offence under S. 5(1)(*c*) is different from any previous existing offence under any penal statute and there can, therefore, be no scope for speculation about repeal. The words used in sub-section (4) "any other law" made the position quite clear and explicit. Other law does not mean identical law in which case the word 'other' will have no meaning. A comparison of the elements of the offences under S. 405 Indian Penal Code and S. 5(1)(*c*) of the Prevention of Corruption Act would show that an offence under S. 405, Penal Code is separate and distinct from the one under S. 5(1)(*c*). There are three points of difference between S. 405, Penal Code and S. 5(1)(*c*). The dishonest misappropriation contemplated in S. 405, Penal Code is different; whereas that under S. 5(1)(*c*) is either dishonest misappropriation or fraudulent misappropriation. The latter section is much wider in amplitude than the former. In S. 405, Penal Code the words used are "in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied. There are no such expressions in S. 5(1)(*c*). It is clear, therefore, that whereas under S. 405, Penal Code there are three essential ingredients to constitute the offence; each one of them being separate and distinct, in S. 5(1)(*c*) there are only two. Now considering S. 5(1)(*c*) there are certain matters in it which are absent in S. 405, Penal Code. The words 'dominion' and 'entrustment' connote two different things. The word 'dominion' is not in S. 5(1)(*c*). The word 'fraudulently' is not present in S. 405, and in S. 5(1)(*c*) the gist of the offence can also be made out if the offender allows any person so to do, i.e., allows any person to derogate from the law as contemplated in the earlier portion of the section. The meaning put on the word 'allows' would certainly be different from 'dishonest misappropriation' by the offender himself. It may be that the word can mean allowing by negligence or without any volition on the part of the offender. It may also mean that there is some kind of positive and tacit acquiescence necessary to bring home the offence. In any event, allowing other persons so to do does not find a place in S. 405, Penal Code though this section also contemplates "wilfully suffering any other person so to do". There is an essential difference between "allowing" a person and "wilfully suffering" a person to do a certain thing. There can, therefore, be no doubt whatever that S. 5(1)(*c*) of the Prevention of Corruption Act creates a new offence called "criminal misconduct" and cannot by implication displace the offence under S. 405, Penal Code.

In S. 405, Penal Code the offender must wilfully suffer another person to misappropriate the property entrusted, but in S. 5(1)(*c*) if he allows another person to dishonestly or fraudulently misappropriate or otherwise convert for his own use any property so entrusted, then it is an offence. There is a vast difference between wilfully suffering another and allowing a person to do a particular thing and the word "allows" is much wider in its import. Wilfully presupposes a conscious action, while even by negligence one can allow another to do a thing. *Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575. Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon** , JJ. [Date of decision: 11-1-1957]

State v. Pandurang, AIR 1955 Bom 451; R. v. V. Satyanarayanmurthy, AIR 1953 Mad 137: 1953 Cri LJ 309; Amarendra Nath Ray v. State, AIR 1955 Cal 236: 1955 Cri LJ 784; Mohd. Ali v. State, AIR 1953 Cal 68: 1953 Cri LJ 1523; Bhup Narain v. State, AIR 1952 All 35: 1952 Cri LJ 236; Gopal Das v. State, AIR 1954 All 80: 1954 Cri LJ 96, approved

*State v. Gurcharan Singh, AIR 1952 Punj 89: 1952 Cri LJ 316, **overruled***

***Followed in** State of Punjab v. Shadi Lal, 1960 Cri LJ 539: AIR 1960 SC 397*

[10028] — Ss. 405 and 409 — "Wilfully suffering" and "wilfully allowing" — *Prevention of Corruption Act, 1947, S. 5(1)(c)*

There is an essential difference between "allowing" a person and "wilfully suffering" a person to do a certain thing. There can, therefore, be no doubt whatever that S. 5(1)(*c*) of the Prevention of Corruption Act creates a new offence called "criminal misconduct" and cannot by implication displace the offence under S. 405, Penal Code.

In S. 405, Penal Code the offender must wilfully suffer another person to misappropriate the property entrusted, but in S. 5(1)(*c*) if he allows another person to dishonestly or fraudulently misappropriate or otherwise convert for his own use any property so entrusted, then it is an offence. There is a vast difference between wilfully suffering another and allowing a person to do a particular thing and the word "allows" is much wider in its import. Wilfully presupposes a conscious action, while even by negligence one can allow another to do a thing. *Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575. Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon** , JJ. [Date of decision: 11-1-1957]

(5) Vicarious or constructive liability — Offences by company

See also under '(12)(xiii) Quashment/Stay/Civil proceedings', below

See also under 'Ss. 415-420 — Cheating', below

See also CrPC, 1973, S. 482, in Vol. 18, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 2 of *SC on CrPC and Criminal Trial*

[10029] — Ss. 405, 406 and 34 — Criminal breach of trust — Ingredients of — Whether on facts made out — Fastening of vicarious liability — *Vicarious liability, held, cannot be fastened on MD, Director or other officers of a Company which is accused of commission of offence under S. 406 — Complainant, wholesale dealer of a Company, after termination of dealership by the Company, sent demand drafts to the Company for supply of goods — Demand made by complainant for supply of goods on ground that dealership was subsequently reiterated by the Company — Proprietor of the dealer firm thereafter filed a complaint before CJM alleging commission of offence under S. 406 by the Company and its MD, the appellant, on ground that the Company with mala fide intention neither supplied the goods nor returned the money — Application filed by appellant under S. 482 CrPC for quashing the criminal proceedings by High Court dismissed holding that prima facie offence under S. 406 was made out against appellant — Held, complaint petition, even assuming to be correct in its entirety, did not disclose an offence under S. 406 against appellant — Vicarious liability cannot be cast on appellant MD for alleged offence committed by the Company — Companies Act, 1956, Ss. 34, 253 and 269*

Ingredients of the offence under Section 406 are:

"(*1*) a person should have been entrusted with property, or entrusted with dominion over property;

(*2*) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;

(*3*) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust." (Para 18)

As the drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 IPC. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. (Para 19)

The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence. (Para 16)

The provisions of the Essential Commodities Act, the Negotiable Instruments Act, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, etc. have created such vicarious liability. In terms of the Explanations appended to Section 405 of the Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the Company and in control thereof has been made vicariously liable for the offence committed by the Company along with the Company but even in a case falling under Section 406 IPC vicarious liability has been held to be not extendable to the Directors or officers of the Company. (Para 20)

The High Court, therefore, committed a manifest error in passing the impugned judgment. (Para 21)

The appeal is allowed. Respondent 2 is liable to bear the costs of the appellant for causing harassment to him which is quantified at Rs 1,00,000 (Rupees one lakh only). (Para 22). *S.K. Alagh* v. *State of U.P.*, (2008) 5 SCC 662: (2008) 2 SCC (Cri) 686: AIR 2008 SC 1731: (2008) 142 Comp Cas 228: 2008 Cri LJ 2256: (2008) 3 All LJ 588.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 15-2-2008]

Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581: (2007) 1 SCC (Cri) 621; Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668, relied on

[10030] — Ss. 405 to 409 — Criminal breach of trust — Essential ingredients of — *Person to whom a property is entrusted, if allows others to misappropriate the same, commits the offence — Entrustment of property and failure in breach of an obligation to account for the property may in the circumstances of the case, lead to an inference of dishonest misappropriation or conversion — Dishonest misappropriation of the property entrusted, even with the intention to restore the property in future, would attract the offence — "Entrustment" — Import of — Held, on facts (per majority, Shah, J. contra), Accused 1, 3 and 5 committed offence of criminal breach of trust*

Per majority (Agrawal and Pasayat, JJ.)

To constitute an offence of criminal breach of trust, there must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract; and the misappropriation or conversion or disposal must be with a dishonest intention. When a person allows others to misappropriate the money entrusted to him, that amounts to a criminal breach of trust as defined by Section 405. The section is relatable to property in a positive part and a negative part. The positive part deals with criminal misappropriation or conversion of the property and the negative part consists of dishonestly using or disposing of the property in violation of any direction and of law or any contract touching the discharge of trust. (Para 361)

The term "entrustment" is not necessarily a term of law. It may have different implications in different contexts. In its most general signification all it imports is the handing over possession for some purpose which may not imply the conferring of any proprietary right at all. (Para 363)

To establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. (Para 365)

Sections 407 to 409 make special provisions for various cases in which property is entrusted to the enumerated categories of persons who commit the offence. The offence of breach of trust and dishonest misappropriation are sufficient to constitute an offence under the relevant provisions. (Para 360)

Section 409 deals with criminal breach of trust by a public servant or by a banker, merchant or agent. Section 405 defines criminal breach of trust. The offence like the offence of criminal misappropriation is characterized by an actual fraudulent appropriation of property. There is not originally wrongful taking or moving as in the case of theft but the offence consists in wrongful appropriation of property, consequent upon a possession which is lawful. The offence is distinguishable from criminal misappropriation because subject of it is not the property which by some casual act or otherwise, but without criminal means, comes into the offender's possession; but the property which is entrusted to the offender by the owner or by others' lawful authority and which the offender holds subject to some duty or obligation to apply it according to the trust. (Para 359)

When a person misappropriates to his own use the property that does not belong to him, the misappropriation is dishonest even though there was an intention to restore it at some future point of time. (Para 364)

When the factual background highlighted is considered in the light of the various provisions, it is clear that the offences under the Indian Penal Code alleged have been established against the accused persons. Accused 1, 3 and 5 were therefore, rightly convicted. (Para 378)

Per Shah, J. (dissenting)

What is punishable under Section 403 is dishonest misappropriation or conversion to his own use any movable property. Further, as per the Explanation, dishonest misappropriation for the time being or for a short time is also misappropriation within the meaning of the section. Hence, for establishing the offence it is required to be proved that:

1. The property belongs to a person other than the accused,

2. The accused appropriated the said property or converted it to his own use, and,

3. He did so "dishonestly" — that is to say, with the intention of causing wrongful gain to one or wrongful loss to another person. (Para 258)

Further, essential ingredients required to be proved under Section 405 are:

1. Accused must be entrusted with some property or with any dominion over property,

2. He dishonestly misappropriates or dishonestly converts to his own use that property, or

3. Dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, or

4. Wilfully suffers any other person to do so. (Para 260)

Allegations in this case are that firstly, the accused appropriated cheques issued by Canara Bank in favour of Grindlays Bank to himself. Secondly, that appropriation was misappropriation, and thirdly, it was dishonest. (Para 259)

In the investment policy or lending policy as per the guidelines framed by MUL in 1989 use of the phrase "through scheduled banks" or "directly" appears to be intentional. "Through scheduled bank" would indicate that the amount is not invested "with the bank". A PW has admitted that the name of the broker did not figure or reflect on the record of MUL in the event of transaction of investment being through the broker. In any case, A-1 and A-2 who are sought to be prosecuted are not responsible for the said policy. The policy is framed by the Board and as per the said policy the Sub-Committee headed by the Chairman and the Managing Director of MUL and the Financial Director has passed appropriate resolutions. It appears that they were in the know of the entire investments, but for reasons best known to the prosecution, they are not prosecuted or examined as witnesses even though they were interrogated by the investigating officer. A-1 and A-2 were promoted for their efficiency and good work. The same stand was taken by MUL before JPC despite knowing that there was so-called investigation by CBI. MUL has not suffered any loss. On the contrary, it has received substantial interest for short-term investment for a few days. UCO Bank has also earned commission which is reflected in its account. If there was any dishonest intention on the part of A-3, he would not have credited the earned commission for the transactions in the account books of the Bank. No loss to UCO Bank. Neither MUL nor UCO Bank has lodged any FIR for the so-called misappropriation or fraud. The prosecution has not even suggested that Accused 1, 2, 3 or 4 got any pecuniary advantage or gain by such transactions. Evidence led by the prosecution discloses that it was the practice of the Bank to issue BRs for such type of transactions. It was the duty of the prosecution to carry out necessary investigation whether the BRs were backed by the units or not. If the investigating officer fails to discharge its duty, no inference can be drawn that BRs were not backed by security/units. The prosecution has miserably failed to prove that A-3 issued BRs without holding units as security or that BRs were not backed by units. The Chief General Manager (Finance) of MUL has stated that looking at the BRs of UCO Bank, no suspicion would arise and that issuance of the BRs necessarily indicates that the bank issuing it would be holding the security covered under the BR. The Divisional Manager of UCO Bank at the Bombay office at the relevant time has produced on record a letter dated 8-1-1991 written by him stating resumption of switch transaction after discussing the subject with various authorities including the Zonal Manager, General Manager and Dy. Manager of UCO Bank. On the evidence as it is, at the highest it was a failure on the part of A-1, A-2 and A-3 to perform their duties or observe rules of procedure in appropriate manner and may at the most be an administrative lapse. There is no evidence against A-2 and A-4 to connect them with the crime. A-4 is prosecuted without collecting any evidence against him that he was responsible for crediting the amount in the account of A-5. The prosecution has erroneously proceeded as if the amount of pay orders issued in favour of Grindlays Bank was directly deposited in the account of A-5. For A-5, it is to be held that he gave loan to MUL in the first transaction and borrowed the amount in the last four transactions. These transactions were carried out through UCO Bank. Therefore, assuming that those transactions were against the guidelines issued by RBI, it would not mean that A-5 has misappropriated the amount. He repaid the amount on fixed dates with stipulated interest. Question of payment of interest would arise in cases of loan transaction and normally the Bank would not borrow the amount at such a high rate of interest. The Bank has issued BRs and there is no evidence that BRs were not backed by the units. On the contrary, the defence has led evidence to suggest that units were given as security. For A-3 also, the investigating officer has not bothered to verify properly because admittedly A-3 was transferred from Hamam Street Branch at Bombay to Hingha Branch, near Nagpur at the relevant time when the 5th transaction was carried out between 2-5-1991 to 7-5-1991. (Para 281)

Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. (Para 281)

In the present case, it is very important to determine who is the controlling agent behind the act of the Company (MUL). If the Board of MUL or the management of the Bank were fully aware of such transactions, subordinates who carry out the transactions could not be held guilty, because for the offences for which the accused are charged *mens rea* must be proved. Therefore, those who are responsible for taking such decision could be prosecuted, but not those who are only carrying out directions on the basis that it is a commercial policy of the Company (MUL) or the Bank. As stated before the JPC, it was an effort to maximise the yield or surplus funds of MUL and there was no need for the Company to take any action against the officers. (Para 281)

Further, the case is required to be decided on the touchstone of ingredients of the offence punishable under IPC and there cannot be any doubt that those who are found guilty should be punished, but the conviction must be on the basis of the established criminal jurisprudence and not on moral or equitable ground or impression created or gathered by the prosecuting agency. It is also true that in the present case, dealing in public funds was there to a large extent but that would not by itself be a sufficient ground for drawing any inference in favour of the prosecution, particularly when there is no evidence on record that MUL or UCO Bank suffered any loss or any of Accused 1 to 4 gained anything. On the contrary, there is evidence on record that UCO Bank got commission from the said transactions. (Para 250)

Hence the prosecution has failed to prove its case against the accused. (Para 281). *Ram Narayan Popli* v. *CBI*, (2003) 3 SCC 641: 2003 SCC (Cri) 869: AIR 2003 SC 2748.

Bench Strength **3**. Coram: **M.B. Shah**[1], *B.N. Agrawal*[2] and **Arijit Pasayat**[2], JJ. [Date of decision: 14-1-2003]

Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575: 1956 Cri LJ 1116; Jaikrishnadas Manohardas Desai v. State of Bombay, AIR 1960 SC 889: 1960 Cri LJ 1250, relied on

[10031] — Ss. 405, 409 and 34 — Imposition of vicarious liability in respect of offences under Ss. 405/409 against Chairman of company, where company entrusted with monies — Failure to arraign company — Effect — *Complaint must reflect a common prior concert or planning amongst all accused — Complaint herein does not reveal any preconcert or preplanning to misappropriate amount in question — MSEB, in whose coffers said amount was credited, not arraigned as accused in complaint — As ingredients of Ss. 405/409 simpliciter are not satisfied against appellant Chairman of MSEB (see* §[114]*), question of his acting in concert with others does not arise — Hence, S. 34 IPC is not attracted against appellant* (Paras 24, 26 and 27). *Asoke Basak* v. *State of Maharashtra*, (2010) 10 SCC 660.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 8-10-2010]

Ramaswami Ayyangar v. State of T.N., (1976) 3 SCC 779: 1976 SCC (Cri) 518; Dani Singh v. State of Bihar, (2004) 13 SCC 203: 2005 SCC (Cri) 127, followed

[10032] — Ss. 405, 409 and 34 — Property entrusted to or in dominion of company, but Chairman sought to be made liable — Averments necessary to implicate Chairman — *Respondent company making security deposit to bid for tenders with MSEB — Due to certain disputes, it sought immediate refund of said amount, as it was no longer interested in participating in tenders — MSEB informed respondent that deposit had been adjusted against dues payable by respondent — Respondents filed complaint against appellant, Chairman of MSEB, that said amount of Rs 5 lakhs was in dominion of appellant-accused, entrusted to MSEB for a specific purpose and, therefore, by adjusting said amount for some other purpose, accused dishonestly and wilfully, with common intention, deprived complainant use of money and committed offence in terms of S. 405 r/w S. 409 IPC — High Court declined to quash complaint — Held, said amount was deposited by complainant company with MSEB and there is nothing in complaint which may even remotely suggest that complainant had entrusted any property to appellant or that appellant had dominion over said money — In absence of any such specific averment demonstrating role of accused in commission of offence, no prima facie case has been made out against appellant in respect of offence under S. 409 r/w S. 405, even with aid of S. 34 IPC — It was a fit case where High Court should have exercised its powers under S. 482 CrPC by quashing complaint — CrPC, 1973, S. 482* (Paras 3 to 7, 19 and 21 to 27). *Asoke Basak* v. *State of Maharashtra*, (2010) 10 SCC 660.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 8-10-2010]

S.K. Alagh v. State of U.P., (2008) 5 SCC 662: (2008) 2 SCC (Cri) 686, followed

[10033] — Ss. 406, 420, 465, 468 and 120-B — Cheating — Conspiracy — Ingredients of — Intention — Liability of principal for criminal acts of agent — *P executed sale deed in Respondent 2's favour on appellant's behalf — Land in dispute was earlier sold to different persons by S — S brother of P — P was attesting witness also in sale deeds executed by S — Respondent 2 filed complaint case against appellant alleging deep-rooted conspiracy — Magistrate took cognizance and issued process against appellant — High Court dismissed appellant's petition under S. 482 CrPC holding that P, appellant's vendor, and his brother S, had in conspiracy with each other, sold away entire lands and appellant was also a party to such conspiracy — Held, no link established between sale deeds executed by S in respect of mutated property and appellant — Appellant was not an attesting witness to any of the sale deeds — If Respondent 2 prejudiced by fact that appellant had executed sale* *deed in his favour in respect of disputed land, he could question such transfer and claim damages in respect thereof from P by way of appropriate damages — No action in criminal court would lie in absence of any intention to cheat — Further held, filing of such a criminal complaint was only to pressurise appellant into making a settlement — CrPC, 1973, S. 482 — Contract Act, 1872, S. 188* (Paras 14 to 18). *Rama Devi* v. *State of Bihar,* (2010) 12 SCC 273.

Bench Strength 2. Coram: **Altamas Kabir** and *A.K. Patnaik,* JJ. [Date of decision: 14-9-2010]

[10034] — S. 409 — Criminal breach of trust — Property of a government company purchased by a firm of which A-1, the then CM was a partner — *CM or a Minister not shown to have dominion over the property of the company — Relationship between A-1 and the company not shown to be one of trustee and beneficiary — Held on facts, ingredients of S. 409 not attracted*

The properties in question belonged to a corporation which is a separate and distinct entity from the Government and the properties are held by it as an owner and it has complete control over the same except, when the said properties are to be alienated, approval of the Government has to be obtained as provided under the articles of association of the said Corporation. Indeed there is no material in the whole case to come to the conclusion that any trust has been or deemed to have been created in respect of the said properties and that the relationship between A-1 and the govt. company is one of trustee and beneficiary. There is absolutely no entrustment of the properties in any manner, which allows a dominion over it except approving or disapproving an act on the part of the Corporation either to sell or to alienate the properties. It cannot be said that a public servant who holds a particular portfolio and has an element of supervisory control in certain matters, has a dominion over the property so as to exercise any legal incidents attached to the right of ownership. Therefore, there was no entrustment of the said properties and it cannot be said that A-1 had dominion over the said properties either as the Chief Minister or as the Minister of Industries and in any case, the evidence does not establish the ingredient of dishonest disposal or conversion of property for personal use. Thus the charge under Section 409 is also not established. (Para 53). *R. Sai Bharathi* v. *J. Jayalalitha,* (2004) 2 SCC 9: 2004 SCC (Cri) 377: AIR 2004 SC 692: 2004 Cri LJ 286.

Bench Strength 2. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi,* JJ. [Date of decision: 24-11-2003]

[10035] — S. 409 — Prosecution of Managing Director of a company under liquidation under S. 409 — Sanction of the company court is not necessary

There is nothing in S. 179, Companies Act which can be construed as restricting the powers of the Court to take cognizance of an offence or the powers of the police to initiate prosecution or even of a private citizen to move the machinery of the criminal courts to bring an offender like the appellant to justice.

For a prosecution for breach of trust even by a director of a company no such condition precedent as the previous sanction of any authority is contemplated by law, unless it is a prosecution in the name and on behalf of the company by the official liquidator who has to incur expenses out of the funds of the company. Section 179 is an enabling provision to enable the liquidator to do certain things with the sanction of the Court. It does not control the general law of the land. *Jaswantrai Manilal Akhaney* v. *State of Bombay,* AIR 1956 SC 575: 1956 SCR 483: 26 Comp Cas 340: 1956 Cri LJ 1116, 1125: (1956) 2 MLJ (SC) 49.

Bench Strength 3. Coram: *Vivian Bose, B. Jagannadhadas* and **B.P. Sinha** , JJ. [Date of decision: 4-5-1956]

[10036] — Ss. 409 & 405 — Cognizance of offence taken under, against director of a public limited company — *Application filed by the director under S. 482 CrPC seeking discharge on ground of availability of penal provisions for such offence under Companies Act — Held, High Court justified in dismissing the application. Radhey Shyam Khemka* v. *State of Bihar,* (1993) 3 SCC 54: 1993 SCC (Cri) 591: (1993) 77 Comp Cas 356: 1993 Cri LJ 2888: (1993) 1 Crimes 1132.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **N.P. Singh** , JJ. [Date of decision: 26-3-1993]

(6) Default in payment of employee's EPF or ESI contribution by employer (S. 405 Explns.)

[10037] — S. 405 Expln. 1 — Existence of a statute or statutory rule regarding Provident Fund or Family Pension Fund not essential under — *Even in absence of rules under the W.B. Board of Secondary Education Act, 1963 (W.B. Act 5 of 1963) and formation of Provident Fund Committee, held, there can be entrustment of provident fund contributions of the teachers by virtue of deduction and retention of their contribution. Harihar Prasad Dubey* v. *Tulsi Das Mundhra,* (1980) 4 SCC 120: 1980 SCC (Cri) 931: AIR 1981 SC 81: (1980) 17 ACC 294: 1980 Cri LJ 1329.

Bench Strength 2. Coram: *R.S. Sarkaria* and **A.C. Gupta** , JJ. [Date of decision: 8-8-1980]

[10038] — S. 405 Expln. 1 — Held, creates a fiction of entrustment — *Employees' Provident Funds Scheme, 1952, Para 32(3). Hindustan Times Ltd.* v. *Union of India*, (1998) 2 SCC 242: 1998 SCC (L&S) 481: AIR 1998 SC 688: (1998) 1 SLR 495: (1998) 28 CLA 149: (1998) 92 FJR 546: (1998) 1 LLJ 682.

Bench Strength 2. Coram: *S.B. Majmudar* and **M. Jagannadha Rao**, JJ. [Date of decision: 7-1-1998]

[10039] — Ss. 405 Expln. 2 and 406 — Word "employer" occurring in Expln. 2 to S. 405 — Meaning and scope — *Held, does not attract the definition of "principal employer" contained in S. 40 of ESI Act — Word "employer" although used in Ss. 85-B and 85-C of ESI Act, held, has not been defined in that Act — High Court rightly applied ordinary parlance meaning to the said word — Hence, where the factory in question was owned by a limited company, held, the company, and not its directors singly or collectively, was the employer liable for prosecution under S. 406 — Employees' State Insurance Act, 1948, Ss. 40, 2(17) & (15), 85-B and 85-C — Factories Act, 1948, Ss. 2(n) (as it then stood) and 100(2). ESI Corpn.* v. *S.K. Aggarwal*, (1998) 6 SCC 288: 1998 SCC (L&S) 1480: AIR 1998 SC 2676: (1998) 94 Comp Cas 75: (1998) 3 LLN 920: (1998) 2 LLJ 794.

Bench Strength 2. Coram: *M.M. Punchhi, C.J.* and **Sujata V. Manohar**, J. [Date of decision: 31-7-1998]

[10040] — Ss. 406/120-B — Quashment — Relevant considerations — Preventing abuse of process of court or securing ends of justice — Nature of dispute — Quashment of proceedings relating to TDS — *Where proceeding is of civil nature which cannot be adjudicated by criminal court, High Court would be justified in exercising its inherent jurisdiction and quashing the same — High Court erred in refusing to exercise its jurisdiction under S. 482 and passing a cryptic order without assigning any reasons therefor when complaint did not disclose any offence of criminal nature — In face of assertion made by appellants that deduction towards income tax were made from salaries of all employees liable to pay the same in view of statutory provisions of IT Act, appropriate remedy for respondent was to approach authority/officer concerned — Moreover, report of SI had indicated that matter in issue was civil in nature — Proceedings against appellants quashed — IT Act, 1961, Ss. 192, 200, 206, 271-C, 276-B & 276-BB — CrPC, 1973, S. 482*

A private complaint was filed by the respondent before ACJM under Sections 461/468/406 read with Section 120-B IPC against the appellants alleging discrimination by unduly deducting Rs 1640 p.m. from the monthly salary as income tax and a further wrongful deduction of Rs 3050 on account of cooperative loan issued by the appellants/ Company. It was also stated in the complaint that the amount so deducted was not deposited with the Income Tax Authority and should be refunded back. The ACJM directed SI to conduct an inquiry into the allegations made in the complaint. On 30-4-2004, the appellants informed that the amount of income tax deducted in consonance with Section 192 of the Income Tax Act being deposited in due course as tax to the credit of the respondent employee in terms of Section 199 of the Income Tax Act as uniformly done in respect of every employee and also produced Form 16 of the respondent for the period from 1-4-2003 to 31-3-2004. The report submitted by SI showed that complaint in issue was civil in nature. However, JM issued summons against the appellants for an offence under Sections 406/120-B of the Penal Code. In response to the summons, the appellants made an application under Section 205 of the Code before the Judicial Magistrate which was rejected. Subsequently, vide order dated 12-9-2005, the Judicial Magistrate issued warrant of arrest against the appellants.

The appellant's application under Section 482 CrPC for quashing the complaint and order dated 12-9-2005 was dismissed by the impugned judgment. Hence, the present appeal.

Allowing the appeal,

Held :

In the complaint, the respondent mentioned about the filing of a writ petition in 1991 before the High Court of Calcutta and the order passed therein in 2003. He also referred to his contempt petition before the High Court. He alleged that due to the direction of the High Court, which was issued at his instance, the officers entered into a criminal conspiracy and with a view to pressurise him for withdrawing the said contempt, started threatening him and illegally deducting Rs 1640 per month from his monthly salary as income tax though he did not fall within taxable income category. It was also pointed out that a sum of Rs 3050 had been deducted from his salary illegally on account of cooperative loan although, in the previous month, the deduction was only to the extent of Rs 50. (Paras 10 to 13)

A perusal of Sections 192, 200, 206, 271, 276-B and 276-BB of the Income Tax Act, makes it clear that it is obligatory on the part of the persons responsible for paying any income chargeable under the head "salaries", at the time of payment, to deduct income tax computed on the basis of the rates in force for the financial year on the estimated income of the assessee and pay the same to the authority concerned. They also make it clear that on failure to deduct tax at source they shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such persons failed to deduct or pay. They also show that failure to pay tax to the credit of the Central Government in certain cases or pay the tax collected at source under Section 276-BB shall be punishable with imprisonment. (Para 23)

In the case on hand, it is the categorical stand of the appellant management that the amount of tax that has been deducted from the respondent's salary as TDS under the head "salaries" in terms of Section 192 is uniformly done in respect of each and every employee of the Company and the amount so deducted is deposited to the credit of the employees including the respondent in terms of Section 199. They also produced a copy of Form 16 being the certificate under Section 203 of the Income Tax Act, 1961 for the tax deducted at source from the income of the respondent. (Para 24)

The JM had forwarded the complaint to SI for conducting an inquiry who had concluded that "the matter is civil in nature" and forwarded the same to the Additional CJM with a request to clarify the same. In spite of that the ACJM after recording stand of complainant had found that there was sufficient ground for proceeding against accused. It is not clear on what grounds ACJM had found so. From the materials placed, particularly, the contents of the complaint, relevant statutory provisions of the Income Tax Act, report of the SI, the complaint does not disclose any case to proceed against the accused persons as arrived at by the Additional CJM. Even if the respondent had some grievance with the appellants about non-promotion, direction of the High Court, pendency of contempt, etc. it is not a case for criminal prosecution. If he is very much interested to vindicate his grievance, the respondent could have very well approached the officer concerned of IISCO or the Income Tax Authority concerned. Though in the complaint, it is stated that the respondent had sent a notice under registered post with acknowledgment due on 17-11-2003, admittedly, no such proof had been placed before the Court. In fact, the appellants stoutly denied the receipt of such a notice. (Paras 26 and 27)

In spite of all the details and materials since the Additional CJM issued summons, the appellants approached the High Court under Section 482 of the Code for quashing the same. The High Court, by the impugned order, without adverting to any of the abovementioned relevant materials passed a cryptic order refusing to exercise its inherent jurisdiction which is unsustainable in law. (Para 28). *Rajeswar Tiwari* v. *Nanda Kishore Roy*, (2010) 8 SCC 442: (2010) 3 SCC (Cri) 915.

Bench Strength **2**. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 19-8-2010]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Sardar Trilok Singh v. Satya Deo Tripathi, (1979) 4 SCC 396: 1979 SCC (Cri) 987; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, considered and relied on

(7) Criminal breach of trust by clerk or servant, etc. (S. 408)

See also under '(4) Ingredients of criminal breach of trust', above

[10041] — Ss. 405, 408 and 409 — Misappropriation — Accused, the cashier, in possession of keys of the safe — *Keys of inner drawers kept sealed inside the safe — Cash disappearing from the safe — Inference is that the accused was party or privy to the extraction of cash from the safe*

Accused was in possession of the keys of the safe, including the keys of the inner drawers of the safe. At least the two keys of the outer lock of the safe were all along with him. Even if someone else was in possession of the keys of the inner drawer he could not open the safe unless the keys of the outer door were made over to him by the accused. Accused's liability as cashier to account for the contents of the safe cannot be disputed. Therefore, the accused was either a party or privy to the extraction of the cash from the safe. In the absence of evidence that he parted with the safe between the period when the cash was last checked and when the loss was detected the accused was under a duty to account for the contents of the safe including the cash. Charge under S. 409 is, therefore, duly brought home to the accused. *Surendra Prasad Verma* v. *State of Bihar*, (1972) 3 SCC 656: 1972 SCC (Cri) 700: AIR 1973 SC 488: 1972 Cri LJ 1202.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **G.K. Mitter** , JJ. [Date of decision: 25-4-1972]

[10042] — Ss. 406 and 34 — Wrongful withholding of company quarters — Criminal complaint for — Maintainability — Authorisation for filing complaint — Bona fides of — Eviction-directed — *Manager, having been authorised by company resolution and power of attorney, filing* *complaint against retired employee for wrongfully occupying company quarters — Though power of attorney was executed prior to purchase of stamp papers, it was notarised on a date subsequent to execution and purchase of stamp papers — Trial court by wrongly reading rubber stamp date of notarisation as being prior to date of purchase of stamp papers, holding power of attorney as fictitious and therefore, dismissing complaint — Criminal complaint, held, was maintainable and cognizance was rightly taken — Said documents cannot be termed as fictitious or manufactured so as to oust the appellant from the arena of justice — Stamp Act, 1899, S. 17 — Powers of Attorney Act, 1882, Ss. 2 and 4 — Companies Act, 1956, Ss. 630 and 621. Automobile Products India Ltd.* v. *Das John Peter,* (2010) 12 SCC 593: (2010) 158 Comp Cas 69: (2010) 93 AIC 214 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Deepak Verma** , JJ. [Date of decision: 20-7-2010]

[10043] — S. 406 r/w S. 34 — Wrongful withholding of company quarters — Eviction directed by Supreme Court itself on dire terms due to conduct of respondent-accused — *Retired employee undisputedly being in wrongful occupation of appellant Company quarters for more than 18 years and breaching undertaking after undertaking to vacate premises — Trial court dismissing complaint under S. 630, Companies Act r/w Ss. 406/34 IPC on basis of untenable technical ground — Instead of remanding matter, held, Art. 142 can be invoked to cure manifest illegality which resulted in palpable injustice to appellant Company — There is no equity in favour of accused — Expeditious eviction, if needed with police help, therefore, directed — Said employee directed to hand over possession or face one year imprisonment and 1000 fine — Companies Act, 1956, Ss. 630 and 621*

Even after taking into consideration all the defences taken by the accused, their eviction from the servant quarter is inevitable. It is clear from the impugned orders that there is manifest illegality in the same and have resulted in palpable injustice to the appellant Company which is curable by invoking the inherent powers under Article 142, Constitution of India. (Paras 27 and 28)

Equity also does not swing in favour of the accused, who have displayed adamant and dilatory attitude. A-1 even committed default of his own promise. A-1 retired in the year 1992 and gave an undertaking to the Company as far as back as 5-1-2000 categorically admitting and agreeing to vacate the premises on or before 31-1-2000, it was incumbent on his part to honour the same. From the date of retirement more than 18 years have passed by and he has used the servant quarter without having any right to do so. No further mercy or sympathy can be shown to such an accused. (Paras 25 to 29)

No useful purpose would be served even if the matter is remitted to the Magistrate for trial on merits. Quietus has to be given to the litigation which started years back. (Paras 28 and 30)

The appellant's complaint filed under Section 630, Companies Act is allowed and the accused is granted time to vacate the servant quarter on or before 1-10-2010 and to hand over its peaceful and vacant possession to the appellant Company. In default thereof the accused shall have to suffer imprisonment for a term of one year and fine of Rs 10,000. In default of payment of fine, the accused shall suffer further imprisonment of one month. If the accused persons fail to do so then the appellant shall be entitled to take police help to get the order executed. (Paras 31 and 32). *Automobile Products India Ltd.* v. *Das John Peter,* (2010) 12 SCC 593: (2010) 158 Comp Cas 69: (2010) 93 AIC 214 (SC).

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Deepak Verma** , JJ. [Date of decision: 20-7-2010]

[10044] — S. 408 — Appellant convicted for misappropriation of certain amounts belonging to the respondent Cooperative Society — *Appellant pleading that the said amounts were taken by him as advance after being sanctioned by the President and in support of the said plea appellant producing certain documents for the first time in the Supreme Court — In spite of service of notice, counsel for the respondent failing to appear before the court and no challenge made to the plea of the appellant — Document accepted and conviction of the appellant set aside. Subash Chandra Bohidar* v. *Burobhadi S.C.S.*, (1996) 7 SCC 16: 1996 SCC (Cri) 165.

Bench Strength **2**. Coram: *J.S. Verma* and **K. Venkataswami** , JJ. [Date of decision: 16-11-1995]

[10045] — S. 408 — Charge for criminal breach of trust specifying July 13, 1957 as the date on which the accused was in employment — Implication of — *Finding by High Court that misappropriation took place on June 30, 1957 does not amount to making out a new case different from the charge — CrPC, 1898, S. 222*

The charge neither mentions the date of entrustment nor of its misappropriation but refers to July 13, 1957 as the date on which the appellant was in the employment. The implication of the charge is that it is on or about that date that the entrustment and the misappropriation took place.

As the funds were in the charge of the appellant the instructions given by him to the accountant to make a wrong cross entry are only susceptible of the inference that he wanted to misappropriate the amount. *Kantilal Gandalal Shah* v. *State of Gujarat*, (1974) 3 SCC 587: 1974 SCC (Cri) 65: AIR 1974 SC 222: 1974 Cri LJ 310.

Bench Strength **2**. Coram: *S.N. Dwivedi* and **Y.V. Chandrachud** , JJ. [Date of decision: 15-11-1973]

[10046] — S. 408 — Conviction restored and sentence reduced to that already undergone — *High Court acted improperly in setting aside concurrent findings of fact where the prosecution evidence was not challenged in cross-examination — CrPC, 1973 — S. 401. State of Karnataka* v. *Marigowda*, (1981) 4 SCC 429: 1981 SCC (Cri) 849: AIR 1982 SC 1171.

Bench Strength **3**. Coram: *O. Chinnappa Reddy*, *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 19-8-1981]

[10047] — S. 408 — Criminal breach of trust by clerk or servant — Probation of Offenders Act, 1958 — S. 4 — Power of court to release certain offenders on probation of good conduct — *Appellant convicted under S. 408 IPC for irregularities detected during audit of accounts of a cooperative society, of which appellant was Secretary — On appeal sentence reduced to one month RI — Irregularities occurred in 1981-82 — Amounts of money involved were small (Rs 1812 and less) — Appellant had reimbursed the Society for entire amount with interest — Held, benevolent provisions of Probation of Offenders Act could be extended to appellant, who directed to execute a bond for keeping the peace and being of good behaviour for 3 years — Sentence suspended sine die. Bore Gowda* v. *State of Karnataka*, (2000) 10 SCC 260.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 27-9-1999]

[10048] — S. 408 — Provision in S. 12 Probation of offenders Act for removal of disqualification attaching to conviction — Applicability — *Held, applicable only to the disqualification attached under the law providing for the offence and its punishment — Hence, where a person convicted under S. 408 IPC was released under S. 4(1) of the 1958 Act, S. 12 of that Act, held, did not bar the taking into account the conviction for the purpose of his dismissal from government service — Constitution of India, Art. 311(2) second proviso (a) — Probation of Offenders Act, 1958 — Ss. 12 and 4(1). Harichand* v. *Director of School Education*, (1998) 2 SCC 383: 1998 SCC (L&S) 560: AIR 1998 SC 788: (1998) 2 LLN 36: (1998) 2 LLJ 831.

Bench Strength **2**. Coram: **S.P. Bharucha** and *V.N. Khare*, JJ. [Date of decision: 14-1-1998]

Aitha Chander Rao v. State of A.P., 1981 Supp SCC 17: 1981 SCC (Cri) 637, distinguished

[10049] — S. 408 — Sentence — Delay in final disposal of appeal a mitigating factor — Misappropriation of about Rs 8784 by manager of a cooperative society — *Occurrence taking place about 13 years ago and the appellant remaining in jail for about three months — Sentence of imprisonment reduced to the period already undergone. Khodidas Manjibhai Savriaya* v. *State of Gujarat*, 1994 SCC (Cri) 1410.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 10-9-1992]

[10050] — Ss. 408 and 405 — Criminal breach of trust — What constitutes — Bus conductor — Ticketless travel — *Conductor of State Road Transport Corporation found by inspection team to be carrying several passengers (35 in this case) without ticket even after realising fare from them — Moreover, he obstructing the checking process by threatening and abusing the authorities — Such acts on his part, held, constituted misconduct of serious nature* (Para 6). *U.P. SRTC* v. *Ram Kishan Arora*, (2007) 4 SCC 627: (2007) 2 SCC (L&S) 64: (2007) 3 LLJ 171: (2007) 3 LLN 616: (2007) 3 CLR 347.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 9-5-2007]

[10051] — Ss. 408, 467, 471 and 477-A — Criminal breach of trust and forgery etc. — *On facts, offences established*

On facts, the two documents, namely, the bill and the voucher-cum-receipt on their face would bring home to the person who uses them either knowledge or reason to believe that the same were forged and this was not disputed by the counsel for the appellant. The evidence also discloses that, *(a)* on the theory of the blank cheques signed by PWs 1 and 12 remaining in the custody of the appellant, and *(b)* the possession of the forged bill with the accused on the basis of which the bearer cheque was issued by him, the conclusions of the High Court were right. Further, the user of the forged voucher-cum-receipt on the part of the appellant-accused with the requisite knowledge or reasonable belief that the same was a forged one is also established by the evidence. Therefore, the prosecution has established its charge under S. 471 read with S. 467, Indian Penal Code under both the counts against the accused beyond any reasonable doubt and the High Court was justified in reversing the acquittal recorded by the trial Court. *B.K. Maarfatia* v. *State of Maharashtra*, (1978) 1 SCC 596: 1978 SCC (Cri) 149: AIR 1978 SC 434: 1978 Cri LJ 507.

Bench Strength **2**. Coram: *P.K. Goswami* and **V.D. Tulzapurkar** , JJ. [Date of decision: 16-12-1977]

[10052] — Ss. 408 and 477-A — Sentence of imprisonment till rising of court and fine of Rs 50 and 100, prima facie inadequate. *State of Karnataka* v. *Surender Kotiankar*, (1984) 4 SCC 370: 1984 SCC (Cri) 624: AIR 1984 SC 1586: 1984 Cri LJ 1727: (1984) 2 Crimes 440.

Bench Strength 2. Coram: *O. Chinnappa Reddy* and *Ranganath Misra*, JJ. [Date of decision: 13-8-1984]

[10053] — Ss. 409 & 408 — Agent or servant — *Accused as promoter of a society lawfully received amount of share money and embezzled the same — Accused is an agent and not a servant — S. 409 and not S. 408 shall apply*

Having regard to the nature of the duties of the appellant as the Secretary of the Society, it is clear that his status was that of an agent and not a servant. Moreover, whether the appellant should be charged under S. 408 or S. 409 is of no importance in the present case, as the sentence imposed on him under S. 409 viz., four years' rigorous imprisonment could be maintained even under S. 408. *Chandi Prasad Singh* v. *State of U.P.*, AIR 1956 SC 149: (1955) 2 SCR 1035: 1956 Cri LJ 322, 325: (1956) 1 MLJ (SC) 88: 1956 ALJ 153.

Bench Strength 2. Coram: *Vivian Bose* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 7-12-1955]

(8) Criminal breach of trust by public servant (S. 409) — Corruption cases

See also Public Accountability and Vigilance — Prevention of Corruption Act, 1947 and

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Synopsis

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(i) Broadly

See also '(4) Ingredients of criminal breach of trust', above

[10054] — **S. 405 — Criminal breach of trust — Entrustment of property is an essential ingredient of — Mere exercise of "power to allot" petroleum outlets by Minister concerned from out of his discretionary quota cannot constitute "property" within the meaning of S. 405**

A trust contemplated by Section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under Section 405. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner. The word "property", used in Section 409 IPC means the property which can be entrusted or over which dominion may be exercised. Mere exercise of "power to allot petrol pumps", and that too under discretionary quota, cannot be treated as "property" within the meaning of Section 405 of the Indian Penal Code, capable of being misutilised or misappropriated. (Paras 168, 171 and 172)

Having regard to the facts of the case and the ingredients of the offence constituting criminal breach of trust, as defined in Section 405, or the offence as set out in Section 409 IPC, it must be held that there was no case made out against the petitioner for any case being registered against him on the basis of the judgment passed by the Supreme Court nor was there any occasion to direct an investigation by CBI in that case. (Para 173). *Common Cause, A Registered Society* v. *Union of India*, (1999) 6 SCC 667: 1999 SCC (Cri) 1196: AIR 1999 SC 2979.

Bench Strength 3. Coram: **S. Saghir Ahmad**, *K. Venkataswami* and *S. Rajendra Babu*, JJ. [Date of decision: 3-8-1999]

Common Cause, A Regd. Society v. Union of India, (1996) 6 SCC 530; Common Cause, A Regd. Society v. Union of India, (1996) 6 SCC 593, ***overruled***

State of Gujarat v. Jaswantlal Nathalal, AIR 1968 SC 700: (1968) 2 SCR 408; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore-Cochin, AIR 1953 SC 478: 1954 Cri LJ 102; CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045; R.K. Dalmia v. Delhi Admn., AIR 1962 SC 1821: (1963) 1 SCR 253, relied on

See also *Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736*

[10055] — S. 405 — Criminal breach of trust as distinguished from mere error of judgment — *Held, error of judgment does not attract criminal liability* (Para 69). *Sudhir Shantilal Mehta* v. *CBI*, (2009) 8 SCC 1: (2009) 3 SCC (Cri) 646.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[10056] — Ss. 405 and 406 — Criminal breach of trust — A Minister is in a position of a trustee in respect of the public property under his charge and discretion — *He must therefore deal with people's property in just and fair manner, failing which he would be liable for criminal breach of trust. Common Cause, A Registered Society (Petrol pumps matter)* v. *Union of India*, (1996) 6 SCC 530: AIR 1996 SC 3538.

Bench Strength 2. Coram: **Kuldip Singh** and *Faizan Uddin*, JJ. [Date of decision: 25-9-1996]

(8)(i) Broadly *(contd.)*

Overruled in Common Cause, A Registered Society v. *Union of India*, (1999) 6 SCC 667

[10057] — Ss. 405 and 409 — Criminal breach of trust — Ingredients — Dishonest use or disposal of property in violation of direction of law — *The expression "direction of law", held, even if given literal meaning, includes direction issued by authorities in exercise of their statutory power as also power of supervision — Failure on the part of bank officials to follow instructions issued by RBI and provisions of a departmental manual, held, was violation of direction of law, resulting in criminal breach of trust — UCO Bank Manual of Instructions on Bill Discounting, Para 2.5(b) — RBI Circular* (Para 100). *Sudhir Shantilal Mehta* v. *CBI*, (2009) 8 SCC 1: (2009) 3 SCC (Cri) 646.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[10058] — Ss. 405 and 409 — "Entrustment"

No question of entrustment arises when a sum is paid by way of illegal gratification along with some transaction. *C.M. Narayan Ittiravi Nambudiri* v. *State of Travancore-Cochin*, AIR 1953 SC 478: 1954 Cri LJ 102: 1953 Ker LT 173.

Bench Strength 5. Coram: *Patanjali Sastri, C.J.* and **B.K. Mukherjea**, *S.R. Das*, *Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 10-11-1952]

[10059] — Ss. 405 and 409 — Suffering of loss not essential for conviction

The officials of UCO Bank and National Housing Bank who helped Harshad Mehta (since deceased) in siphoning off public money of Rs 40 crores were also charged for criminal breach of trust, apart from being charged for criminal conspiracy.

Held :

It is not the law that complaint petition under all circumstances must be made by banks and financial institutions whose money had been the subject-matter of offence. It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction. Criminal law can be set in motion by anybody. The prosecution was initiated on the basis of information received by Central Bureau of Investigation (CBI). CBI is entitled to do so not only in regard to its statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by the Janakiraman Committee. The money involved in transfer is public money belonging to public sector banks. If transaction was illegal, as a result whereof, a private person, who was not expected to reap fruits of "call money" was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to have been committed. It is for the same reason the submission that as nobody ultimately suffered any loss, an offence under Section 409 of the Penal Code was not made out, cannot be accepted. A bank or financial institution may not suffer ultimate loss but if money has been allowed to be used by another person illegally for illegal purpose, ingredients of Section 405 of the Penal Code would get attracted. A case involving temporary embezzlement also attracts ingredients of Section 405 of the Penal Code. (Paras 150, 152 and 153)

When a person allows others to misappropriate property entrusted to him, that also amounts to criminal breach of trust. In the present case, amount of Rs 40 crores was entrusted to Accused 6 to be dealt with in accordance with the provisions of the National Housing Bank Act, 1987. The Act does not permit grant of loan to an individual. Accused 6 in violation of the law handed over the amount to UCO Bank with full knowledge that the amount would be credited to the account of Harshad Mehta. The call money transaction with UCO Bank was only a cover-up. The property which was trusted to Accused 6 was misappropriated by him. The most essential ingredient of criminal breach of trust is misappropriation with dishonest intention. (Para 154). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[10060] — S. 409 — Absence of proof of motive in a case against public servant — *Held, ordinarily not safe to convict accused*

Officers in the position of the accused do not commit illegal acts like disposing of Government property in their custody and expose themselves to a prosecution and possible disgrace unless they are prompted by some strong motive, usually self-interest; and though a conviction can be based on evidence which does not disclose a motive if the facts proved justify such a course, yet it would ordinarily be unsafe to convict in a case like the present in the absence of proof indicating an adequate reason for criminal behaviour on the part of the accused. *Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857, 860.

Bench Strength 3. Coram: *B.K. Mukherjea* and *S.R. Das*, **Vivian Bose**, JJ. [Date of decision: 22-12-1954]

[10061] — S. 409 — Acquittal for offences under S. 409 IPC and S. 5 of Prevention of Corruption Act, 1947 — *Held, does not bar trial under S. 135, Customs Act and S. 85, Gold (Control) Act. A.A. Mulla* v. *State of Maharashtra*, (1996) 11 SCC 606: AIR 1997 SC 1441.

Bench Strength 2. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 28-10-1996]

[10062] — S. 409 — Applicability of — Proof — Nature and burden of — *Held, prosecution to prove that property in question was entrusted with the accused — Once the same is proved, it is for the accused to prove as to how the property entrusted was dealt with — Actual mode of entrustment need not be proved — Accused appointed as Unit Manager on deputation in Kerala State Civil Supplies Corporation (KSCSC) at Punalur — After he was relieved to his parent department, a special audit conducted on direction of Managing Director of KSCSC — Certain quantities of boiled rice, palmolein and free-sale sugar found short — Accused's liability fixed at Rs 1,70,640 — Accused undertook to remit Rs 1,63,770 being the value of the shortage of 72 quintals of palmolein, 102 quintals of rice and 39 quintals of sugar — Deposited Rs 50,000 in part-payment — On facts, held, entrustment proved — No material placed by accused to prove as to how the property entrusted was dealt with — Conviction and sentence under S. 409, held, proper — Evidence Act, 1872, Ss. 101 and 103*

The accused-appellant was appointed on deputation as Unit Manager of the Kerala State Civil Supplies Corporation (in short "the Corporation") at Punalur vide order dated 14-4-1983 passed by the Regional Manager of the Corporation posted in Thiruvananthapuram. By a letter dated 4-11-1986, the Managing Director of the Corporation directed the Regional Manager to relieve the accused to his parent department on 30-11-1986. Pursuant to the said direction, the Regional Manager issued an order dated 29-11-1986 relieving the accused. The said order was directed to be effective from the afternoon of 29-11-1986. Since the accused did not attend the office on 29-11-1986, the Regional Manager by an order dated 1-12-1986 permitted PW 3 to assume charge of the Punalur depot. Accordingly, PW 3 took the said charge. The stock of the Punalur Depot was partly stored in the Warehousing Corporation godown at Punalur and partly in the godown attached to the office, referred to by the witnesses as self-godown. Though PW 3 assumed charge, the accused had not handed over the keys of the godown or verified the stock. The accused reported in the depot on 13-12-1986 and in the presence of the then Assistant Manager (Accounts) (PW 2) in the regional office of the Corporation, brought the keys and opened the godown. He also undertook in writing the handing over of the charge on 13-12-1986, 15-12-1986 and 16-12-1986. In the presence of the accused the items found in the godown were verified. Only the stocks of 21.875 quintals of MP boiled rice and 84 kg of tamarind were found in the self-godown. The Managing Director of the Corporation directed a special audit to be conducted by PW 1. On audit, the actual stock of boiled rice, palmolein and free sale sugar was found short. PW 1 assessed the total value of shortage of rice at Rs 33,150, that of palmolein at Rs 1,08,000 and sugar at Rs 22,620. He also reported that the accused had withdrawn loading and transporting charges for these articles. PW 1 fixed accused's liability including infructuous expenses on transporting and cost of missing empty barrels at Rs 1,70,640. On 29-12-1986 the accused undertook to remit Rs 1,63,770 being the value of the shortage of 72 quintals of palmolein, 102 quintals of rice and 39 quintals of sugar and in part-payment, deposited Rs 50,000 in the Punalur Depot on that day. By Ext. P-17 he undertook to deposit half the amount by 2-1-1987 and the balance by 31st March next year. Thereafter, the matter was reported to the authorities concerned and consequent to which the accused was suspended from service. The Managing Director of the Corporation wrote to the Director of Vigilance (Investigation) along with a copy of audit report. The Director of Vigilance (Investigation) sanctioned registration of a case. The Inspector of the Kollam Vigilance Unit I (PW 11) conducted the investigation and sent a report to his higher authorities. In the meantime, the accused retired from service on 28-2-1992. The trial court on consideration of materials held the accused guilty and convicted him of the offences punishable under Section 5(2), Prevention of Corruption Act, 1947 and Section 409 IPC. The High Court in appeal confirmed the conviction and sentence.The accused challenged the said conviction and sentence by filing the instant appeal before the Supreme Court. Since the accused died during pendency of the appeal, his legal representatives were allowed to be impleaded.

Before the Supreme Court, the LRs of the accused submitted that in the absence of a sanction for the prosecution the whole proceeding was non est and the trial was vitiated. The prosecution had acted unfairly in taking advantage of the position that after retirement sanction was not necessary under the Prevention of Corruption Act. In any

(8)(i) Broadly *(contd.)*

event, in respect of a retired employee sanction was necessary in terms of Section 197 CrPC. Additionally, it was submitted that the prosecution had not established any misappropriation and/or mens rea of the alleged crime and, therefore, both the trial court and the High Court had acted contrary to law. It was further submitted that both the courts below proceeded on mere surmises and conjectures to hold that the accused had committed misappropriation. The essential ingredients necessary to prove the accusations under Section 409 IPC were squarely absent. It was also submitted that both the trial court and the High Court had attached undue importance to the fact that the accused-appellant had agreed to pay the differential amount. It was contended that even if the accused had agreed to pay the amount, that was not material while considering the issue whether the ingredients had been established by the prosecution. Finally, it was submitted that taking note of the small amount involved and the fact that the accused had already deposited the amount, the benefit available under the Probation of Offenders Act, 1958 could be extended.

Dismissing the appeal preferred by the accused, *Held* :

It is fairly well-settled position in law that actual mode of entrustment or misappropriation is not to be proved by the prosecution. Once entrustment is proved, it is for the accused to prove as to how the property entrusted was dealt with. It was not only on the basis of the undertaking that the conviction was recorded, but the other evidence on record also unerringly proved entrustment. Therefore, it was for the accused to prove as to how the property entrusted with him was dealt with. No material was placed in that regard. Therefore, the courts below correctly held entrustment to have been proved. The concurrent findings of fact recorded by the courts below relating to entrustment and misappropriation are well merited and fully justified on the basis of evidence on record and do not suffer from any perversity or patent error of law to warrant interference. (Para 13). *N. Bhargavan Pillai* v. *State of Kerala*, (2004) 13 SCC 217: 2005 SCC (Cri) 142: AIR 2004 SC 2317: 2004 Cri LJ 2494.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat** , JJ. [Date of decision: 20-4-2004]

Jiwan Dass v. State of Haryana, (1999) 2 SCC 530: 1999 SCC (Cri) 288, distinguished on facts

[10063] — S. 409 — Conviction under — Facts which are required to be proved for — Burden of proof in respect thereof — *Held, onus lies on prosecution to prove charge against accused and it has to prove that (a) the accused, a public servant was entrusted with property of which he was duty-bound to account for, and (b) the accused had misappropriated the property — But, where entrustment is admitted by accused, it is for him to discharge the burden that the entrustment has been carried out as accepted and the obligation has been discharged — Proof as to actual mode and manner of misappropriation would be difficult in case where entrustment is proved or admitted and in such a case the prosecution would have to rely largely on the truth or falsity of the explanation given by the accused — Appellant, a Junior Engineer, was in charge of execution of construction of tanks — He showing payments made to persons engaged for work, but in reality no such payments were made — Showing bogus names, appellant misappropriating Rs 6764.10 by abusing his position as supervisor — Accused 2, a labourer, was made to put his thumb marks on the muster rolls to show receipt of monies by fictitious persons — No dispute about entrustment of money to appellant — Plea of appellant that the payments were not made by him directly but through the middlemen, not sustainable as he could not escape from liability by saying that he had entrusted the job to someone else — Thus, his conviction under S. 409, held, was proper — Evidence Act, 1872, S. 106*

In order to sustain a conviction under Section 409 IPC the prosecution is required to prove that (*a*) the accused, a public servant was entrusted with property of which he was duty-bound to account for, and (*b*) the accused had misappropriated the property. (Para 9)

It is not necessary or possible in every case to prove as to in what precise manner the accused had dealt with or appropriated the goods. In a case of criminal breach of trust, the failure to account for the money, proved to have been received by the accused or giving a false account of its use is generally considered to be a strong circumstance against the accused. Although onus lies on the prosecution to prove the charge against the accused, yet where the entrustment is proved or admitted it would be difficult for the prosecution to prove the actual mode and manner of misappropriation and in such a case the prosecution would have to rely largely on the truth or falsity of the explanation given by the accused. Thus, where the entrustment is admitted by the accused, it is for him to discharge the burden that the entrustment has been carried out as accepted and the obligation has been discharged. (Paras 12 and 10)

In the instant case, there is no dispute about the entrustment. The appellant had taken the stand that the payments were not made by him directly but through the middlemen, who distributed the amount to the persons who were engaged. This plea has been elaborately dealt with by both the trial court and the High Court. It was the duty of the appellant to make payment. He cannot escape from liability by saying that he had entrusted the job to someone else. It was found by the trial court and the High Court with reference to the evidence on record that payments were shown to have been made to persons who were found to be fictitious. The evidence of Village Kotwal, who was examined as PW 6 also shows that there was no such person in the village to whom the appellant claimed to have made payment. (Paras 12 to 14)

In view of the clinching evidence tendered by the prosecution which has been analysed at great length by the trial court and the High Court, there is no scope for interference. (Para 15). *Mustafikhan* v. *State of Maharashtra*, (2007) 1 SCC 623: (2007) 1 SCC (Cri) 399.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 4-12-2006]

Jagat Narayan Jha v. State of Bihar, 1995 Supp (4) SCC 518: 1995 SCC (Cri) 246, relied on

Inderjit Singh v. State of Punjab, 1995 Supp (3) SCC 289: 1995 SCC (Cri) 837, distinguished on facts

[10064] — S. 409 — Criminal breach of trust — Entrustment of money admitted by the accused — Burden lies on him to prove that entrustment has been carried out and the obligation has been discharged — *His explanation has to be examined on preponderance of probabilities — On facts held, defence of accused is probable and he is entitled to benefit of doubt — Case of entrustment of Government money by government servant — Forgery and interpolation in cash book alleged — Evidence Act, 1872, S. 106. Jagat Narayan Jha* v. *State of Bihar*, 1995 Supp (4) SCC 518: 1995 SCC (Cri) 246: 1994 Cri LJ 1100.

Bench Strength 2. Coram: *M.M. Punchhi* and *S.C. Agrawal*, JJ. [Date of decision: 29-4-1992]

[10065] — S. 409 — Criminal breach of trust — Property of a govt. company purchased by a firm of which A-1, the then CM was a partner — *CM or a Minister not shown to have dominion over the property of the company — Relationship between A-1 and the company not shown to be one of trustee and beneficiary — Held on facts, ingredients of S. 409 not attracted*

The properties in question belonged to a corporation which is a separate and distinct entity from the Government and the properties are held by it as an owner and it has complete control over the same except, when the said properties are to be alienated, approval of the Government has to be obtained as provided under the articles of association of the said Corporation. Indeed there is no material in the whole case to come to the conclusion that any trust has been or deemed to have been created in respect of the said properties and that the relationship between A-1 and the govt. company is one of trustee and beneficiary. There is absolutely no entrustment of the properties in any manner, which allows a dominion over it except approving or disapproving an act on the part of the Corporation either to sell or to alienate the properties. It cannot be said that a public servant who holds a particular portfolio and has an element of supervisory control in certain matters, has a dominion over the property so as to exercise any legal incidents attached to the right of ownership. Therefore, there was no entrustment of the said properties and it cannot be said that A-1 had dominion over the said properties either as the Chief Minister or as the Minister of Industries and in any case, the evidence does not establish the ingredient of dishonest disposal or conversion of property for personal use. Thus the charge under Section 409 is also not established. (Para 53). *R. Sai Bharathi* v. *J. Jayalalitha*, (2004) 2 SCC 9: 2004 SCC (Cri) 377: AIR 2004 SC 692: 2004 Cri LJ 286.

Bench Strength 2. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 24-11-2003]

[10066] — S. 409 — Criminal breach of trust by public servant — What and how to be proved to establish the charge of — *Held, the prosecution must prove that: (i) the accused was a public servant, (ii) was in such capacity entrusted with the property or with domination over the same, and (iii) he committed breach of trust in respect of the same — Strict proof must be given. Jiwan Dass* v. *State of Haryana*, (1999) 2 SCC 530: 1999 SCC (Cri) 288: AIR 1999 SC 1301: 1999 Cri LJ 2034.

Bench Strength 2. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 26-2-1999]

[10067] — S. 409 — Embezzlement of fund collected by appellant Taxation Clerk from municipal tax payers without depositing the same to the account of Municipal Committee alleged — Onus of proof on appellant — *Appellant admitting receipt of the amount but stating that as per usual practice, he had handed over the amount to the Cashier who had defalcated the same — Cashier neither admitting receipt of the money from appellant not admitting existence of any practice as alleged by appellant — Cashier acquitted by lower appellate court — Held, plea of appellant not acceptable*

(8)(i) Broadly *(contd.)*

The prosecution was successful in proving the charge against the appellant. The entrustment as such is not denied by the appellant. It was for him to discharge the onus that he had discharged the trust as was expected of him. By merely taking the plea that he had passed on the sum to the cashier, the trust cannot be said to have been discharged and could only be done if either the cashier would admit receipt or the appellant had reasonably established that there had been a practice to pass on such money without receipt. No departmental man, least of all the accountant, has come forward to support the existence of such practice. The appellant cannot be permitted to say that whatever he had said in his statement under S. 313, CrPC is the gospel truth. The argument of the appellant that the cashier was wrongly acquitted may be plausible, but in the facts and circumstances that fact alone can be of no help to the appellant. *Bagga Singh* v. *State of Punjab*, 1996 Cri LJ 2883 (SC).

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 13-12-1994]

[10068] — S. 409 — Entrustment — Failure of Tahsildar to deposit in the Treasury amounts of land revenue, fines etc. — *Though Reader of Tahsildar physically receiving the amounts, Tahsildar countersigning the receipts prepared by the Reader — Tahsildar having dominion over the accounts was "entrusted with the money" — Neither office practice and procedure followed nor amounts entered in the account books — Accused, held, guilty of misappropriation of the amounts entrusted to him. Vasant Moghe* v. *State of Maharashtra*, (1979) 3 SCC 771: 1979 SCC (Cri) 868: AIR 1979 SC 1008: 1979 Cri LJ 885.

Bench Strength **2**. Coram: *Jaswant Singh* and **O. Chinnappa Reddy** , JJ. [Date of decision: 27-11-1978]

[10069] — S. 409 — Entrustment of money to accused not proved on facts — No other incriminating circumstances shown — *Held, offence under S. 409 not made out — Conviction improper — Acquittal ordered — Ranbir Penal Code, 1932 (1989 Smvt.), S. 409. Roshan Lal Raina* v. *State of J&K*, (1983) 2 SCC 429: 1983 SCC (Cri) 533: AIR 1983 SC 631: 1983 Cri LJ 975.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **O. Chinnappa Reddy** , JJ. [Date of decision: 23-3-1983]

[10070] — S. 409 — Entrustment of property — Proof — *In absence of legal and independent proof of entrustment partial admission of entrustment obtained by putting a question with regard to entrustment, held, insufficient to prove the charge — Rather, the putting of such question, in the said circumstances, would itself be improper. Jiwan Dass* v. *State of Haryana*, (1999) 2 SCC 530: 1999 SCC (Cri) 288: AIR 1999 SC 1301: 1999 Cri LJ 2034.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 26-2-1999]

[10071] — S. 409 — Failure by public servant to disburse entrusted amounts to the labour and the contractor, held, established on evidence — *However, in view of the facts that the accused-appellant was likely to lose his service and had already undergone 6½ months' RI out of the total term of 2 years' RI, his sentence reduced to the extent of the imprisonment already undergone and a fine of Rs 1000. Vishnu Datta Mishra* v. *State of M.P.*, (1979) 4 SCC 382: 1979 SCC (Cri) 993: AIR 1979 SC 825: 1979 Cri LJ 565.

Bench Strength **2**. Coram: **Jaswant Singh** and *O. Chinnappa Reddy*, JJ. [Date of decision: 28-11-1978]

[10072] — S. 409 — Giving of charge — *Merely giving keys and that too on a holiday, does not amount to giving charge. Amrut Sakharam Sanap* v. *State of Maharashtra*, (1971) 3 SCC 918: 1972 SCC (Cri) 166.

Bench Strength **2**. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 6-4-1970]

[10073] — S. 409 — Ingredients of the offence specified in Item 2 is Sch. to 1949 W.B. Act do not differ in any respect from those required by S. 409 — Entry not limits itself to offences by public servants for acts done as public servants — *W.B. Criminal Law Amendment (Special Courts) Act, 1949 (21 of 1949) — Sch. Item 2. Supdt. & Remembrancer of Legal Affairs* v. *S.K. Roy*, (1974) 4 SCC 230: 1974 SCC (Cri) 399: AIR 1974 SC 794: (1974) 3 SCR 348: 1974 Cri LJ 678: 1974 (11) ACC 199.

Bench Strength **3**. Coram: **M.H. Beg**, *Y.V. Chandrachud* and *R.S. Sarkaria*, JJ. [Date of decision: 12-2-1974]

[10074] — S. 409 — Misappropriation — *Appellant, in charge of Mayor's Relief Fund, preparing cheque for payment of dues to a contractor of the Municipal Corporation, but instead of delivering it to the contractor, getting it encashed through peon — Peon informing the Mayor that he had encashed the cheque and paid the amount to the appellant — But appellant keeping quiet on this before the Mayor and later giving a written undertaking to the Mayor that he would make good the amount — On the basis of this evidence courts below finding the appellant guilty of misappropriation — In the circumstances conviction under S. 409 upheld. Vijay Digambar Lanjekar* v. *State of Maharashtra*, 1991 Supp (2) SCC 8: 1991 SCC (Cri) 841.

Bench Strength **3**. Coram: *A.M. Ahmadi*, *V. Ramaswami* and *M. Fathima Beevi*, JJ. [Date of decision: 19-2-1991]

[10075] — S. 409 — Offence by police officer — *Held, is cognizable under Rule I and not under Rule III of Para 486 of U.P. Police Regulations. State of U.P.* v. *Babu Ram Upadhya*, AIR 1961 SC 751: (1961) 2 SCR 679: (1961) 1 Cri LJ 773.

Bench Strength **5**. Coram: *P.B. Gajendragadkar*[2], *A.K. Sarkar*[1], **K. Subba Rao**[1], **K.N. Wanchoo**[2] and *J.R. Mudholkar*[1], JJ. [Date of decision: 25-11-1960]

[10076] — S. 409 — Persons (like public servants, bankers, etc.) made liable under S. 409 — Duties of such persons — *Held, the same are of highly confidential character, involving great power of control over property entrusted to them — Breach of trust by such persons may often result in serious public or private calamity — High morality is expected of these person — They are supposed to discharge their duties honestly* (Para 146). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

Ram Narayan Popli v. CBI, (2003) 3 SCC 641: 2003 SCC (Cri) 869; Raghunath Anant Govilkar v. State of Maharashtra, (2008) 11 SCC 289: (2009) 1 SCC (Cri) 130; Supdt. and Remembrancer of Legal Affairs v. S.K. Roy, (1974) 4 SCC 230: 1974 SCC (Cri) 399; Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore-Cochin, AIR 1953 SC 478, relied on

[10077] — S. 409 — Prosecution must prove factum of entrustment and of misappropriation of the entrusted articles before a conviction can be recorded under — *Overseer convicted under for shortage of some articles from open godowns which were in physical charge of Chowkidars — Physical charge of the articles not shown to have been made over to the Overseer after being regularly counted in the godowns — Also no evidence to show misappropriation by the Overseer — Goods being open and accessible to all and sundry, possibility of the goods having been pilfered or stolen by others exists — Thus both the ingredients not having been proved, the conviction cannot be sustained. Janeshwar Das Aggarwal* v. *State of U.P.*, (1981) 3 SCC 10: 1981 SCC (Cri) 616: AIR 1981 SC 1646: 1981 ALJ 887.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali*, *Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 25-3-1981]

[10078] — S. 409 — Public servant after detection depositing the misappropriated sum in the treasury — *Held, would not absolve him of the offence already committed by putting the money to personal use instead of depositing it — No interference with the conviction therefore called for. Vishwa Nath* v. *State of J&K*, (1983) 1 SCC 215: 1983 SCC (Cri) 173: AIR 1983 SC 174: 1983 Cri LJ 231.

Bench Strength **2**. Coram: *R.S. Pathak* and **A.N. Sen**, JJ. [Date of decision: 5-1-1983]

[10079] — S. 409 — When a person can be said to be acting in the "capacity of a public servant" — "Entrustment" — meaning of

The respondent as Superintendent of the Pakistan section of an Insurance Society which was a unit of LIC collected premium directly from the policy-holders, issued receipts and made false adjustments in the records. The Special Court acquitted him on the ground that no money was entrusted to the respondent in his capacity as a public servant. The appeal to the High Court did not succeed. The State has then appealed to the Supreme Court.

Held :

In the case of an offence by a public servant punishable under S. 409, IPC, the acquisition of dominion or control over the property must also be in the capacity of a public servant. This is not the same thing as having the authority, as a public servant to get the control or dominion over property annexed with an obligation. The gravamen of the offence is the dishonest misappropriation of the money or property which comes into the possession or under the control of a public servant who has the ostensible authority to receive it even though, technically speaking, from the point of view of the distribution of departmental duties under internal rules of an office, it may not be within the scope of his authority or duty to accept the money. The fact that a public servant acts fraudulently in the exercise of his duties as a public servant to get dominion or control over some property will be an aggravating and not an exculpating circumstance. The "entrustment" results from what the person handing over money or property is made to think, understand, and believe about the purpose for which he hands over money or property to a public servant. If this takes place because of and due to the exercise of the official authority the requirements of S. 409, IPC are satisfied.

Ordinarily, it is the ostensible or apparent scope of a public servant's authority when receiving property and not its technical limitations, under some internal rules of the department or office concerned, and the use made by the servant of his actual official capacity which would determine whether there is a sufficient nexus or connection between the acts complained of and the official capacity so as to bring it within the ambit of S. 409, Indian Penal Code.

To constitute an offence under S. 409, IPC, it is not required that misappropriation must necessarily take place after the creation of a legally correct entrustment of dominion over property. The entrustment

(8)(i) Broadly *(contd.)*

may arise in "any manner whatsoever". That manner may or may not involve fraudulent conduct of the accused. Section 409, IPC, covers dishonest misappropriation in both types of cases: that is to say, those where the receipt of property is itself fraudulent or improper and those where the public servant misappropriates what may have been quite properly and innocently received. All that is required is what may be described as "entrustment" or acquisition of dominion over property in the capacity of a public servant who, as a result of it, becomes charged with a duty to act in a particular way, or, at least honestly.

The obligation to act in a certain manner with regard to or to deal honestly with property, over which a public servant obtains dominion or control by the use of his official capacity, may arise either expressly or impliedly.

A legal defect in the scope of the ostensible authority of a public servant does not prevent an entrustment to or an obligation to be fastened upon a public servant in his capacity as a public servant if the facts of the case establish, as in the present case, the required nexus or connection between acts which create the obligation and the capacity.

On facts held that the respondent misused his official capacity, and, under its garb and the colour of his office, obtained payments and issued receipts. The policy-holders did not know the correct position and would not have made payments to the respondent but for the possession and use by him of his official capacity. There is sufficient ostensible nexus between the actual official capacity and the conduct of the respondent to hold that the entrustment or dominion was obtained by the respondent over monies of policy-holders in his official capacity or as a public servant who, consequently, became charged with the duty, as a public servant between the actual official capacity and the conduct of the respondent to hold that the entrustment or dominion was obtained by the respondent over monies of policy-holders in his official capacity or as a public servant who, consequently, became charged with the duty, as a public servant, and indeed, even more so as a public servant, to act honestly with regard to sums thus received by him. So the respondent is guilty of an offence punishable under S. 409, IPC, which could be tried by the Special Court. *Supdt. & Remembrancer of Legal Affairs* v. *S.K. Roy*, (1974) 4 SCC 230: 1974 SCC (Cri) 399: AIR 1974 SC 794: (1974) 3 SCR 348: 1974 Cri LJ 678: 1974 (11) ACC 199.

Bench Strength **3**. Coram: **M.H. Beg**, *Y.V. Chandrachud* and *R.S. Sarkaria*, JJ. [Date of decision: 12-2-1974]

[10080] — Ss. 409 and 405 — Allocation of business amongst Ministers — Thereby no trust of the government properties is created in favour of any Minister — *Merely because a person is elected by the people and is inducted as a Minister, he cannot be said to be holding a trust on behalf of the people — Hence, on that basis it cannot be determined whether he committed offence of criminal breach of trust — Nor can the doctrine of public trust be applied as that doctrine pertains to environmental law — Criminal breach of trust can be determined only under the provisions of the Penal Code — Constitution of India — Art. 77(3)*

In the judgment under review the Court was of the opinion that a person on being elected by the people and on becoming a Minister holds a sacred trust on behalf of the people. This, is a philosophical concept and reflects the image of virtue in its highest conceivable perfection. This philosophy cannot be employed for determination of the offence of "criminal breach of trust" which is defined in the Indian Penal Code. Whether the offence of "criminal breach of trust" has been committed by a person has to be determined strictly on the basis of the definition of that offence set out in the Penal Code. (Para 159)

The Court has also invoked the "Doctrine of Public Trust" which is a doctrine of environmental law under which the natural resources such as air, water, forest, lakes, rivers and wildlife are public properties "entrusted" to the Government for their safe and proper use and proper protection. Public Trust Law recognises that some types of natural resources are held in trust by the Government for the benefit of the public. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The "Doctrine of Public Trust" has been evolved so as to prevent unfair dealing with or dissipation of all natural resources. This doctrine is an ancient and somewhat obscure creation of Roman and British law which has been discovered recently by environmental lawyers in search of a theory broadly applicable to environmental litigation. But this doctrine cannot be invoked in fixing the criminal liability and the whole matter will have to be decided on the principles of criminal jurisprudence, one of which is that the criminal liability has to be strictly construed and offence can be said to have been committed only when all the ingredients of that offence as defined in the statute are found to have been satisfied. (Paras 160 and 161)

Election to the State Legislature or the House of the People are held under the Constitution on the basis of adult suffrage. On being elected as a Member of Parliament, the petitioner was inducted as Minister of State. The Department of Petroleum and Natural Gas was allocated to him. Under the allocation of business rules, made by the President of India, the distribution of petroleum products, inter alia, came to be allocated to the petitioner. This allocation of business under the Constitution is done for smooth and better administration and for more convenient transaction of business of the Government of India. In this way, neither a "trust", as ordinarily understood or as defined under the Trust Act, was created in favour of the petitioner nor did he become a "trustee" in that sense. (Para 163)

It must, therefore, be held that the petitioner does not, on becoming the Minister of State for Petroleum and Natural Gas, assume the role of a "trustee" in the real sense nor does a "trust" come into existence in respect of the government properties. Therefore, the Court's direction regarding investigation by CBI into the offence of criminal breach of trust against the Minister cannot be sustained. (Para 166). *Common Cause, A Registered Society* v. *Union of India*, (1999) 6 SCC 667: 1999 SCC (Cri) 1196: AIR 1999 SC 2979.

Bench Strength **3**. Coram: **S. Saghir Ahmad**, *K. Venkataswami* and *S. Rajendra Babu*, JJ. [Date of decision: 3-8-1999]

Tito v. Waddell (No. 2), (1977) 3 All ER 129; Kinloch v. Secy. of State for India, (1880) 15 Ch D 1, approved

Common Cause, A Regd. Society v. Union of India, (1996) 6 SCC 530; Common Cause, A Regd. Society v. Union of India, (1996) 6 SCC 593, overruled

[10081] — Ss. 409 and 405 — Applicability of — Essential requirements for proving criminal breach of trust, stated — *If due to a fortuitous or intervening situation, a person to whom money is entrusted is incapacitated from carrying out the job, held, that will not bring in application of S. 405 or S. 409, unless misappropriation, or conversion to personal use or disposal of property is established — Where amount of Rs 1,50,200 was given by appellant to a bank in order to get two bank drafts of Rs 75,000 each, but due to an intervening situation i.e. the theft of the said money from the cash counter by somebody, the said bank drafts could not be prepared and handed over to the appellant, held, the ingredients necessary to constitute criminal breach of trust were absent — Hence, accused persons (cash peon G and Head Cashier B of the bank), held, not liable to be convicted under S. 409*

In order to sustain conviction under Section 409, two ingredients are to be proved. They are:

(*1*) the accused, a public servant, or banker or agent was entrusted with property for which he is duty-bound to account for; and

(*2*) the accused has committed criminal breach of trust. (Para 7)

What amounts to criminal breach of trust is provided in Section 405 IPC. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (*1*) entrustment, and (*2*) whether the accused was actuated by dishonest intention or not; misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. (Paras 8 and 9)

But here, it is not the case of the prosecution that the money which was given to Head Cashier *B* and cash peon *G* to obtain the bank drafts was taken away by them. Because of an intervening situation, the disappearance of the cash due to theft by somebody else, the bank drafts could not have been prepared and handed over to the appellant. Even if there is loss of money, the ingredients necessary to constitute criminal breach of trust are absent. If due to a fortuitous or intervening situation, a person to whom money is entrusted is incapacitated from carrying out the job, that will not bring in application of Section 405 IPC or Section 409 IPC, unless misappropriation, or conversion to personal use or disposal of property is established. Therefore, the accused persons cannot be convicted under Section 409 IPC. (Para 10). *Kailash Kumar Sanwatia* v. *State of Bihar*, (2003) 7 SCC 399: 2003 SCC (Cri) 1649: AIR 2003 SC 3714.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat** , JJ. [Date of decision: 2-9-2003]

[10082] — Ss. 409 & 405 — Cognizance of offence taken under, against director of a public limited company — *Application filed by the director under S. 482 CrPC seeking discharge on ground of availability of penal provisions for such offence under Companies Act — Held, High Court justified in dismissing the application. Radhey Shyam Khemka* v. *State of Bihar,* (1993) 3 SCC 54: 1993 SCC (Cri) 591: (1993) 77 Comp Cas 356: 1993 Cri LJ 2888: (1993) 1 Crimes 1132.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh** , JJ. [Date of decision: 26-3-1993]

[10083] — Ss. 409 and 405 — Criminal breach of trust — Essential ingredients for proving the offence of, restated — *Where entrustment of property to the accused established and accused failed to produce or account for the properties when asked*

(8)(i) Broadly *(contd.)*

to do so and no plausible explanation given in respect of the said failure, held, accused liable to be convicted under S. 409

Appellant AS, who was a property clerk in a court, was prosecuted for misappropriating the properties belonging to the court and selling them to the accused A-2 to A-5 during the period 2-3-1979 to 6-6-1985. The trial court acquitted him of the charge under Section 409 IPC. But in appeal, the High Court reversed the acquittal and convicted him under Section 409 IPC. In the instant appeal, AS contended that the ingredients necessary to bring home accusations under Section 409 were not present. It was submitted that only entries in the books of accounts were made by AS and there was nothing beyond that to show that he was acting as a property clerk.

Dismissing the appeal filed by the accused-appellant,

Held :

In order to sustain conviction under Section 409, two ingredients are to be proved. They are:

(*1*) the accused, a public servant, or a banker or agent was entrusted with property of which he is duty-bound to account for; and

(*2*) the accused has committed criminal breach of trust. (Para 5)

What amounts to criminal breach of trust is provided in Section 405 IPC. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (*1*) entrustment, and (*2*) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime. (Paras 6 and 7)

Cogent and reliable evidence was adduced to show that the appellant was working as a property clerk from 2-3-1979 to 6-6-1985 and that he was entrusted with the court's properties and had domain over them including the articles with which the present case is concerned. (Para 8)

The evidence on record conclusively establishes that the accused-appellant was in charge of the properties and he could not either produce those articles or properly account for them when he was asked to do so, as was obligated for him. No explanation, much less plausible has been given. The High Court was, therefore, right in setting aside the order of acquittal so far as the appellant is concerned. (Paras 10 and 12). *Anwar Chand Sab Nanadikar* v. *State of Karnataka*, (2003) 10 SCC 521.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat** , JJ. [Date of decision: 17-9-2003]

Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233: 1976 SCC (Cri) 566: AIR 1977 SC 170, explained and distinguished

Jaikrishnadas Manohardas Desai v. State of Bombay, AIR 1960 SC 889: 1960 Cri LJ 1250, followed

[10084] — Ss. 409 & 405 — Criminal breach of trust — Ingredients of — Failure to account for property entrusted not enough — Dishonest misappropriation for conversion to his own use or dishonest use or disposal must be proved

An essential ingredient of the offence under S. 405 is that the accused being in any manner entrusted with property or with dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust.

Section 409 can be invoked only if it can be shown that the accused being in any manner entrusted with property or with dominion over property in his capacity as public servant committed criminal breach of trust in respect of that property. It requires something much more than mere failure or omission to return the property. *Sardar Singh* v. *State of Haryana*, (1977) 1 SCC 463: 1977 SCC (Cri) 121: AIR 1977 SC 1766: 1977 Cri LJ 1158.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *A.C. Gupta*, JJ. [Date of decision: 1-11-1976]

[10085] — Ss. 409 and 405 — Money obtained by fraud or cheating was 'entrusted' to the accused — *Prevention of Corruption Act, 1947, S. 5(1)(c)*

There can be no doubt before a public servant can be convicted of an offence under S. 5(1)(*c*), *P.C. Act or under S. 409, IPC, the property which is said to have been misappropriated must be entrusted to him. Section 405 merely provides, whoever being in any manner entrusted with property or with any dominion over the property, as the first ingredient of the criminal breach of trust. The words 'in any manner' in the context are significant. The section does not provide that the entrustment of property should be by some one or the amount received must be the property of the person on whose behalf it is* *received. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment and for the benefit of the owner.*

The expression 'entrusted' in S. 409 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over. It may be that a person to whom the property is handed over may be an agent of the person to whom it is entrusted or to whom it may belong, in which case if the agent who comes into possession of it on behalf of his principal, fraudulently misappropriates the property, he is nonetheless guilty of criminal breach of trust because as an agent he is entrusted with it. A person authorised to collect moneys on behalf of another is entrusted with the money when the amounts are paid to him, and though the person paying may no longer have any proprietary interest nonetheless the person on whose behalf it was collected becomes the owner as soon as the amount is handed over to the person so authorised to collect on his behalf. Here the employee of Indian Airlines took excess money from passengers and pocketed the same by falsifying the receipts. He was therefore, guilty under S. 409 and Ss. 5(2) and 5(1)(*c*), Prevention of Corruption Act 1947. *Som Nath Puri* v. *State of Rajasthan*, (1972) 1 SCC 630: 1972 SCC (Cri) 359: AIR 1972 SC 1490: (1972) 3 SCR 497: 1972 Cri LJ 897.

Bench Strength **3**. Coram: *J.M. Shelat*, **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 15-2-1972]

In re Ram Soonder Podda, (1878) 2 Cal LR 515; In re Ramappa, (1911) 22 Mad LJ 112: 13 Cri LJ 15; Venkata Raghunatha Sastri, 45 Mad LJ 133: AIR 1923 Mad 597: 24 Cri LJ 452; Crown Prosecutor v. McIver, 69 Mad LJ 681: AIR 1936 Mad 1: 37 Cri LJ 142; State v. Dahyalal Dalpatram, AIR 1960 Bom 53: 1960 CriLJ 217, approved

Surendra Pal Singh v. State, AIR 1957 All 122: 1957 Cri LJ 170, overruled

[10086] — Ss. 409, 405, 403, Explns. 1 and 21 — Criminal breach of trust by public servant — Temporary misappropriation of public money *— Failure to utilise travelling allowance (TA) and daily allowance (DA) for the purpose for which it was given to a public servant — Appellant, a dog handler in a Dog Squad Team in police, drawing an amount of Rs 12,000 on 4-6-1998 as TA/DA to be utilised by him and other dog handlers for dogs' training commencing from 5-6-1998 — He was on leave from 5-6-1998 to 14-6-1998 but on expiry of leave, appellant not attending training and remaining absent unauthorisedly till 14-7-1998 — During his unauthorised absence, appellant went to his native place and returning the amount on coming back — Trial court convicting appellant under S. 409 — His appeal and criminal revision both dismissed — Sustainability — Appellant had taken money for a particular purpose but did not utilise it for that purpose — Hence, held, there was no scope for interference* (Para 6). *Shabbir Ahmed Sherkhan* v. *State of Maharashtra*, (2009) 5 SCC 22: (2009) 1 SCC (L&S) 1016: (2009) 2 SCC (Cri) 607.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 20-3-2009]

[10087] — Ss. 409, 467 and 471 — Criminal breach of trust by public servant — Proof — Essential requirements *— Existence of mens rea, held, must be proved — Recurring deposit accounts in a sub-post office — Misappropriation of amounts of, by employees of that post-office — Conviction of employees A-1 and A-2 (appellants) and A-3 (who did not prefer appeal) — A-1 and A-2 passing vouchers put up by A-3 — No evidence of criminal conspiracy — Nothing to show that A-1 and A-2 had knowledge that the vouchers were fabricated by A-3 — Held, it could not be said that A-1 and A-2 acted with a criminal intent — It might be that they acted in a negligent manner — But, that by itself would not constitute an offence under S. 409 though it may expose them to disciplinary action under the relevant rules — Held, offences under Ss. 409, 467, and 471 IPC and the one under Prevention of Corruption Act, not proved — A-1 and A-2 acquitted — Prevention of Corruption Act, 1947, Ss. 5(1)(c) and (d) r/w 5(2)*

Allowing the appeals filed by the accused persons (A-1 and A-2),

Held :

For the offence under Section 409 IPC it must be proved that a person entrusted with property or with any dominion over property, in his capacity as public servant commits criminal breach of trust in respect of such property, as defined in Section 405 IPC, meaning thereby that he dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. The crucial word used in Section 405 IPC is "dishonestly" and, therefore, it implies the existence of mens rea, that is to say, a guilty mind. (Para 9)

(8)(i) Broadly *(contd.)*

If there is no evidence to show that the appellants (A-1 and A-2) had knowledge that the vouchers were fabricated by A-3, it cannot be said that they acted with a criminal intent. It may be that they acted in a negligent manner and if they had taken due care they would have detected the fraud, but they failed to do so. However, that by itself would not constitute an offence under Section 409 IPC though it may expose the appellants to disciplinary action under the relevant rules. (Para 9)

There is no evidence to show that A-1 and A-2 forged the documents which purported to be a valuable security. The evidence is only to the effect that they had negligently put their signatures on those vouchers while passing the vouchers for payment. (Para 9)

In the absence of any evidence to show that A-3 was acting in conspiracy with A-1 and A-2 or that A-1 and A-2 had knowledge of the fact that A-3 had fraudulently and dishonestly prepared forged vouchers on the basis of which the amounts were sought to be withdrawn, the offences under Sections 467, 471 or 409 IPC are not proved against A-1 and A-2. Consequently, the offence under the provisions of the Prevention of Corruption Act is also not made out. (Para 10). *L. Chandraiah* v. *State of A.P.*, (2003) 12 SCC 670: AIR 2004 SC 252: 2004 Cri LJ 365.

Bench Strength **2**. Coram: *B.P. Singh* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 6-11-2003]

[10088] — Ss. 409, 467, 471, 477-A and 120-B — Ingredients — Existence of mens rea essential for establishing offences under Ss. 409, 467 and 471 — *Alleged acts of fraudulent misappropriation of fund by encashing TA bills funded by Indian Population Project by making false allotment letters, acquittal rolls, entries in books and receipts in furtherance of criminal conspiracy with dishonest intention — Proof — Essential ingredients of conspiracy under S. 120-B not made out against appellant-accused — Mens rea of appellant-accused for offences under Ss. 409, 467 and 471 not proved, nor essential ingredients of those offences made out — Records established that appellant-accused were not beneficiaries of the misappropriated fund — Held, prosecution failed to prove the offences under Ss. 409, 467, 471 and 477-A r/w S. 120-B IPC and consequently offences under the PC Act also not made out — Prevention of Corruption Act, 1988, Ss. 13(1)(c) & 13(2)*

The prosecution has miserably failed to establish the essential ingredients of the conspiracy under Section 120-B IPC by leading cogent and convincing evidence against the appellants, A-4 to A-7. (Para 15)

For the offence under Sections 409, 467 and 471, the existence of mens rea (guilty mind) must be proved. So far with regard to the offence under Section 467 IPC is concerned, there is no evidence to show that the appellants forged a document which purported to be a valuable security. There is also no evidence that the appellants had knowledge of fact that the allotment letter was a forged letter. Again, for an offence under Section 409 it must be proved that the person entrusted with the property, or any dominion over property in his capacity as a public servant committed criminal breach of trust in respect of such property as defined in Section 405 IPC. The evidence must show that he dishonestly misappropriated or converted to his own use that property or dishonestly used or dispossessed that property in violation of any direction of law prescribing the mode in which such trust is to be discharged. In the present case, there is no evidence that A-4 to A-7 dishonestly misappropriated or converted to their own use the amount of TA. On record it is established that A-4 to A-7 are not the beneficiaries of the misappropriated amount. (Para 16)

In the absence of any evidence to show that A-4 to A-7 (appellants) were acting in conspiracy with other accused persons and that A-4 to A-7 have fraudulently and dishonestly prepared forged bill on the basis of forged allotment letter, the offences under Sections 467, 471, 477-A or Section 409 are not proved against the appellants. Consequently, the offence under the provision of the Prevention of Corruption Act is also not made out. The trial court was, therefore, not justified in convicting A-4 to A-7 under the aforesaid sections of law. (Para 17). *Radha Pisharassiar Amma* v. *State of Kerala*, (2007) 13 SCC 410.

Bench Strength **2**. Coram: **H.K. Sema** and *L.S. Panta*, JJ. [Date of decision: 14-11-2007]

[10089] — Ss. 409/34 — For liability under S. 34 physical presence not necessary if participation established — *Situation different in* Shreekantiah case, *AIR 1955 SC 287 where absence itself disproved participation. Jaikrishnadas Manohardas Desai* v. *State of Bombay*, AIR 1960 SC 889: (1960) 3 SCR 319: 1960 Cri LJ 1250, 1254.

Bench Strength **3**. Coram: *Syed Jafer Imam*, *K.N. Wanchoo* and **J.C. Shah** , JJ. [Date of decision: 16-3-1960]

***Considered in** (1973) 1 SCC 512: (1973) 1 SCC (Cri) 384*
***See also** 52 IA 40, 52: AIR 1925 PC 1: 26 Cri LJ 431*

(ii) Relative scope vis-à-vis Prevention of Corruption Act

See in detail Prevention of Corruption Act, 1988 and Public Accountability and Vigilance in *Complete Digest of Supreme Court Cases,* 2nd Edn.

[10090] — S. 405 — Both distinct — Latter not discriminatory — *Constitution of India, Art. 14 — Prevention of Corruption Act, 1947, S. 5(1)(c). Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458, 464: 1957 SCR 423, 437: (1958) 2 LLJ 645: 1957 Cri LJ 575.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon** , JJ. [Date of decision: 11-1-1957]

[10091] — S. 405 — Held, not repealed by S. 5 of Prevention of Corruption Act, 1947. *State of Punjab* v. *Amar Singh*, Criminal Appeal No. 172 of 1957.

Bench Strength **4**. Coram: **S.R. Das, C.J.** and *N.H. Bhagwati, T.L. Venkatarama Aiyar* and **S.K. Das** , JJ. [Date of decision: 21-5-1958]

State v. Gurcharan Singh, AIR 1952 Punj 89, ***overruled***
See also *1957 SCR 423*

[10092] — S. 405 — Offence under S. 5(1), Prevention of Corruption Act, held, distinct and separate from one under S. 405, IPC — *Former does not repeal the latter to any extent. State of A.P.* v. *Akki Veeriah*, Criminal Appeal No. 56 of 1956. [Date of decision: 25-8-1958]

[10093] — Ss. 405 & 409 — Scope — Effect of S. 5 of Prevention of Corruption Act — Ss. 5(1)(c) and 5(2) do not repeal S. 405 or 409, IPC — *Offences under S. 5(1)(c) and S. 405 are separate and distinct*

The Prevention of Corruption Act being a temporary one, the Legislature would not have intended in the normal course of things that a temporary statute like the one in question should supersede an enactment of antiquity, even if the matter covered the same field. Under S. 6(*a*), General Clauses Act if by efflux of time the period of a temporary statute which had repealed an earlier statute expires, there would not be a revival of the earlier one by the expiry of the temporary statute.

By enacting the Amending Act of 1952 and creating sub-section (4) to S. 5 the legislature specifically stated that the offence under S. 5(1)(*c*) is different from any previous existing offence under any penal statute and there can, therefore, be no scope for speculation about repeal. The words used in sub section (4) "any other law" made the position quite clear and explicit. Other law does not mean identical law in which case the word 'other' will have no meaning. A comparison of the elements of the offences under S. 405, IPC and 5(1)(*c*) of the Prevention of Corruption Act would show that an offence under S. 405, Penal Code is separate and distinct from the one under S. 5(1)(*c*). There are three points of difference between S. 405, Penal Code and S. 5(1)(*c*). The dishonest misappropriation contemplated in S. 405, Penal Code is different; whereas that under S. 5(1)(*c*) is either dishones misappropriation of fraudulent misappropriation. The latter section is much wider in amplitude than the former. In S. 405, Penal Code the words used are "in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied". There are no such expressions in S. 5(1)(*c*). It is clear, therefore, that whereas under S. 405, Penal Code there are three essential ingredients to constitute the offence; each one of them being separate and distinct, in S. 5(1)(*c*) there are only two. Now considering S. 5(1)(*c*) there are certain matters in it which are absent in S. 405, Penal Code. The words 'dominion' and 'entrustment' connote two different things. The words 'dominion' is not in S. 5(1)(*c*). The word 'fraudulently' is not present in S. 405, and in S. 5(1)(*c*) the gist of the offence can also be made out if the offender allows any person so to do, i.e., allows any person to derogate from the law as contemplated in the earlier portion of the section. The meaning put on the word 'allows' would certainly be different from "dishonest misappropriation" by the offender himself. It may be that the word can mean allowing by negligence or without any volition on the part of the offender. It may also mean that there is some kind of positive and tacit acquiescence necessary to bring home the offence. In any event, allowing other persons so to do does not find a place in S. 405, Penal Code though this section also contemplates "wilfully suffering any other person so to do". There is an essential difference between "allowing" a person and "wilfully suffering" a person to do a certain thing. There can, therefore, be no doubt whatever that S. 5(1)(*c*) of the Prevention of Corruption Act creates a new offence called "criminal misconduct" and cannot by implication displace the offence under S. 405, Penal Code.

In S. 405, Penal Code the offender must wilfully suffer another person to misappropriate the property entrusted, but in S. 5(1)(*c*) if he allows another person to dishonestly or fraudulently misappropriate or otherwise convert for his own use any property so entrusted, then it is an offence. There is a vast difference between wilfully suffering another and allowing a person to do a particular thing and the word 'allows' is much wider in its import. Wilfully presupposes a conscious action, while even by negligence one can allow another to do a thing.

(8)(ii) Relative scope vis-à-vis Prevention of Corruption Act *(contd.)*

Therefore the two offences are distinct and separate. The offence created under S. 5(1)(*c*) of the Prevention of Corruption Act is distinct and separate from the one under S. 405, Penal Code and, therefore, there can be no question of S. 5(1)(*c*) repealing S. 405, Penal Code. *Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575, 580.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon**, JJ. [Date of decision: 11-1-1957]

State v. Pandurang, AIR 1955 Bom 451; R. v. V. Satyanarayanmurthy, AIR 1953 Mad 137: 1953 Cri LJ 309; Amarendra Nath Ray v. State, AIR 1955 Cal 236: 1955 Cri LJ 784; Mohd. Ali v. State, AIR 1953 Cal 68: 1953 Cri LJ 1523; Bhup Narain v. State, AIR 1952 All 35: 1952 Cri LJ 236; Gopal Das v. State, AIR 1954 All 80: 1954 Cri LJ 96, approved

State v. Gurcharan Singh, AIR 1952 Punj 89: 1952 Cri LJ 316, ***overruled***

Followed in 1960 Cri LJ 539: AIR 1960 SC 397

[10094] — Ss. 405 and 409 — "Allowing", "dominion", "entrustment" — *Prevention of Corruption Act, 1947, S. 5(1)(c) & (2). Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon**, JJ. [Date of decision: 11-1-1957]

[10095] — Ss. 405 and 409 — "Wilfully suffering" and "wilfully allowing" — *Prevention of Corruption Act, 1947, S. 5(1)(c)*

There is an essential difference between "allowing" a person and "wilfully suffering" a person to do a certain thing. There can, therefore, be no doubt whatever that S. 5(1)(*c*) of the Prevention of Corruption Act creates a new offence called "criminal misconduct" and cannot by implication displace the offence under S. 405, Penal Code.

In S. 405, Penal Code the offender must wilfully suffer another person to misappropriate the property entrusted, but in S. 5(1)(*c*) if he allows another person to dishonestly or fraudulently misappropriate or otherwise convert for his own use any property so entrusted, then it is an offence. There is a vast difference between wilfully suffering another and allowing a person to do a particular thing and the word "allows" is much wider in its import. Wilfully presupposes a conscious action, while even by negligence one can allow another to do a thing. *Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon**, JJ. [Date of decision: 11-1-1957]

[10096] — S. 409 — Prohibition of a subsequent trial for the same offence — *Offence of criminal misconduct punishable under S. 5(2) of the Prevention of Corruption Act, 1947 is not identical in essence, import and content with an offence under S. 409, IPC — Therefore acquittal for an offence under S. 5(2), Prevention of Corruption Act, 1947 does not bar a trial under S. 409, IPC — CrPC, 1898 — S. 403 — Constitution of India — Art. 20(2) — CrPC, 1973 — S. 300*

The offence of criminal misconduct punishable under S. 5(2) of the Prevention of Corruption Act 2 of 1947 is not identical in essence, import and content with an offence under S. 409 of the Indian Penal Code. The offence of criminal misconduct is a new offence created by that enactment and it does not repeal by implication or abrogate S. 409 of the Indian Penal Code. Therefore there can be no objection to a trial and conviction under S. 409 of the Indian Penal Code even if the respondent has been acquitted of an offence under S. 5(2) of the Prevention of Corruption Act 2 of 1947. *State of M.P.* v. *Veereshwar Rao Agnihotri*, AIR 1957 SC 592: 1957 SCR 868: 1957 Cri LJ 892.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *Syed Jafer Imam, S.K. Das*, **P. Govinda Menon** and *A.K. Sarkar*, JJ. [Date of decision: 5-4-1957]

[10097] — S. 409 — Trial of offence under S. 409, IPC read with S. 5, Prevention of Corruption Act not improper. *State of Punjab* v. *Shadi Lal*, AIR 1960 SC 397: 1960 Cri LJ 539.

Bench Strength **2**. Coram: **Syed Jafer Imam** and *K.N. Wanchoo*, JJ. [Date of decision: 4-9-1959]

(iii) Sanction for prosecution

See in detail CrPC, 1973, S. 197, in Vol. 16, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 1 of *SC on CrPC and Criminal Trial*

See also S. 19, Prevention of Corruption Act, 1988 in *Complete Digest of Supreme Court Cases*, 2nd Edn.

[10098] — Ss. 406/120-B — Sanction for prosecution of public servant — Offences under Ss. 406, 409 read with S. 120-B IPC — Sanction under S. 197 for prosecution of public servant, held, not necessary — *CrPC, 1973 — S. 197*

It was laid down in *Harihar Prasad case*, (1972) 3 SCC 89 that:

"As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409, Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act is concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."

Learned Single Judge of the High Court declined to follow the aforesaid legal position in the present case on the sole premise that the offence under Section 406 of IPC has also been fastened against the accused besides Section 409 of IPC. It is difficult to discern the rationale in the distinguishment. Sections 406 and 409 of IPC are cognate offences in which the common component is criminal breach of trust. When the offender in the offence under Section 406 is a public servant (or holding any one of the positions listed in the section) the offence would escalate to Section 409 of the Penal Code. When in *Harihar Prasad case* it was held that in regard to the offence under Section 409 of IPC read with Section 120-B it is no part of the duty of the public servant to enter into a criminal conspiracy for committing breach of trust, there is no sense in stating that if the offence is under Section 406 read with Section 120-B IPC it would make all the difference vis-à-vis Section 197 of the Code. (Para 8). *State of Kerala* v. *V. Padmanabhan Nair*, (1999) 5 SCC 690: 1999 SCC (Cri) 1031: AIR 1999 SC 2405: 1999 Cri LJ 3696: (1999) 4 LLN 77.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 14-7-1999]

Harihar Prasad v. State of Bihar, (1972) 3 SCC 89: 1972 SCC (Cri) 409; Shreekantiah Ramayya Munnipalli v. State of Bombay, AIR 1955 SC 287: 57 Bom LR 632; Amrik Singh v. State of Pepsu, AIR 1955 SC 309, followed

[10099] — S. 409 — Accused charged under S. 409, IPC and S. 5(2), Prevention of Corruption Act, 1947 — Sanction for prosecution under S. 5(2) accorded, but no sanction for prosecution under S. 409, IPC accorded — *Sanction for prosecution under S. 5(2) cannot be extended to cover the prosecution under S. 409, IPC — In case sanctioning authorities of the two prosecutions are the same the prosecution under S. 409, IPC after the sanction under S. 5(2) is incompetent. Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *S.R. Das* and **Vivian Bose** , JJ. [Date of decision: 22-12-1954]

See also AIR 1966 SC 220: 1966 Cri LJ 179

[10100] — S. 409 — Objection as to want of sanction under S. 197(1), CrPC, 1898 for prosecution of accused public servant not taken in courts below — *Held, the objection open to accused at the stage of Supreme Court, as it was a pure question of law. Rameshwar Sahai* v. *State of U.P.*, Criminal Appeal No. 144 of 1954.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *C.J.* and **T.L. Venkatarama Aiyar** and *Syed Jafer Imam*, JJ. [Date of decision: 30-11-1955]

(1955) 1 SCR 1177, distinguished

[10101] — S. 409 — Prosecution of a public servant under — Whether sanction is required under S. 197(1), CrPC, 1898 will depend on the facts of each case

Even when the charge is one of misappropriation by a public servant, whether sanction is required under S. 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under S. 197(1), CrPC would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

Whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary. *Amrik Singh* v. *State of Pepsu*, AIR 1955 SC 309: (1955) 1 SCR 1302: 1955 Cri LJ 865, 867.

Bench Strength **3**. Coram: *S.R. Das*, *N.H. Bhagwati* and **T.L. Venkatarama Aiyar** , JJ. [Date of decision: 28-2-1955]

Reviewing Shreekantiah (AIR 1955 SC 287) and Amrik Singh (AIR 1955 SC 309) the Supreme Court in Matajog Dubey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140, 145 stated: "There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of duty."

Also "whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of progress of the case".

AIR 1939 FC 43: 40 Cri LJ 468; AIR 1948 PC 128: 49 Cri LJ 503: and AIR 1949 PC 117: 50 Cri LJ 395, affirmed

See also AIR 1966 SC 20: 1966 Cri LJ 179; AIR 1969 SC 686: 1969 Cri LJ 1057; AIR 1954 SC 455: 1954 Cri LJ 1161; and AIR 1956 SC 44: 1956 Cri LJ 140

For an instance see (1955) 1 SCR 1177: AIR 1955 SC 287: 1955 Cri LJ 857

Followed in (1972) 3 SCC 89: 1972 SCC (Cri) 409

[10102] — S. 409 — Prosecution of Managing Director of a company under liquidation under S. 409 — Sanction of the company court is not necessary

There is nothing in S. 179, Companies Act which can be construed as restricting the powers of the Court to take cognizance of an offence or the powers of the police to initiate prosecution or even of a private citizen to move the machinery of the criminal courts to bring an offender like the appellant to justice.

(8)(iii) Sanction for prosecution *(contd.)*

For a prosecution for breach of trust even by a director of a company no such condition precedent as the previous sanction of any authority is contemplated by law, unless it is a prosecution in the name and on behalf of the company by the official liquidator who has to incur expenses out of the funds of the company. Section 179 is an enabling provision to enable the liquidator to do certain things with the sanction of the Court. It does not control the general law of the land. *Jaswantrai Manilal Akhaney* v. *State of Bombay*, AIR 1956 SC 575: 1956 SCR 483: 26 Comp Cas 340: 1956 Cri LJ 1116, 1125: (1956) 2 MLJ (SC) 49.

Bench Strength **3**. Coram: *Vivian Bose*, *B. Jagannadhadas* and **B.P. Sinha** , JJ. [Date of decision: 4-5-1956]

[10103] — S. 409 — Prosecution under — Entrustment and/or dominion in capacity as public servant — Disposal lawful or otherwise not possible save by an act done or purporting to be done in his official capacity — *S. 197, CrPC, 1898 applies, sanction was necessary and trial is vitiated in its absence*

If S. 197, CrPC is construed too narrowly it can never be applied, for of course it is not part of an official's duty to commit an offence and never can be. But it is not the duty to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. Section 197 has content and its language must be given meaning. *Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857.

Bench Strength **3**. Coram: *B.K. Mukherjea* and *S.R. Das*, **Vivian Bose** , JJ. [Date of decision: 22-12-1954]

See also 1954 Cri LJ 1161: AIR 1954 SC 455; 1956 Cri LJ 140: AIR 1956 SC 44; and AIR 1966 SC 220: 1966 Cri LJ 179

[10104] — S. 409 — Prosecution under — Sanction not necessary

A public servant committing criminal breach of trust does not normally act in his capacity as a public servant and therefore no sanction is necessary to prosecute him. *Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575, 581.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon** , JJ. [Date of decision: 11-1-1957]

See also AIR 1966 SC 220: 1966 Cri LJ 179

State v. Pandurang Baburao, AIR 1955 Bom 451; Bhup Narain Saxena v. State, AIR 1952 All 35: 1952 Cri LJ 236 and State v. Gulab Singh, AIR 1954 Raj 211: 1954 Cri LJ 1446, approved

[10105] — S. 409 — Public servant — Sanction not necessary if act not connected with his official duty — *S. 197(1), CrPC, 1898 and S. 106, T.N. Village Panchayats Act, 1950 (10 of 1950) — Prosecution of President of Panchayat Board upheld. P. Arulswami* v. *State of Madras*, AIR 1967 SC 776: (1967) 1 SCR 201: 1967 Cri LJ 665.

Bench Strength **3**. Coram: **V. Ramaswami**, *V. Bhargava* and *Raghubar Dayal*, JJ. [Date of decision: 29-8-1966]

[10106] — S. 409 — Sanction for prosecution of a public servant under — Absence of sanction for prosecution under S. 197, CrPC, 1898 is fatal and cannot be cured. *Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *S.R. Das* and **Vivian Bose** , JJ. [Date of decision: 22-12-1954]

See also AIR 1966 SC 220: 1966 Cri LJ 179

[10107] — S. 409 — Sanction not necessary when act of criminal misappropriation was not committed by the appellant while he was acting or purporting to act in the discharge of his official duties and that offence has no direct connection with the duties of the accused as a public servant *(Per majority: Sarkar, J. contra)*. *Baijnath* v. *State of M.P.*, AIR 1966 SC 220: (1966) 1 SCR 210: 1966 Cri LJ 179.

Bench Strength **3**. Coram: **A.K. Sarkar**[1], *M. Hidayatullah*[2] and V. Ramaswami[2], JJ. [Date of decision: 7-5-1965]

H.H.B. Gill v. King, 49 Cri LJ 503: AIR 1948 PC 128: 1948 FCR 19; Albert West Meads v. King, AIR 1948 PC 156: 75 IA 185: 49 Cri LJ 660; Phemindra Chandra v. King, AIR 1949 PC 117: 76 IA 10: 50 Cri LJ 395, approved

See fully CrPC, 1898, S. 197

See also AIR 1967 SC 778: 1967 Cri LJ 668

[10108] — S. 409 — Sanction under S. 197 CrPC — *Held, is not a condition precedent for launching prosecution for an offence under S. 409 — CrPC, 1973 — S. 197* (Para 12). *N. Bhargavan Pillai* v. *State of Kerala*, 2005 SCC (Cri) 142: AIR 2004 SC 2317: (2004) 2 KLT 725: 2004 Cri LJ 2494.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat** , JJ. [Date of decision: 20-4-2004]

State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539, followed

[10109] — S. 409 — Time when question of sanction to be considered — *Court can consider the question of necessity of sanction at any stage of the trial when necessity of sanction is disclosed*

The question whether sanction under S. 197, CrPC is necessary may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity of sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case. *Matajog Dobey* v. *H.C. Bhari*, AIR 1956 SC 44: (1955) 2 SCR 925: (1955) 28 ITR 941: 1956 Cri LJ 140.

Bench Strength **5**. Coram: *S.R. Das*, *Vivian Bose*, *B. Jagannadhadas*, *Syed Jafer Imam* and **N. Chandrasekhara Aiyar**, JJ. [Date of decision: 31-10-1955]

[10110] — Ss. 409 & 406 — Sanction for prosecution granted for offence under S. 5(2), P.C. Act saying that the accused liable to be prosecuted under Ss. 409/406, IPC and S. 5(2) of the P.C. Act — *Sanction covers offence under S. 5(1)(c)*

The sanction says that the appellant had received money and misappropriated it by not crediting the same into the treasury and embezzled it and was therefore guilty of criminal misconduct and liable to prosecution under Ss. 409/406, IPC and S. 5(2) of the P.C. Act. The allegations made clearly show that the sanctioning authority had S. 5(1)(*c*) in mind because the sanction speaks of misappropriation and embezzlement of the moneys of the Board and misappropriation and embezzlement is only to be found in S. 5(1)(*c*). The section speaks of misappropriation and embezzlement and there is nothing in the words to imply that this was only with reference to conversion by the appellant to his own use. As the words of the sanction stand they would cover a case of misappropriation or conversion to his own use by the appellant himself or by allowing others to do so. Therefore, the sanction was sufficient for the purpose of giving jurisdiction to the Special Judge to take cognizance of the cases. *Munnalal* v. *State of U.P.*, AIR 1964 SC 28: (1964) 3 SCR 88: (1964) 1 Cri LJ 11: (1966) 2 LLJ 318: ILR (1963) 2 All 916.

Bench Strength **3**. Coram: *P.B. Gajendragadkar*, **K.N. Wanchoo** and *K.C. Das Gupta*, JJ. [Date of decision: 17-4-1963]

[10111] — Ss. 409, 420, 467, 468 and 471 — "Acting or purporting to act in discharge of his official duty" — Offences under Ss. 409, 420, 467, 468 and 471 IPC — If covered — *Held, the said offences cannot be regarded as committed by public servant while discharging or purporting to act in discharge of his official duty — CrPC, 1973 — S. 197* (Para 60). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193, relied on

[10112] — Ss. 409, 463, 468, 477-A and 120-B — Discharge of accused Vice-Chancellor of University — When warranted — Previous sanction for prosecution not having been obtained under S. 50(2), 1994 University Act — *Alleged actions taken while appellant was discharging his duties as Vice-Chancellor — Vice-Chancellor being an officer of University in terms of S. 23, 1994 Act — Appellant starting off University in two years, which job had been pending for two decades — Land allotted by Government being waterlogged and required filling up with earth — Appellant inviting tenders therefor and accepting lowest tender which was lower than estimate prepared by Assistant Executive Engineer — Appellant also consulting several experts in the field for said filling up of earth — Neither FIR nor charge-sheet alleging any personal gain for appellant in transaction — Allegation being only that contractor doing earth-filling obtained an excess amount — Even FIR and charge-sheet presenting a huge difference in calculation of loss and this not being reflected in charge-sheet — It not being clear as to why prosecution waited for nearly 8 years to file charge-sheet — Government communicating to Vigilance Department to withdraw charges against appellant but nothing clear about follow-up action — Effect — Appellant on facts and law, held, is entitled to be discharged — In absence of previous sanction as per mandatory requirement under S. 50(2), 1994 Act, prosecution cannot proceed against appellant who was discharging his duties as officer of University — Further, it can be presumed that Government had taken a conscious decision exonerating appellant even in 2006 and there is no reason to doubt integrity of appellant — Heading of S. 50, 1994 Act makes it clear that any act done in good faith is protected — Sree Sankaracharya University of Sanskrit Act, 1994, Ss. 50 and 23 — Applicability of S. 50 — Heading in S. 50 i.e. "protection of acts done in good faith" — Interpretation of — Evidence Act, 1872, S. 114 Ill.(e) — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(d) — CrPC, 1973, Ss. 239 and 482. R. Ramachandran Nair* v. *State of Kerala (Vigilance Deptt.)*, (2011) 4 SCC 395.

Bench Strength **2**. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 28-3-2011]

[10113] — Ss. 409 and 468 — Need for sanction under S. 197 CrPC, if any — *Offences under S. 409 IPC (criminal breach of trust by a public servant, etc.) and S. 468 IPC (forgery for the purpose of cheating) — Sanction for prosecution, held, not* *required as these offences are not committed in the discharge of official duty — Respondent charged with commission of offences under Ss. 409, 420, 461 and 468 IPC but convicted by trial court for the offences under Ss. 409 and 468 only — Appellate court discharging respondent inter alia on the ground that sanction for prosecution was not granted by competent authority — High Court affirming the order — Held, sanction was not required in the present case — High Court's order set aside and appeal of the State directed to be heard on merits — CrPC, 1973, S. 197* (Paras 6 and 9). *State of U.P.* v. *Paras Nath Singh*, (2009) 6 SCC 372: (2009) 2 SCC (L&S) 200: 2009 Cri LJ 3069: (2009) 5 All LJ 249.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *D.K. Jain* and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44; S.A. Venkataraman v. State, AIR 1958 SC 107; C.R. Bansi v. State of Maharashtra, (1970) 3 SCC 537: 1971 SCC (Cri) 143; Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287: (1955) 1 SCR 1177; Amrik Singh v. State of Pepsu, AIR 1955 SC 309; Harihar Prasad v. State of Bihar, (1972) 3 SCC 89: 1972 SCC (Cri) 409; State of Kerala v. V. Padmanabhan Nair, (1999) 5 SCC 690: 1999 SCC (Cri) 1031; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539, applied

(iv) Instances

[10114] — S. 405 — Receiver not accounting for extra payment — *On evidence, payment was illegal gratification to him personally and hence not covered by S. 405. C.M. Narayan Ittiravi Nambudiri* v. *State of Travancore-Cochin*, AIR 1953 SC 478: 1954 Cri LJ 102: 1953 Ker LT 173.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and **B.K. Mukherjea** , *S.R. Das, Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 10-11-1952]

[10115] — Ss. 405 and 409 — Criminal breach of trust — Misuse of funds by bank officials in violation of banking practices and/or departmental instructions — Whether a criminal breach of trust — *Terms of S. 405, held, are very wide — It applies to one who is in any manner entrusted with property or dominion over property — S. 405 does not require that trust should be in furtherance of a lawful object — The expression "direction of law" in S. 405, held, includes banking norms, banking practices and directions given in internal departmental instructions of a bank — Held on facts, bank officials who allowed advance credits on banker's cheques to a customer in violation of departmental instructions, acted in violation of direction of law — The officials had dominion over money belonging to Bank and they dishonestly used that money for conferring benefit on the customer — The officials were therefore guilty of offence under S. 409*

Terms of Section 405 IPC are very wide. It applies to one who is in any manner entrusted with property or dominion over property. The section does not require that trust should be in furtherance of any lawful object. (Para 168)

An officer of a bank holds a position of trust. Each one of them, keeping in view the nature and extent of duties required to be performed, is expected to do so not only in terms of statutory directions but also the directions issued by Reserve Bank of India and his own employer. Documents for the purpose of giving credit in the account of a customer would indisputably be required to be prepared on the basis of cheque receipts. It cannot be prepared in anticipation of receipt of a cheque; firstly, because the amount of cheque, the name of drawee and other particulars would not be known to them; secondly, the bank is required to maintain a large number of registers to put in place a sound banking system. All precautions must be taken to prevent a fraud or deceit on the part of a customer. Therefore, the fact that credit and debit vouchers were prepared and other registers were filled up, although the cheques were not in physical possession of the Bank, establishes existence of a criminal conspiracy between ultimate beneficiary, on the one hand, and some of the officers of the Bank, on the other. A debit or credit voucher furthermore is not prepared in piecemeal or in instalments. Bank officers are not supposed to know the immediate requirement of an account-holder. (Para 147)

The offences relating to criminal breach of trust stands established against A-1, A-2 and A-4. They were officers in Funds Department of Andhra Bank. In that capacity, they had been entrusted with the funds of the Bank. In that sense, they had dominion over a thing. The money which was transferred to A-3's account, was the money belonging to the Bank. Only the said accused had the power to transfer it to the account of A-3. The same has been done dishonestly to cause wrongful gain to A-3 and in the process wrongful loss has been caused to the Bank. (Para 173)

The instruments based on which the funds of Andhra Bank were transferred to A-3's account were not physically available with Andhra Bank at the time the accused persons authorised transfer of bank funds to A-3's account. A-3 also utilised the said credit given and accordingly even cheques issued by him were honoured. Had it not been for the credits given on relevant dates, his account would have been overdrawn. Interest was also not charged from A-3 and was not debited to his account and loss was therefore caused to the Bank. (Para 174)

Guidelines for banker's cheques were issued by Head Office. They were issued for the purpose of operation of security transaction at Fort Branch, Bombay of Andhra Bank. The guidelines moreover specify that permission had been granted to A-3 for the purpose of securities transactions. Therefore, these directions were obviously binding on the persons who were working in the Funds Department. These guidelines were exclusively meant for Funds Department for handling securities transactions, and there was no other department or branch of Andhra Bank anywhere in India which was handling such securities transactions. As such, they were binding on the accused persons. (Para 44)

Banking norms and established practices and procedures contain directions of law, prescribing the mode in which trust is to be discharged. The expression "direction of law" in the context of Sections 405 and 409 would include not only legislations pure and simple but directions also, instruments and circulars issued by an authority entitled therefor. The trust in this regard would therefore have to be discharged in terms of such directions. Acting in violation thereof causing wrongful gain to A-3 and loss to the Bank would bring the action within Section 409 IPC. (Para 175)

Established banking norms are binding on an officer of the bank in the matter of discharge of trust i.e. in dealing with the money entrusted to him. He is required to follow the same and that would be an implied term of his contract of service as an officer of the bank. The accused acted in breach of the same. Prosecution has sufficiently proved involvement of A-1, A-2 and A-4 as regards the offence of criminal breach of trust. (Para 176). *Mir Nagvi Askari* v. *CBI*, (2009) 15 SCC 643.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

R. Venkatakrishnan v. CBI, (2009) 11 SCC 737; Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507; State of Punjab v. Pritam Chand, (2009) 16 SCC 769; Sharon Michael v. State of T.N., (2009) 3 SCC 375: (2009) 2 SCC (Cri) 103, relied on

[10116] — Ss. 405 and 409 — Criminal breach of trust by bank officials — Discounting of bills of exchange in violation of RBI Circular and Bank Manual of Instructions — Discounting taking place at bank branch which was normally not transacting such business — *Held, guilty bank officials had dominion over funds entrusted to them by their employer bank and they acted dishonestly to help a private party while discounting bills of exchange — Criminal breach of trust was therefore established against Accused 1 who was Chairman-cum-Managing Director of the bank and Accused 2 who was General Manager thereof — However, further held, offence was not proved against Accused 8 who was Divisional Manager, for the reason that he being a Scale IV employee, was not in a position to take any decision to commit criminal breach of trust — Prevention of Corruption Act, 1988, Ss. 13(1)(d) and 13(2)*

Accused 1, 2 and 8 were officials of UCO Bank, who discounted two bills of exchange drawn by M/s J.H. Mehta and accepted by two business concerns Mazda and Growmore. It was alleged that all these business concerns were interconnected and were controlled by a single person, Harshad Mehta (since deceased), who was dealing in the share market. The bills were discounted at Nariman Point Branch of UCO Bank whereas such kind of business was transacted at D.N. Road Branch. It also came to light that while discounting the bills of exchange, instructions contained in RBI Circular dated 5-9-1988 and in UCO Bank Manual of Instructions on Bill Discounting were not followed. UCO Bank later on purchased shares from Harshad Mehta to get back money advanced through discounting of bills. It was alleged that the entire transaction was to enable Harshad Mehta to siphon off funds of UCO Bank for using in the share market, and thus the Bank was exposed to a great risk.

Accused 1 at the relevant time was Chairman-cum-Managing Director of UCO Bank. Accused 2 was General Manager and Accused 8 was Divisional Manager of the Bank. The whole process was initiated after a meeting between Accused 1 and Harshad Mehta. The Special Court had convicted Accused 1 and 2 of the offence of criminal breach of trust but had acquitted Accused 8.

Agreeing with the Special Court,

Held :

The Bank entrusted its funds to its officers; they had the dominion over the said property; they were holding the said money in trust which is a comprehensive expression, inter alia, to denote a relationship of master and servant. The act of criminal breach of trust per se may involve a civil wrong but a breach of trust with an ingredient of mens rea would give rise to a criminal prosecution as well. Criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with, or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied, relating to carrying out the trust. It is one thing to say that any circular letter issued by RBI being not within the public domain would not be law but it would be another

(8)(iv) Instances *(contd.)*

thing to say that it did not contain any direction of law so as to attract liability in terms of Section 405 of the Penal Code. Lawful directions were issued by RBI. The circular letter was meant for all scheduled banks. The authorities and/or officers running the affairs of scheduled banks were aware thereof. If it is binding on the banks, it would be binding on the officers. Any omission or commission on the part of any authority of the Bank would amount to acting in violation of any direction of law. A direction of law need not be a law made by Parliament or a legislature; it may be made by an authority having the power therefor; the law could be a subordinate legislation, a notification or even a custom. Authorities of UCO Bank were dealing with public funds. They were required to apply the same in terms of circulars issued by Bank as also RBI. It has been accepted at the Bar that failure on the part of officers of the Bank to abide by directives issued under circulars would result in civil action. Subjecting the bank to a civil liability would thus attract one of the ingredients of criminal breach of trust. However, mere error of judgment would not attract the penal provision contained in Section 409 of the Penal Code. Moreover, the Special Judge has found that the accused had knowledge of RBI circular. (Paras 64, 61 and 66 to 69)

In order that the Bank could discount a bill of exchange, it was necessary that it related to a bona fide or genuine commercial transaction and it was because of this requirement that the accused persons had gone to the extent of preparing false documents to give an appearance that the discounting related to bona fide commercial transaction. (Paras 62, 60 and 87)

It does not matter whether the violation was in relation to the circular issued by RBI or it was in violation of the guidelines issued by the UCO Bank itself. The question as to whether directions are statutory in character and binding in law may not depend upon the nature of the powers to be exercised by RBI. Discounting and rediscounting of bills of exchange is an integral part of banking transactions. (Para 90)

None of the ingredients of Para 2.5(*b*) of UCO Bank Manual were satisfied. None of persons or companies concerned were customers of the said Branch; the authorities did not know them. All the procedural requirements necessary for safeguarding interests of the Bank were thrown to the winds. (Paras 92 to 99)

Even if it is assumed that the transaction was otherwise permissible in law under the Contract Act or any other parliamentary Act, yet the prosecution must succeed once it is able to prove that ingredients of Section 405 are satisfied. The entire transaction was undertaken with one motive: that funds of UCO Bank should be made available to Harshad Mehta who was a stockbroker. The fact that UCO Bank had undertaken grave risk is not in dispute. An offence is committed with a view to circumvent the law. An apparent state of affairs need not be the real state of affairs. A simple transaction of discounting and rediscounting on its face may appear to be genuine and lawful but there may be underlying purposes behind it. (Paras 47, 101 and 102)

The charge of criminal breach of trust therefore stands established against Accused 1 and 2. The role played by Accused 2 in the entire chain of events is significant. The decision to discount two bills of exchange at Nariman Point Branch had been taken by Accused 1 only after consulting Accused 2. Accused 2 had full details of the transaction. He had also played a key role in the purchase of shares by UCO Bank to provide for repayment of the amount advanced by UCO Bank. He had also similarly made an endorsement for issuing a cheque in favour of ANZ Grindlay's Bank on account of J.H. Mehta. However, the role played by Accused 2 was subsidiary to that played by Accused 1. The entire transaction appears to have been gone through because of a deal struck between deceased Harshad Mehta and Accused 1. The Special Judge however rightly held that Accused 8 was not in a position to issue any directions; he being a Scale IV employee. He therefore could not be said to be guilty of the offence of criminal breach of trust. (Paras 110 to 112). *Sudhir Shantilal Mehta* v. *CBI*, (2009) 8 SCC 1: (2009) 3 SCC (Cri) 646.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[10117] — Ss. 406 and 420 — Imposition of penalty/punishment — Statements made by complainant subsequent to imposition of penalty on the delinquent — Not relevant — *Departmental enquiry against bank officer for misappropriation of a certain amount culminating in removal from service — Subsequent to the passing of the order of removal, the complainant allegedly making a disclosure statement under Ss. 406/420 IPC — Contention of the delinquent that the punishing authority ought to have considered the said statement, rejected. Suresh Pathrella* v. *Oriental Bank of Commerce*, (2006) 10 SCC 572: (2006) 134 DLT 516.

Bench Strength **2**. Coram: **H.K. Sema** and *P.K. Balasubramanyan*, JJ. [Date of decision: 19-10-2006]

Sohan Singh v. Union of India, (1984) 1 SCC 162: 1984 SCC (L&S) 105; Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713: 2006 SCC (L&S) 840, distinguished

[10118] — Ss. 407, 467 and 477-A — Criminal trial simultaneous with departmental enquiry on the same charge — Acquittal in criminal trial on benefit of doubt no bar to imposing of penalty in departmental proceedings — *Sub-Postmaster fraudulently withdrawing an amount (Rs 8000 in this case) from SB Account of a person by himself putting that person's signature — Criminal trial ending in acquittal on benefit of doubt — In such circumstances, CAT erred in holding that in view of the acquittal in the criminal trial, penalty could not be imposed in the departmental proceedings on the same charge. Senior Supdt. of Post Offices* v. *A. Gopalan*, (1997) 11 SCC 239: AIR 1999 SC 1514.

Bench Strength **2**. Coram: *S.C. Agrawal* and *G.B. Pattanaik*, JJ. [Date of decision: 21-2-1997]

Nelson Motis v. Union of India, (1992) 4 SCC 711: 1993 SCC (L&S) 13: (1993) 23 ATC 382, distinguished

[10119] — S. 409 — Application for extending the time for completing the investigation filed by IO after the expiry of the statutory period prescribed by S. 167(5)(iii) CrPC — Grant of — Permissibility — *Where the court had still not passed a discharge order, validity of extension of time on such an application, upheld — Further held, there was no conflict between the ratio in* Falguni Dutta case *and that in* Bimal Chandra Saha case — *W.B. Criminal Law Amendment (Special Courts) Act, 1949 (21 of 1949) — CrPC, 1973 — S. 167(5) & (6) (as amended in the State of W.B.)*

The appellant was involved as accused in an offence under Section 409, IPC. During investigation of the case he applied for, and got, a pre-arrest bail order and surrendered himself before the Magistrate on 18-3-1993. As the investigation was not completed within two years therefrom, he moved the said Magistrate on 22-9-1995 for discharging him under Section 167(5), CrPC. The Magistrate dismissed the application pointing out that the case being triable only by a Special Judge under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 the order sought by the appellant could be passed only by the Special Judge. A Single Judge of the High Court while holding the Magistrate to be competent to pass an order under Section 167(5) in the instant case, granted further time to the IO, on an application filed by him, on being satisfied that the IO could not complete the investigation due to sickness. The question was whether time could have been extended without the IO moving for such extension before the expiry of the statutory period. A further question was whether there was conflict between the decisions in *State of W.B.* v. *Falguni Dutta case* and *Durgesh Chandra Saha* v. *Bimal Chandra Saha case*. Upholding the Single Judge's order and answering the second question in the negative,

Held :

On the facts of the instant case the two years' period mentioned in Section 167(5)(*iii*) must be reckoned from 18-3-1993 on which date the appellant surrendered himself in court.

There is no conflict between the decisions in *State of W.B.* v. *Falguni Dutta case* and *Durgesh Chandra Saha* v. *Bimal Chandra Saha case* and the ratio was applied on the factual position in each case. *Nirmal Kanti Roy* v. *State of W.B.*, (1998) 4 SCC 590: 1998 SCC (Cri) 1100: AIR 1998 SC 2322.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S. Rajendra Babu*, JJ. [Date of decision: 23-4-1998]

Durgesh Chandra Saha v. Bimal Chandra Saha, (1996) 1 SCC 341: 1996 SCC (Cri) 109, impliedly distinguished

State of W.B. v. Pranab Ranjan Roy, (1998) 3 SCC 209: 1998 SCC (Cri) 730, followed

[10120] — S. 409 — Charge against cashier that he delayed payment of T.A. Bills and other amounts or did not make payments at all though he had already taken receipts from such person — *Held, the concurrent finding of conviction cannot stand because no written complaint by the several affected persons who had also given testimony was produced in evidence — Case not proved beyond reasonable doubt. Om Prakash* v. *State of Haryana*, (1979) 4 SCC 550: 1980 SCC (Cri) 125: AIR 1980 SC 476: 1980 Cri LJ 311.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 25-1-1979]

[10121] — S. 409 — Criminal breach of trust — Accused employed as Laboratory Attendant in Fruit Canning Unit — *Failure to deposit amount collected by him from salesman in local treasury — Burden lies on accused to prove that he deposited the amount — Such burden not discharged — Conviction upheld — Evidence Act, 1872, S. 106. Hira Nand* v. *State of H.P.*, 1995 Cri LJ 3646.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 14-2-1995]

[10122] — S. 409 — Criminal breach of trust by public servant — Whether on facts substantiated — J *and* M, *Superintendent and Storekeeper respectively in Government Heat Treatment Centre authorised to take a certain quantity of light diesel oil from Indian Oil Corporation (IOC) — Bank draft given to them for that purpose, deposited in*

(8)(iv) Instances *(contd.)*

IOC office, M taking delivery of diesel oil and in token thereof signing the cash-memo as well as the register — Oral evidence of Senior Technical Officer of the Government Heat Treatment Centre and of Depot Manager, IOC, also confirming the taking of delivery of diesel oil by M — However, the diesel oil ultimately found to be short by 4300 litres — In view of the said evidence, held, there was no entrustment of diesel or dominion over the same, to J *— Hence, conviction of* J *under S. 409, held, not sustainable — Mere entrustment of the bank draft to, and authorisation in favour of,* J *to take delivery of diesel oil, held, could not lead to a contrary inference — Even the subsequent undertaking given by* J *to make up the loss, held, could not amount to confession or admission of guilt on the part of* J *and could not sustain his conviction under S. 409 — However, in view of the said oral and documentary evidence,* M, *held, guilty of embezzlement of 4300 litres of diesel oil — Hence, his conviction and sentence under S. 409, upheld — Confession of accused — What is not confession or admission of guilt — Evidence Act, 1872, Ss. 17 and 24. Jiwan Dass* v. *State of Haryana*, (1999) 2 SCC 530: 1999 SCC (Cri) 288: AIR 1999 SC 1301: 1999 Cri LJ 2034.

Bench Strength 2. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 26-2-1999]

[10123] — S. 409 — Entitlement to back wages *— Employee removed from service on conviction by criminal court for criminal breach of trust but subsequently acquitted — Thereafter order of removal set aside by High Court and the employee reinstated — In such circumstances payment of back wages might put a premium on corruption — Hence, in order to take a decision in that regard, pre-prosecution confidential reports of the employee should be considered by the court/tribunal — Since in the instant case, the confidential reports indicated doubtful integrity, back wages refused by Supreme Court*

The respondent is not entitled to back wages because he was found to be a man of doubtful integrity and his confidential reports are not good.

Corruption is the result of deep-seated moral degradation and unsatiated greed for wealth. The office of public service affords an opportunity to the public servant to abuse the office and in that pursuit to accept illegal gratification for the discharge of official duty. Acquittal may be due to many reasons, like apathy in prosecution, witnesses turning hostile, indulging in corruption in a skilful manner, etc. Conduct of an employee gains notoriety in service and among the public. Payment of back wages would provide an impetus and put a premium on corruption. The society has to pay the price for corrupt officers from public exchequer. When a court directs payment of back wages on reinstatement, it has to consider the backdrop of circumstances and to pragmatically apply the principle to the given set of facts. No abstract principle of universal application can be laid in this regard. *State of U.P.* v. *Ved Pal Singh*, (1997) 3 SCC 483: 1997 SCC (L&S) 823: AIR 1997 SC 608: 1997 Lab IC 441: (1997) 1 CLR 366.

Bench Strength 2. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 7-10-1996]

[10124] — S. 409 — Recipient denying having received the money and repudiating the signature on the receipt to be his *— Conviction based on sole testimony of such interested witness, held, improper — Prosecution unable to discharge its onus — Accused entitled to the benefit of doubt. Labhshanker Maganlala Shukla* v. *State of Gujarat*, (1979) 3 SCC 391: 1979 SCC (Cri) 684: AIR 1979 SC 1012: 1979 Cri LJ 890.

Bench Strength 3. Coram: *Jaswant Singh, P.S. Kailasam* and **A.D. Koshal** , JJ. [Date of decision: 29-9-1978]

[10125] — S. 409 — Surreptitious and unauthorised sale of store material and misappropriation of the proceeds by store incharge in FCI *— Eye witness account of watchman, truck drivers and mazdoor as also recovery of the material from the purchaser supporting the prosecution case — Circumstance of shortage of store material on verification of stock relied on as a corroborative piece of evidence — Various grounds taken by the accused for discrediting the testimony of the prosecution witnesses found to be baseless — Having regard to the direct and other evidence, held, conviction under S. 409 and three months RI and fine of Rs 1000 upheld — In view of the short term of imprisonment awarded and the long period during which the appellant was at large, it is just or proper that sentence of imprisonment be reduced to the period already undergone while maintaining the sentence of fine* (Para 6). *Lal Bahadur Shriramdatta Chaudhari* v. *State of Maharashtra*, 1991 Supp (1) SCC 546: 1991 SCC (Cri) 718: AIR 1991 SC 34.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi** , JJ. [Date of decision: 9-10-1990]

[10126] — Ss. 409 and 120-B — Applicability — Criminal breach of trust — Diversion of funds of company — Transactions prior to occupying the positions mentioned in S. 409, held, did not attract Ss. 409 & 120-B — *Precondition for*

Respondents 1 and 2 to become directors of the company was to deposit a certain amount — In order to fulfil the said pre-condition they allegedly obtaining loan from a party who, as a supplier, had been advanced an identical sum by that company — In such circumstances, the said allegations even if accepted in entirety, held, did not constitute an offence under Ss. 120-B and 409 — Therefore, continuance of criminal proceedings against Respondents 1 and 2 under those provisions being manifestly unjust, the charge and the proceedings were rightly quashed by the High Court in exercise of its powers under S. 482, CrPC — CrPC, 1973, S. 482. Ashim Kumar Roy v. *Bipinbhai Vadilal Mehta*, (1998) 1 SCC 133: 1998 SCC (Cri) 269: AIR 1997 SC 3976: (1998) 91 Comp Cas 1.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K. Venkataswami**, JJ. [Date of decision: 14-10-1997]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388, applied

[10127] — Ss. 409 and 201 — Entitlement to, reinstatement with back wages and continuity of service — Unfair and unreasonable treatment by Bank — *On the charge of embezzlement of a certain amount, employer initiating departmental proceedings, criminal prosecution and also filing a suit to recover the amount allegedly embezzled — Concurrently holding that charge to be unproved, criminal court acquitting the delinquent employee and civil court dismissing the employer's suit — Both the courts finding the delinquent employee to have been treated very unfairly and unreasonably — Criminal court finding the employer to have extracted a confession from him in a very cruel manner — In such circumstances, the employee, held, entitled to reinstatement with back wages, continuity in service and other benefits — Costs of litigation also awarded to him — Constitution of India, Art. 136 — CPC, 1908, S. 35*

The judgments of both the civil court and the criminal court established that the appellant was treated very unfairly and unreasonably. For all intent and purport, a criminal case was foisted upon him. A confession, according to Chief Judicial Magistrate, was extracted from him by the bank officers in a very cruel manner. It is, therefore, not a case where back wages should be denied. The respondent Bank tried to proceed against the appellant both in a civil proceedings as well as in a criminal proceedings and at both the independent forums, it failed. Therefore, the impugned orders and judgments cannot be sustained. The appellant is directed to be reinstated with back wages, continuity of service and other consequential benefits. The respondent shall also pay and bear the costs of the appellant which is quantified at Rs 10,000. (Paras 16 and 17). *Jasbir Singh* v. *Punjab & Sind Bank*, (2007) 1 SCC 566: (2007) 1 SCC (L&S) 401: (2007) 1 LLN 106: (2007) 1 LLJ 481: (2007) 112 FLR 911: (2007) 1 SLR 569.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 31-10-2006]

U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, (2006) 1 SCC 479: 2006 SCC (L&S) 250, explained

Distinguished in St. Michael's Teacher's Training Institute v. V.N. Karpaga Mary, (2008) 7 SCC 388

[10128] — Ss. 409, 405 and 24 — Criminal breach of trust — *Accused in charge of Government Agricultural Seed Store charged under S. 409 for preparing forged bills showing credit sales of seeds, fertilisers etc. to village level workers and misappropriating the amount shown in the bills — Charges of forgery and using forged documents as genuine under Ss. 467 and 471 already set aside by High Court and in absence of any appeal, stand of accused that the bills were genuine acceptable — Entire amount in question deposited by accused before CID investigation — Practice of credit sales of the store articles in vogue for long in the department despite Government circular prohibiting the same — Superior officers also not taking serious view of the credit sales and a circular merely warning that officials indulging in credit sales would be held personally responsible to pay the outstanding amount — In the circumstances, held, accused cannot be burdened with criminality of breach of trust for following the long established practice of credit sales — Prosecution failed to establish the main ingredient of 'dishonestly' against the accused even if he may be guilty of dereliction of his duty — Prosecution even failed to prove temporary misappropriation of the amount — Second accused, having taken charge of the seed store after the bills were prepared and after the alleged misappropriation of the amount in question by the first accused, cannot be convicted under S. 409 — In absence of any evidence regarding any conspiracy, pre-concert or concert of minds of the two accused-appellants or any pre-arranged plan between them to commit the offence, they cannot be jointly fastened with the offence under S. 409 — In case of reinstatement in service of the appellants pursuant to their acquittal, they, although ordinarily entitled to back wages, will not be having any claim for the back wages from the date of suspension up to the date of reinstatement in view of their undertaking to that effect before the court* (Paras 15, 24 to 27). *Narendra Pratap Narain Singh* v. *State of U.P.*, (1991) 2 SCC 623: 1991 SCC (Cri) 482: AIR 1991 SC 1394.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 3-4-1991]

(8)(iv) Instances *(contd.)*

[10129] — Ss. 409, 405 and 24 — Criminal breach of trust — Making available public money by bank officials to a private party contrary to statutory provisions and departmental instructions — Dishonest intention evident from facts and circumstances of the case — *Held, amounted to criminal breach of trust even if the money was subsequently recovered and banks did not suffer any monetary loss — Further held, banks officials were criminally liable even if no departmental action had been taken against them — It also did not matter that prosecution was launched by CBI instead of banks themselves — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946)*

The officials of UCO Bank and National Housing Bank who helped Harshad Mehta (since deceased) in siphoning off public money of Rs 40 crores were also charged for criminal breach of trust, apart from being charged for criminal conspiracy.

Held :

It is not the law that complaint petition under all circumstances must be made by banks and financial institutions whose money had been the subject-matter of offence. It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction. Criminal law can be set in motion by anybody. The prosecution was initiated on the basis of information received by Central Bureau of Investigation (CBI). CBI is entitled to do so not only in regard to its statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by the Janakiraman Committee. The money involved in transfer is public money belonging to public sector banks. If transaction was illegal, as a result whereof, a private person, who was not expected to reap fruits of "call money" was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to have been committed. It is for the same reason the submission that as nobody ultimately suffered any loss, an offence under Section 409 of the Penal Code was not made out, cannot be accepted. A bank or financial institution may not suffer ultimate loss but if money has been allowed to be used by another person illegally for illegal purpose, ingredients of Section 405 of the Penal Code would get attracted. A case involving temporary embezzlement also attracts ingredients of Section 405 of the Penal Code. (Paras 150, 152 and 153)

When a person allows others to misappropriate property entrusted to him, that also amounts to criminal breach of trust. In the present case, amount of Rs 40 crores was entrusted to Accused 6 to be dealt with in accordance with the provisions of the National Housing Bank Act, 1987. The Act does not permit grant of loan to an individual. Accused 6 in violation of the law handed over the amount to UCO Bank with full knowledge that the amount would be credited to the account of Harshad Mehta. The call money transaction with UCO Bank was only a cover-up. The property which was trusted to Accused 6 was misappropriated by him. The most essential ingredient of criminal breach of trust is misappropriation with dishonest intention. (Para 154). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[10130] — Ss. 409 and 420 — Bulk purchases of insurance stamps from outside State for use within the State — If "calculated to deprive Government of any duty or penalty" — *FIR lodged against officers of an insurance corporation alleging that offences under Ss. 420 & 409 IPC r/w Ss. 64 & 69 of Stamp Act, were committed — Tenability — Held, no offence was committed — Rates of stamp duty in respect of insurance policies is the subject-matter of a Central Law — State's power to make rules under a Central Act, therefore, extends only to the extent provided for under the Act — Moreover, Stamp Rules of the State were framed when the current constitutional scheme was not in place — Also that R. 115-A refers to stamps which are "property of the Central Government" — Hence, contention that insurance stamps must be purchased within the State only, held, is legally untenable — Further held, by purchasing stamps appellants had in any case paid duties and had not "deprived Government of any duty or penalty" in contravention of S. 64(c) of Stamp Act — Nor were the appellants stamp vendors — Nor did they make any unauthorised sale of insurance stamps — Hence held, S. 69 of Stamp Act was not applicable — High Court's order holding that FIR prima facie disclosed commission of alleged offences, set aside — Stamp Act, 1899, Ss. 64(c), 27, 69, 74 and 75 r/w Rr. 3 and 115-A, United Provinces Stamp Rules, 1942. V.V.S. Rama Sharma* v. *State of U.P.*, (2009) 7 SCC 234: (2009) 3 SCC (Cri) 356: (2009) 77 AIC 24 (SC): (2009) 4 All LJ 309.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dr. M.K. Sharma** , JJ. [Date of decision: 15-4-2009]

[10131] — Ss. 409 and 420 — Misappropriation — Appellant, Manager of Rice Mill, in custody and management of huge stocks of paddy entrusted to him — Evidence of disinterested official witnesses establishing that he misappropriated 1500 quintals of paddy — *In the circumstances of the case reversal of acquittal by the High Court justified — However, sentence of imprisonment till the rising of the Court found inadequate — But in view of long lapse of time notice for enhancement of sentence not issued. Narindra Kumar Jain* v. *State of M.P.*, 1996 SCC (Cri) 1025: AIR 1996 SC 2213.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 10-5-1996]

[10132] — Ss. 409, 420 and 120-B — Exercise of revisional powers by High Court for quashing charges — Maintainability — Charges of corruption against cooperative bank officials — *Charge-sheet under Ss. 409, 420 and 120-B IPC together with S. 13 (1)(d) r/w S. 13(2), PC Act, 1988, filed against respondent-accused, Chairman and Directors of Cooperative Bank, who were also members of the Loan Committee, for sanctioning loans without verifying eligibility of borrowers to receive such loans or the end-use of such loans and intentionally acting in an illegal manner to enable borrowers to avail of the loans — Trial court directing framing of charges — In revision thereagainst, High Court quashing the charges framed on the ground that respondents were members of the Loan Committee and as such members they were only required to consider loan cases which were put up to them by Bank Manager concerned for the grant of loan and it was for the Branch Managers of various branches to verify the facts regarding entitlement for grant of loan before submitting the same to the Loan Committee and hence, it could not be said that respondents had acted illegally and had wrongly sanctioned loans to the borrowers concerned — Sustainability — Appellant, inter alia, contending that in going into factual aspects of the matter, High Court travelled beyond its revisional powers in coming to findings of fact, which were yet to be established on evidence — Tenability — Held, undoubtedly, in the inquiry report of District Vigilance Committee, role attributed to respondents in sanctioning loans was shown to be purely managerial where the groundwork had been completed by Branch Managers, but as members of Loan Sanctioning Committee, they had acted inefficiently — It was also suggested that Chairman and Chief Executive Officer of the Bank had connived with other accused in defrauding the Bank — Hence, held, High Court erroneously quashed charges framed against respondents — Consequently, orders impugned set aside and charges framed by trial court restored — Trial court directed to proceed with trial — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2) — CrPC, 1973, Ss. 401 & 397 and 228* (Paras 5, 10, 43, 44 and 50 to 52). *State of M.P.* v. *Rameshwar*, (2009) 11 SCC 424: (2009) 3 SCC (Cri) 1421: (2009) 77 AIC 102 (SC): 2009 Cri LJ 2415.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-4-2009]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Nikhil Merchant v. CBI, (2008) 9 SCC 677: (2008) 3 SCC (Cri) 859, distinguished.

[10133] — Ss. 409, 420, 467, 468 and 471 — Applicability — Addition of other person as accused — *Appellant (school clerk) was accused of embezzling school funds by putting forged signatures of Respondent 2 (Head Master-cum-Drawing and Disbursing Officer) under Ss. 409, 420, 467, 468 and 471 IPC — Report of the signature expert though received by the prosecution was not produced before the court — When from the evidence of PWs 2, 14 and 11 it came to light that Respondent 2 might be involved in the crime, the Magistrate issued summons against Respondent 2 on an application made by the appellant — Cognizance by Magistrate, held, was not illegal or arbitrary — CrPC, 1973 — S. 319*

Now, an application under Section 319 CrPC can only be made to a court and the court may exercise the power under the said section if it appears from *evidence* that any person other than the accused had also committed an offence for which he can be tried together with the accused. It was the case of the appellant that it was during the course of prosecution evidence that he came to know that signatures of Respondent 2 were sent for examination, some report was received by the prosecution which was not produced in court and on the basis of such evidence, the case was made out against Respondent 2. In these circumstances, there is no infirmity in the prayer granting applications under Section 319 CrPC. Therefore, even on merits, the order passed by the Magistrate issuing summons to Respondent 2 could not be said to be unlawful or even improper. The Magistrate issued summons taking into account evidence led by the prosecution, particularly, by PWs 2, 14 and 11. (Paras 62, 49 and 56). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

(8)(iv) Instances *(contd.)*

[10134] — Ss. 409, 420, 467 and 477-A — Fraud and misappropriation of bank funds — Conviction justified — *Charge against Respondent 1 Bank Manager of sanctioning crop loan in the name of fictitious persons and misappropriating the same — Respondent completed all the loan formalities himself and affixed his own thumb impressions instead of those of the loanees on the loan document — Handwritings on the loan document and the thumb impressions thereon, found by qualified fingerprint expert to be those of respondent — All transactions, right from application to disposal took place in the afternoon and all documents used to be processed during lunch hour, whereas as per the procedure, disbursement of land could take place only upon proper verification thereof — Loan sanctioned and the amount disbursed on the very same day the loan application was made — Held, charge against Respondent 1 made out — Prevention of Corruption Act, 1947 — S. 5(2)* (Paras 25 and 29). *State* v. *M. Krishna Mohan*, (2007) 14 SCC 667: AIR 2008 SC 368: (2008) 61 AIC 180 (SC).
Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ.
[Date of decision: 12-10-2007]

[10135] — Ss. 409, 420, 467, 477-A r/w S. 120-B — Exoneration in departmental proceedings — Would not entitle accused to acquittal in criminal proceedings — *Charge against Respondent 2, Field Officer on probation of Gramin Bank, of conspiring with Respondent 1 Manager of the Bank by preparing appraisal report on the basis of which Respondent 1 sanctioned crop loans in the names of fictitious persons and misappropriated the loan amount — Plea of Respondent 2 that since in departmental enquiry held against him, he was exonerated, he would be entitled to acquittal in the criminal proceedings on that ground — But according to investigating officer the departmental enquiry was initiated before commencement of investigation — Held, plea of exoneration in departmental proceedings having been raised by way of defence, Respondent 2 was obliged to bring on record all the relevant documents relating to departmental proceedings — Enquiry officer in departmental proceedings could not get benefit of all the materials considered by IO — Hence exoneration in departmental proceedings would not result in acquittal of Respondent 2 in the criminal proceedings — Prevention of Corruption Act, 1947, S. 5(2) proviso*

The inquiry report has not been brought on record. The factum of exoneration of Respondent 2 in the departmental proceedings was raised by way of defence. It was, therefore, obligatory on his part to bring on record all the relevant documents, namely, the charge-sheet, the other materials brought on record by the Department and the findings of the enquiry officer. If the statement of the investigating officer is to be accepted and there is absolutely no reason as to why it should not be, there was no occasion for the enquiry officer to have the benefit of the depositions of the purported loanees, the opinion of the fingerprint expert and other material brought on record by the prosecution which clearly established the involvement of the respondents herein. In a case of this nature where departmental proceeding was initiated only as against Respondent 2, the enquiry officer did not have the benefit to consider all the materials which could be brought on record by the Department in the light of the investigation made by a specialised investigating agency, the evidence of experts and deposition of witnesses to show that forgery of document has been committed by forging thumb impression and handwriting, exoneration of Respondent 2 in the departmental proceedings cannot lead to the conclusion that he was not guilty of commission of the offences wherefor he was charged. (Paras 31 and 35)

P.S. Rajya case, (1996) 9 SCC 1 was rendered on the facts obtaining therein and cannot be said to be an authority for the proposition that exoneration in departmental proceeding *ipso facto* would lead to a judgment of acquittal in a criminal trial. (Para 33)

It may be true that no act of forgery and misappropriation has been attributed to Respondent 2, but he was the one who had prepared the appraisal report. After preparation of such appraisal report, the loan amount having been sanctioned and the amount of loan purported to have been paid to the loanees, he was also guilty of commission of the said offence. (Para 26)

The entire prosecution case relating to charges of forgery and misappropriation has been attributed to Respondent 1 alone. He was the one who had put on shelves all the procedural requirements. Not only he, during the luncheon hours, filled up the application forms, but even prior thereto he had purported to have received the documents, sanctioned the loan and obtained the amount of loan in cash. The loanees were known to him and not to Respondent 2. (Para 42)

Therefore, a case has been made out to invoke the proviso appended to sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 in the case of Respondent 2. Furthermore, he worked in the bank for a short period and was still undergoing probation. Forgery and misappropriation was committed by Respondent 1 even thereafter. The appraisal reports prepared by Respondent 2 were used by Respondent 1 also for the subsequent period, when Respondent 2 was no longer working in the said branch. (Para 43)

Therefore, while upholding the conviction and sentence as awarded by trial Judge as against Respondent 1 (Accused 1), in view of the special reasons recorded hereinbefore, a sentence of imprisonment of three months is imposed on Respondent 2. He shall, however, be liable to pay a fine of Rs 20,000 (Rupees twenty thousand only) and in default shall undergo a sentence of three months. (Para 44). *State* v. *M. Krishna Mohan*, (2007) 14 SCC 667: AIR 2008 SC 368: (2008) 61 AIC 180 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

Supdt. of Police (CBI) v. Deepak Chowdhary, (1995) 6 SCC 225: 1995 SCC (Cri) 1095, relied on

P.S. Rajya v. State of Bihar, (1996) 9 SCC 1: 1996 SCC (Cri) 897, distinguished

[10136] — Ss. 409 and 467 — Prosecution of Marketing Inspector for misappropriation of rent collected from stall-holders and fabrication of false record to conceal embezzlement — *Accused issuing receipt for higher amount but in corresponding counter-foils entering only lesser amount — Entries in receipts and counterfoils not disputed — On facts, held, finding of High Court in favour of accused clearly attributable to misreading of evidence leading to miscarriage of justice and therefore not sustainable — Absence of cash book, which had been destroyed in fire, not material — Order of acquittal passed by High Court set aside — However, in view of old age and retirement from service several years ago accused deserves leniency in punishment — CrPC, 1973, Ss. 378 and 386. State of Orissa* v. *Gangadhar Pande*, 1989 Supp (2) SCC 150: 1991 SCC (Cri) 389.

Bench Strength 3. Coram: *S. Natarajan, K. Jagannatha Shetty* and *Kuldip Singh*, JJ. [Date of decision: 28-3-1989]

[10137] — Ss. 409, 467, 471 and 411 — Appellant, Bank clerk accused of forging bills and getting payments — Approver's evidence, if valid — *Corroboration of approver's evidence, whether adequate — Omission by approver to state to police some facts, whether fatal — Conviction upheld*

Omissions by approver in his statement to the police is not fatal. It may be that when the approver gave his police statement he did not know that he would be granted pardon and possibly for that reason had not come out with all the facts known to him and he did so while he was making his statement before the Magistrate as he knew by then that he would be tendered pardon on condition that he would disclose all the facts known to him. The omission in the police statement, therefore, by itself would not necessarily have rendered his evidence unreliable. In considering whether the approver's evidence passed the test of reliability, the Court would have to consider whether taken as a whole and in the light of the facts and circumstances of the case it was a credible version or not. *Madan Mohan Lal* v. *State of Punjab*, (1970) 2 SCC 733: 1970 SCC (Cri) 509: AIR 1970 SC 1006: 1970 Cri LJ 898.

Bench Strength 2. Coram: **J.M. Shelat** and *G.K. Mitter*, JJ. [Date of decision: 1-4-1970]

[10138] — Ss. 409, 467, 471 and 477-A — Embezzlement — *Charge of encashment of fake RBI demand drafts at Sub-Treasury in the name of fictitious payees by falsification of accounts by Sub-Treasury Officer in connivance with other employees — DDs proved to be false and bogus and payees fictitious — No advice for payment received from RBI — Identity of the person, who was stated to have identified the payees, not disclosed — Entries regarding signatures or thumb impressions of the payees and amounts paid, admitted to have been made by the accused in relevant registers, found to be false — Shortage in cash balance not explained by accused — Held on facts, prosecution discharged its burden of establishing the charges beyond doubt by leading unimpeachable evidence — When payment of huge amount was being made it was the duty of the accused to make thorough enquiry regarding correct identity and genuineness of the payees — This fact being in the special knowledge of the accused, it was incumbent upon them to disclose names and identity of the person who had identified the payees and to establish their innocence by producing such person or the payees in defence evidence — In absence thereof, conviction recorded by trial court upheld. State of A.P.* v. *Y. Basavadevudu*, (1992) 3 SCC 30: 1992 SCC (Cri) 495.

Bench Strength 2. Coram: *Kuldip Singh* and **N.M. Kasliwal** , JJ. [Date of decision: 26-3-1992]

[10139] — Ss. 409, 467 and 477-A — Prevention of Corruption Act, 1947, S. 5(2) — Amount drawn by Principal of school for chowkidar not borne on the register — *Chowkidar not denying receipt of the amount — Other persons also not borne on the register — Held, impropriety and breach of rules not sufficient to sustain conviction for misappropriation. Brijbasi Lal Shrivastava* v. *State of M.P.*, (1979) 4 SCC 521: 1980 SCC (Cri) 116: AIR 1979 SC 1080: 1979 Cri LJ 913.

Bench Strength 2. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali** , JJ. [Date of decision: 16-1-1979]

(8)(iv) Instances *(contd.)*

[10140] — Ss. 409, 467 r/w S. 109 — Prosecution alleging that accused misappropriated a large amount belonging to a Gram Panchayat by defrauding the Sarpanch who was illiterate — *Held, illiteracy of the Sarpanch cannot induce court to ignore infirmities in his evidence or to fill in lacunae in prosecution case — In any case this fact would not justify benefit of doubt for prosecution. Mohinder Singh* v. *State of Haryana*, (1974) 4 SCC 285: 1974 SCC (Cri) 447: AIR 1974 SC 873: 1974 Cri LJ 742.

Bench Strength **2**. Coram: **H.R. Khanna** and *V.R. Krishna Iyer*, JJ. [Date of decision: 5-3-1974]

[10141] — Ss. 409 and 477-A — Nature and scope of departmental proceedings — Dissimilarity with criminal proceedings — *Scope of disciplinary proceedings and scope of criminal proceedings, held, are quite distinct, exclusive and independent of each other — Standards of proof in the said two proceedings are also different — In the present case, even the charges in the said two proceedings were different — Hence, High Court erred in holding that the acquittal of the delinquent employee by the criminal court had clinched the issue in the departmental enquiry*

The scope of disciplinary proceedings and the scope of criminal proceedings in a court of criminal law are quite distinct, exclusive and independent of each other. Moreover, the standards of proof required in the criminal proceedings and the departmental disciplinary actions are not the same. [Paras 32, 21, 22 and 24(*i*)]

The prosecution proceedings launched against the respondent herein were in respect of offences punishable under Sections 409 and 477-A IPC, whereas the departmental proceedings as initiated against her were in respect of the charges of misappropriation and other fraudulent practices. Thus, the respondent herein was proceeded against for quite different charges and on different sets of facts before the criminal court on the one hand and before the departmental enquiry officer on the other. The High Court patently erred in holding that the acquittal of the respondent by the criminal court had clinched the issue in the departmental enquiry. (Paras 32, 3 and 20)

The plea of the respondent for taking a lenient view has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. Loss of confidence is the primary factor and not the amount of money misappropriated. In the instant case, the respondent employee was found guilty of misappropriating the Corporation funds. There was nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefor with the quantum of punishment awarded by the disciplinary and Appellate Authority. (Para 29)

In the present case, the charged employee held a position of trust where honesty and integrity were inbuilt requirements of functioning and, therefore, the matter required to be dealt with firmly with firm hands and not leniently. (Para 35). *T.N.C.S. Corpn. Ltd.* v. *K. Meerabai*, (2006) 2 SCC 255: 2006 SCC (L&S) 265: (2006) 1 LLN 516: (2006) 40 AIC 516 (SC): (2006) 2 SLR 358.

Bench Strength **2**. Coram: *H.K. Sema* and **Dr. Ar. Lakshmanan** , JJ. [Date of decision: 23-1-2006]

Lalit Popli v. Canara Bank, (2003) 3 SCC 583: 2003 SCC (L&S) 353; Ajit Kumar Nag v. G.M. (PJ), Indian Oil Corpn. Ltd., (2005) 7 SCC 764: 2005 SCC (L&S) 1020, relied on

***Distinguished in** Union of India v. Naman Singh Shekhawat, (2008) 4 SCC 1*

[10142] — Ss. 409 and 477-A — On facts, charges of criminal breach of trust and falsification of accounts established — *However, taking the time factor and the age of the appellant into consideration sentence reduced to six months' R.I. under each count — No law point laid down. Inder Sain Jain* v. *State of Punjab*, AIR 1994 SC 1065: 1994 Cri LJ 1224.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 7-9-1993]

[10143] — Ss. 409 and 477-A — Overwhelming evidence against appellant — Reversal of acquittal by High Court upheld. *Budh Singh* v. *State of Haryana*, (1974) 3 SCC 638: 1974 SCC (Cri) 168: AIR 1974 SC 1354: 1974 Cri LJ 614.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 22-11-1973]

[10144] — Ss. 409, 477-A and 120-B — Order of dismissal on the ground of conduct which had led to conviction on a criminal charge — *Pendency of an appeal against the conviction, held, no bar to passing of such an order — However in case of acquittal in appeal, the dismissed employee can seek review of the dismissal order — Central Civil Services (CCA) Rules, 1965, R. 19(i) — Constitution of India, Art. 311(2) second proviso (a) — Prevention of Corruption Act, 1947, S. 5(1)(c) and (2). Union of India* v. *V.K. Bhaskar*, (1997) 11 SCC 383.

Bench Strength **2**. Coram: *S.C. Agrawal* and *G.T. Nanavati*, JJ. [Date of decision: 30-1-1996]

Director of Collegiate Education (Admn.) v. S. Nagoor Meera, (1995) 3 SCC 377: 1995 SCC (L&S) 686: (1995) 29 ATC 574, followed

[10145] — Ss. 409 and 511 — Charge of attempt to commit criminal breach of trust against appellant godown keeper of Food Corporation of India — *Wheat bags being loaded in truck from Food Corporation's godown under the instruction of the appellant — Truck along with a release order for the wheat bags in favour of a cooperative society seized by police — Defence founded on the plea that loading of the truck was for despatching wheat to the cooperative society — Held, failure of prosecution to produce the release order fatal to the prosecution case — Conviction and sentence of the appellant under S. 409 read with S. 511, Indian Penal Code set aside. Chittaranjan Choudhury* v. *State of Bihar,* (1987) 2 SCC 104: 1987 SCC (Cri) 287: AIR 1987 SC 856: 1987 Cri LJ 773.

Bench Strength **2**. Coram: *G.L. Oza* and **M.M. Dutt** , JJ. [Date of decision: 28-1-1987]

(v) Sentence

See also '(13) Sentence/Fine/Compensation/Other punishment/relief', below

[10146] — Ss. 406 and 467 — Sentence reduced — Offence of forgery and criminal breach of trust by a government servant — *Concurrent sentence of four years' rigorous imprisonment and fine of Rs 500, in default to rigorous imprisonment for six months awarded by trial Court — High Court reducing fine — Record not very clear on the offence of forgery committed by the accused — Supreme Court in view of the appellant's age and loss of government service and obscurity as to part played in forgery reducing the sentence to one year's rigorous imprisonment while maintaining the fine. Ramashraya Chakravarti* v. *State of M.P.*, (1976) 1 SCC 281: 1976 SCC (Cri) 1: AIR 1976 SC 392: (1976) 2 SCR 713: 1976 Cri LJ 334.

Bench Strength **2**. Coram: **P.K. Goswami** and *N.L. Untwalia*, JJ. [Date of decision: 13-11-1975]

[10147] — S. 409 — Accused sentenced to a total period of 11 years' rigorous imprisonment in 4 cases for misappropriating money of Society as its sarpanch — *Sentence not excessive. Ranchhod Lal* v. *State of M.P.*, AIR 1965 SC 1248: (1965) 2 SCR 283: (1965) 2 Cri LJ 253, 256.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 27-11-1964]

[10148] — S. 409 — Conviction of cashier for temporary retention of provident fund money meant to be disbursed — *On the peculiar facts of the case sentence reduced but fine maintained — Appellant directed to execute bond for good behaviour — Prevention of Corruption Act, 1947 — Ss. 5(1)(c) and 5(2). S. Natarajan* v. *State of Mysore*, (1979) 4 SCC 542: 1979 SCC (Cri) 918: AIR 1980 SC 639: 1980 Cri LJ 447.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision: 23-1-1979]

[10149] — S. 409 — Conviction under — In view of the facts that the accused-appellant was likely to lose his service and had already undergone 6½ months' R.I. out of the total term of 2 years' R.I., his sentence reduced to the extent of the imprisonment already undergone and a fine of Rs 1000. *Vishnu Datta Mishra* v. *State of M.P.*, (1979) 4 SCC 382: 1979 SCC (Cri) 993: AIR 1979 SC 825: 1979 Cri LJ 565.

Bench Strength **2**. Coram: **Jaswant Singh** and *O. Chinnappa Reddy*, JJ. [Date of decision: 28-11-1978]

[10150] — S. 409 — Conviction under — Reduction of sentence — *Entire amount (Rs 23,107) involved in criminal breach of trust replenished to person entitled — Hence, sentence of one year simple imprisonment reduced to the period already undergone. Bankupalli Chinnababu* v. *State*, (2002) 9 SCC 352: 2003 SCC (Cri) 1193: AIR 2003 SC 4406.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 27-9-2000]

[10151] — S. 409 — Criminal breach of trust — Sentence — *Accused, a public servant, convicted for collecting Rs 648 from villagers as house tax and dishonestly misappropriating or converting the said amount for his own use — Lower courts awarding sentence of 6 months' RI and a fine of Rs 1000 — In the circumstances of the case, sentence reduced to the period already undergone i.e. 4½ months' RI without disturbing the fine of Rs 1000* (Para 5). *Bachchu Singh* v. *State of Haryana*, (1999) 9 SCC 81: 1999 SCC (Cri) 365: AIR 1999 SC 2285: 1999 Cri LJ 3528.

Bench Strength **2**. Coram: *K. Venkataswami* and **S.S.M. Quadri** , JJ. [Date of decision: 8-2-1999]

[10152] — S. 409 — Criminal breach of trust by public servant — Sentence — *Accused returning the money — Sentence reduced to imprisonment already undergone and fine imposed. Kassim Pillai Abdul* v. *State of Kerala*, (1978) 4 SCC 481: 1979 SCC (Cri) 102: AIR 1978 SC 1081: 1978 Cri LJ 994.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 28-2-1978]

[10153] — S. 409 — Offence of criminal breach of trust under — Provisions of S. 4, Probation of Offenders Act, 1958 do not apply. *Som Nath Puri* v. *State of Rajasthan*, (1972) 1 SCC 630: 1972 SCC (Cri) 359: AIR 1972 SC 1490: (1972) 3 SCR 497: 1972 Cri LJ 897.

Bench Strength **3**. Coram: *J.M. Shelat*, **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 15-2-1972]

(8)(v) Sentence *(contd.)*

[10154] — S. 409 — Prevention of Corruption Act, 1947 — S. 5(1)(c) — Sentence — *Misappropriation of Rs 52, 465.37 belonging to Govt. by the appellant who was Managing Director of the Corporation — In peculiar facts and circumstances of the case and in view of old age of the appellant and his health, sentence of one year reduced to the period already undergone — Prevention of Corruption Act, 1947, S. 5(1)(c). R.V. Lyngdoh* v. *State (Delhi) Spl. Establishment*, (1999) 2 SCC 645: 1999 SCC (Cri) 298.

Bench Strength **2**. Coram: **G.T. Nanavati** and *N. Santosh Hegde*, JJ. [Date of decision: 4-2-1999]

[10155] — S. 409 — Sentence — In a case where accused did not get any pecuniary advantage sentence of 3 months' R. I. and a fine of Rs 201 and in default R. I. for six weeks' was a proper sentence. *Jaswantrai Manilal Akhaney* v. *State of Bombay*, AIR 1956 SC 575: 1956 SCR 483: 26 Comp Cas 340: 1956 Cri LJ 1116, 1125: (1956) 2 MLJ (SC) 49.

Bench Strength **3**. Coram: *Vivian Bose, B. Jagannadhadas* and **B.P. Sinha** , JJ. [Date of decision: 4-5-1956]

[10156] — S. 409 — Sentence — Mitigating circumstances — Sentence of imprisonment essential under S. 409 — *Simple imprisonment for 15 days and fine of Rs 1500 in default whereof 6 months simple imprisonment, ordered by High Court — Appeal preferred by the convict before Supreme Court within the time granted by High Court for surrender — Offence took place in 1969 — Hence no purpose would be served in incarcerating the appellant at this stage — But since S. 409 leaves no choice with the court but to award some imprisonment besides fine, sentence reduced to the period of imprisonment, if any, already undergone or till rising of the court if no imprisonment undergone — Case remanded to verify fact of incarceration, if any, undergone. Jaydev Shrichand Danani* v. *State of Gujarat*, 1993 Supp (1) SCC 616: 1993 SCC (Cri) 429: AIR 1992 SC 2152.

Bench Strength **2**. Coram: *M.M. Punchhi* and *S.C. Agrawal*, JJ. [Date of decision: 8-4-1992]

[10157] — S. 409 — Sentence — Mitigating factors — *CJM convicted respondent under S. 409 and sentenced him to undergo simple imprisonment for 6 months and imposed fine of Rs 1000 — Sessions Court affirmed the conviction and sentence — In revision, High Court acquitted the respondent — Order of acquittal set aside and conviction under S. 409 affirmed by Supreme Court in appeal — But having regard to facts that the offence had been committed 15 years back, respondent had deposited the entire amount (Rs 8000) before lodging of FIR, respondent might have been in custody for some time and respondent now aged about 60 years, held, interest of justice would be subserved if any substantial punishment is not awarded — Accordingly, a further fine of Rs 4000 imposed, apart from Rs 1000 imposed by trial court — In default of payment of the said amount respondent shall undergo simple imprisonment for three months* (Paras 16 and 17). *State of H.P.* v. *Karanvir*, (2006) 5 SCC 381: (2006) 2 SCC (Cri) 460: AIR 2006 SC 2211: 2006 Cri LJ 2917.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[10158] — S. 409 — Sentence — Mitigating factors — Misappropriation of wheat by Inspector in Food and Civil Supplies Department — *In view of long lapse of time and loss of job sentence reduced to 6 months' R.I. — However, a fine of Rs 15,000 imposed to reimburse the State for loss incurred by it. Ranjit Singh* v. *State of Punjab*, AIR 1995 SC 1959: 1995 Cri LJ 3615.

Bench Strength **2**. Coram: *M.M. Punchhi* and *Sujata V. Manohar*, JJ. [Date of decision: 8-2-1995]

[10159] — S. 409 — Sentence — Occurrence taking place in 1971 and the amount misappropriated being Rs 3604.85 p — *Accused remaining in jail for more than two months — Sentence reduced to the period already undergone. Raj Singh* v. *State of U.P.*, 1995 Supp (4) SCC 500: 1994 SCC (Cri) 1785.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 17-9-1992]

[10160] — S. 409 — Sentence — Offence under S. 409 proved but the appeal having been admitted about 7 years back and the accused having lost his job, sentence reduced to the period of imprisonment already undergone. *Vasant Moghe v. State of Maharashtra, (1979) 3 SCC 771: 1979 SCC (Cri) 868: AIR 1979 SC 1008: 1979 Cri LJ 885.*

Bench Strength **2**. Coram: *Jaswant Singh* and **O. Chinnappa Reddy** , JJ. [Date of decision: 27-11-1978]

[10161] — S. 409 — Sentence of 2 years' RI with fine of Rs 2000 imposed against appellant under — *Appellant already undergone 6 months' RI and paid the fine and later released on bail — Appellant also lost his job as a result of the conviction — SLP filed in 1979 decided in 1991 — On these facts held, ends of justice would be met if the sentence is reduced to the period already undergone. Vijay Digambar Lanjekar* v. *State of Maharashtra*, 1991 Supp (2) SCC 8: 1991 SCC (Cri) 841.

Bench Strength **3**. Coram: *A.M. Ahmadi, V. Ramaswami* and *M. Fathima Beevi*, JJ. [Date of decision: 19-2-1991]

[10162] — S. 409 — Sentence reduced — Appellant convicted on charge of embezzlement of Rs 8898.38 — *High Court sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs 9000 out of which the embezzlement amount to be paid back, or on default, to undergo rigorous imprisonment for a further period of 6 months — Appellant depositing Rs 9000 during pendency of present appeal — Held, ends of justice would be met if appellant's sentence reduced to period already undergone provided he pays in addition, a fine of Rs 2000 — In default of payment of fine appellant shall undergo rigorous imprisonment for a further period of three months. Ved Prakash Handooja* v. *Delhi Admn.*, (1974) 4 SCC 596: 1974 SCC (Cri) 632: AIR 1974 SC 2336: 1975 Cri LJ 31.

Bench Strength **2**. Coram: **H.R. Khanna** and *P.K. Goswami*, JJ. [Date of decision: 20-3-1974]

[10163] — S. 409 — Sentence reduced — Chances of repetition of offence remote — *Circumstance for awarding a lenient sentence. Harihar Prasad* v. *State of Bihar*, (1972) 3 SCC 89: 1972 SCC (Cri) 409: 1972 Cri LJ 707.

Bench Strength **2**. Coram: *J.M. Shelat* and **S.C. Roy** , JJ. [Date of decision: 7-9-1971]

[10164] — S. 409 — Sentence reduced — Money entrusted in the capacity as Sub-Postmaster retained for about two months — *Accused undergoing more than one trial and seven years passed since the commission of the offence — Sentence reduced to imprisonment already undergone i.e. four weeks plus a fine of Rs 100. State of Punjab* v. *Amar Singh*, Criminal Appeal No. 172 of 1957.

Bench Strength **4**. Coram: **S.R. Das, C.J.** and *N.H. Bhagwati, T.L. Venkatarama Aiyar* and **S.K. Das** , JJ. [Date of decision: 21-5-1958]

[10165] — Ss. 409 and 420 — Misappropriation of money from bank — Sentence of one year RI — *Accused-appellant subsequently remitting the entire amount to bank — Hence, the sentence imposed on him reduced to the period already undergone. Bonela Swaminatham* v. *State of A.P.*, (2001) 10 SCC 225: 2002 SCC (Cri) 1042: AIR 2000 SC 3578 (1): 2000 Cri LJ 4996 (2).

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 9-5-2000]

[10166] — Ss. 409 and 467 — Sentence reduced — Public servant found guilty of embezzlement and forgery — *Excessive sentence awarded to him — Minimised by Supreme Court*

Where the accused, who was a public servant, was prosecuted and convicted for offences under Ss. 409 and 467, IPC and was sentenced to 7 years' and 4 years' rigorous imprisonment respectively for them, the Supreme Court, considering that if he had been prosecuted under the Prevention of Corruption Act II of 1947 the maximum sentence which would have been awarded to him would have been seven years' rigorous imprisonment though the special court trying him would have imposed upon him a substantial fine even to the extent of the amount embezzled by him, and keeping in view the circumstances of the case, found the sentences to be excessive reduced the sentences to those of three years' rigorous imprisonment each in regard to those offences. *Mangleshwari Prasad* v. *State of Bihar*, AIR 1954 SC 715: 1954 Cri LJ 1797, 1801.

Bench Strength **3**. Coram: *B.K. Mukherjea, Vivian Bose* and **N.H. Bhagwati** , JJ. [Date of decision: 22-1-1954]

[10167] — Ss. 409, 467 and 471 — Accused convicted for offence punishable with life imprisonment not entitled to benefit of probation — *But where accused acquitted six years ago on being given such benefit by the High Court, Supreme Court's interference would not be in the interest of justice — Prevention of Corruption Act, 1947, S. 5(1)(c) read with S. 5(2) — Probation of Offenders Act, 1958 — S. 4. State of Gujarat* v. *V.A. Chauhan*, (1983) 2 SCC 64: 1983 SCC (Cri) 319: AIR 1983 SC 359: 1983 Cri LJ 692(1).

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 3-2-1983]

Som Nath Puri v. State of Rajasthan, (1972) 1 SCC 630, 1972 SCC (Cri) 359, followed

[10168] — Ss. 409 and 477-A — Sentence reduced — In view of the accused having secured alternative employment and the circumstances of the case, held, the imprisonment of 19 days already undergone would be sufficient. *Ganeshbhai Sankarbhai* v. *State of Gujarat*, (1972) 2 SCC 73: 1972 SCC (Cri) 647: AIR 1972 SC 1618: 1972 Cri LJ 1029.

Bench Strength **3**. Coram: **P. Jaganmohan Reddy**, *K.K. Mathew* and *G.K. Mitter*, JJ. [Date of decision: 3-5-1972]

[10169] — Ss. 409/34 — Sentence — *While upholding the conviction, sentence of 3 years' imprisonment reduced to that of 5 months already undergone in view of the fact that the accused was made a scapegoat, being a new and inexperienced recruit to the department. Bhagwan* v. *State of Maharashtra*, (1980) 1 SCC 610: 1980 SCC (Cri) 312: AIR 1979 SC 1120: 1979 Cri LJ 924.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 7-2-1979]

(9) Criminal breach of trust by banker, merchant, factor, broker or agent, etc. (S. 409)

See also '(8)(v) Criminal breach of trust by public servant (S. 409) — Corruption cases — Sentence', above

See also under 'Ss. 415-420 — Cheating', below

[10170] — S. 406 — Jurisdiction of Special Court under 1992 Act — Accused involved in an offence relating to transactions in securities during the relevant period — *Held, can be tried by Special Court and not by a regular criminal court even though he is not a notified person as per S. 3(2) — Effect of notification under S. 3(2) — Also transfer of such cases to Special Court would be automatic — Notification by custodian not essential — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 7, 3(2) & (4) and 9-A*

The scheme of Section 7, in the light of the Preamble of the Act and the main purpose for enactment of the Act, appears to be that all criminal proceedings pertaining to prosecutions in connection with the accused involved in transactions in securities during the relevant period will lie before the Special Court and not before ordinary courts as the section starts with a non obstante clause stating that notwithstanding anything contained in any other law, only Special Courts will have exclusive jurisdiction to try such offences. It is of course true that once the Custodian notifies the name of any person in the Official Gazette as per sub-section (2) of Section 3 then certain civil consequences regarding attachment of his properties would follow as per Section 3 sub-section (3) automatically and that would empower the Custodian to deal with such properties in such manner as Special Court may direct as per sub-section (4) of Section 3 of the Act. On such notification of the person concerned the Custodian would also get jurisdiction and power to cancel contracts and agreements entered into by such notified person after following the procedure of Section 4 sub-section (1). It is also true that on and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) (Amendment) Act, 1994 as laid down by Section 9-A pending suits against such notified persons contemplated by the special provisions would also stand transferred for adjudication to the Special Court. Thus so far as civil suits are concerned the proceedings pending on the commencement of Amending Act of 1994 would stand transferred provided in the meantime after the main Act came into force in 1992 such defendants have got notified under Section 3 sub-section (2) of the Act. But that is a scheme pertaining to civil actions against notified persons. The offence referred to in sub-section (2) of Section 3 which is within the sweep of Section 7 of the Act must be an offence committed by any person and must have the following two characteristics:

1. Such offence must relate to transactions in securities; and

2. Such offence should be alleged to have been committed between 1-4-1991 and on or before 6-6-1992.

Once these two requirements are satisfied the Special Court will get jurisdiction to try such offences and, therefore, consequently to try the accused concerned who are alleged to have committed such offences cognizable by the Special Court. When the principal accused is the notified person even non-notified accused can be tried jointly with such principal accused as per Section 8 if they were jointly involved in such offences. But even that apart if the accused is the sole accused and he is not a notified person and if any criminal case is pending against such an accused in any court when the Act came into force then even such a criminal case provided two requirements of sub-section (2) of Section 3 qua such offence as seen earlier are satisfied will automatically stand transferred to the Special Court as laid down by the latter part of Section 7. If the Special Court can try transferred criminal cases which were filed prior to 6-6-1992 in regular courts wherein the accused were not notified persons as such cases would stand transferred to it for trial automatically on coming into force of the Act, then of necessity it must be held that even if such criminal cases are filed after coming into force of the Act, against non-notified persons involved in similar type of offences they could be tried by the Special Court. Any other view would result in creation of two conflicting types of jurisdictions for the Special Court functioning as per the same Section 7.

On a conjoint reading of Section 3 and its relevant provisions, therefore, it must be held that once the Custodian notifies a person in the Official Gazette under sub-section (2) of Section 3 he gets the power and jurisdiction to deal with such person's properties and transactions as laid down under Section 3 sub-section (4) and Section 4 and in such a case even the civil suits of notified persons would stand transferred as per Section 9-A of the Act. But so far as criminal proceedings are concerned even if the accused is not notified still the Special Court will have jurisdiction under Section 7 to deal with the offences alleged to have been committed by such an accused if the earlier mentioned two basic requirements of Section 3 sub-section (2) are satisfied. *Minoo Mehta* v. *Shavak D. Mehta*, (1998) 2 SCC 418: 1998 SCC (Cri) 645: AIR 1998 SC 831: (1998) 91 Comp Cas 895.

Bench Strength **2**. Coram: **S.B. Majmudar** and *M. Jagannadha Rao*, JJ. [Date of decision: 15-1-1998]

Canara Bank v. Nuclear Power Corpn. of India Ltd., 1995 Supp (3) SCC 81; Kudremukh Iron Ore Co. Ltd. v. Fairgrowth Financial Services Ltd., (1994) 4 SCC 246, distinguished

See also (2001) 6 SCC 16 at p. 22 where this decision has been criticised and explained

[10171] — Ss. 406/420/120-B and 379 — Held, on facts, offences not made out against financiers in hire-purchase agreement — Recovery of possession of goods by owner-financier as per terms of the hire-purchase agreement, does not amount to a criminal offence — *Such an agreement is an executory contract of sale, conferring no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled — Held, on facts, where respondent hirer had defaulted in instalment payments of motor vehicle and agreement specifically provided that appellant financiers were entitled to repossess the vehicle in case of default and their agents were authorised to enter any premises for the purpose, and appellants had actually recovered possession of the vehicle, no offence was made out against the appellants — High Court erred in dismissing their petition under S. 482 CrPC challenging issue of summons on complaint filed under Ss. 406/420/120-B and 379 IPC — Hire Purchase Act, 1972, Ss. 8 and 20 — CrPC, 1973, S. 482*

The respondent *S*, entered into a hire-purchase agreement dated 3-5-1994 with the appellants, owners of a non-banking financial institution, in respect of a motor vehicle. Rs 3,02,884 was the total consideration agreed to be paid for the vehicle; *S* initially paid Rs 69,308 and agreed to pay the balance in 36 monthly instalments of Rs 8400 each. A dispute developed at some stage and on 3-12-1998 *S* filed a criminal complaint alleging that during the night of 16-9-1996, when the vehicle had been in the custody of a motor mechanic, the appellants had taken it away; they had thus committed offences under Sections 406/420/120-B IPC. Cognizance was taken by the Magistrate and summons issued to the appellants.

The appellants filed a petition under Section 482 CrPC before the High Court seeking to have the proceedings quashed. They averred in the petition that *S* had defaulted in making the instalment payments, that as of 1-9-1996 the outstanding amount was Rs 1,34,887; they had therefore been obliged to terminate the hire-purchase agreement. They also stated that *S* surrendered the vehicle to them. The High Court, however, dismissed the petition under Section 482 CrPC holding that it was possible to make out offences, particularly under Section 379 IPC, on the basis of the allegations in the complaint.

In appeal before the Supreme Court, it was submitted on behalf of the appellant financiers that in recovering possession of the vehicle, they had only exercised their right under the hire-purchase agreement as owners of the vehicle; that no offence could be made out from the allegations in the complaint. The agreement, which was produced in court, contained a clear provision that the appellants could repossess the vehicle in case of default by the hirer-purchaser; the appellants or their agents were also entitled to enter any premises for the purpose of inspection or of repossession and were specifically exempted from civil or criminal liability at the instance of the hirer.

Allowing the appeal,

Held :

Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But as hire-purchase schemes gained in popularity, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into the picture. The finance company would buy the goods from the dealer and let them to the customer under hire-purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire-purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference between the cash price and the hire-purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments. (Para 5)

In the present case agreement executed by the parties is to the effect that the hirer would not become the owner of the property until he pays the entire instalments. (Para 10)

The whole case put forward by the respondent complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken repossession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to repossess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating. (Para 11)

The plea that the appellants have committed theft is without any basis as the appellants have taken repossession of the vehicle in exercise of their right under the agreement. There may be instances where the owner of the goods may commit theft of his own goods as indicated in Illustration (*k*) of Section 378 IPC. But in the instant case, the owner repossessing the vehicle delivered to the hirer under the hire-purchase agreement will not amount to theft as the vital element of "dishonest intention" is lacking. The element of "dishonest intention" which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. (Paras 12 and 13)

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. (Para 17)

In the present case the agreement specifically gave authority to the appellants to repossess the vehicle and their agents to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. (Para 17). *Charanjit Singh Chadha* v. *Sudhir Mehra*, (2001) 7 SCC 417: 2001 SCC (Cri) 1557: AIR 2001 SC 3721.

Bench Strength **2**. Coram: *K.T. Thomas* and **K.G. Balakrishnan**, JJ. [Date of decision: 31-8-2001]

R.M. Goode: Hire Purchase Law & Practice, 2nd Edn., p. 846; Sardar Trilok Singh v. Satya Deo Tripathi, (1979) 4 SCC 396: 1979 SCC (Cri) 987; K.A. Mathai v. Kora Bibbikutty, (1996) 7 SCC 212: 1996 SCC (Cri) 281, relied on

[10172] — S. 409 — Advocate and client — Correspondence and account showing that matter was a civil one — *Compliant of breach of trust by client's son against the advocate without authority from his father — Maintainability. Vasudeo Kulkarni* v. *Surya Kant Bhatt*, (1977) 2 SCC 304: 1977 SCC (Cri) 349: AIR 1977 SC 1331: 1977 Cri LJ 1000: (1977) 3 SCR 109.

Bench Strength **2**. Coram: **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 2-3-1977]

[10173] — S. 409 — Agent — Director of a company is its agent. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1841: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das, K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 5-4-1962]

[10174] — S. 409 — Entrustment of or dominion over property — Bank director not only an agent but a trustee having dominion or control over the bank property which comes into his hand — *Such 'property' is a chose in action — De facto managing director committing misappropriation of property without substituting in lieu thereof securities of equal amount, held, liable under. Shivnarayan Laxminarayan Joshi* v. *State of Maharashtra*, (1980) 2 SCC 465: 1980 SCC (Cri) 493: AIR 1980 SC 439: 1980 Cri LJ 388.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.P. Sen*, JJ. [Date of decision: 10-10-1979]

[10175] — S. 409 — Persons (like public servants, bankers, etc.) made liable under S. 409 — Duties of such persons — *Held, the same are of highly confidential character, involving great power of control over property entrusted to them — Breach of trust by such persons may often result in serious public or private calamity — High morality is expected of these person — They are supposed to discharge their duties honestly* (Para 146). *R. Venkatkrishnan* v. *CBI*, (2009) 11 SCC 737.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

Ram Narayan Popli v. CBI, (2003) 3 SCC 641: 2003 SCC (Cri) 869; Raghunath Anant Govilkar v. State of Maharashtra, (2008) 11 SCC 289: (2009) 1 SCC (Cri) 130; Supdt. and Remembrancer of Legal Affairs v. S.K. Roy, (1974) 4 SCC 230: 1974 SCC (Cri) 399; Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore-Cochin, AIR 1953 SC 478, relied on

[10176] — S. 409 — Requirements of — Expression "in the way of his business" — Meaning of

What S. 409, IPC requires is that the person alleged to have committed criminal breach of trust with respect to any property be entrusted with that property or with dominion over that property in the way of his business as an agent. The expression "in the way of his business" means that the property is entrusted to him, "in the ordinary course of his duty or habitual occupation or profession or trade". He should get the entrustment or dominion in his capacity as agent. In other words, the requirements of this section would be satisfied if the person be an agent of another and that other person entrusts him with property or with any dominion over that property in the course of his duties as an agent. A person may be an agent of another for some purpose and if he is entrusted with property not in connection with that purpose but for another purpose, that entrustment will not be entrustment for the purposes of S. 409, IPC if any breach of trust is committed by that person.

A different expression "in the way of business" has been used in place of the expression "in his capacity" to make it clear that entrustment of property in the capacity of agent will not, by itself, be sufficient to make the criminal breach of trust by the agent a graver offence than any of the offences mentioned in Ss. 406 to 408, IPC. The criminal breach of trust by an agent would be a graver offence only when he is entrusted with property not only in his capacity as an agent but also in connection with his duties as an agent. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1840: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das, K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 5-4-1962]

[10177] — S. 409 — Retrial — Prosecution of a practising lawyer by a client under S. 409 — *An important document alleged to be in accused's handwriting alleged to be forged by the accused — Complainant not producing expert evidence — Trial court holding the document not proved and acquitting the accused — High Court ordering retrial in the appeal against acquittal and directing the Magistrate to afford an opportunity to the complainant to produce expert evidence — Order against well established rules of criminal jurisprudence is erroneous*

The accused, a practising lawyer, was prosecuted by the complaint, his client, under S. 409, IPC for misappropriating a sum of Rs 5000. The prosecution case was based on a letter alleged to have been written by the accused. The accused challenged the document as a forgery in material parts, but the complainant did not take any steps to get an expert on handwriting examined. The trial Court acquitted the accused. In appeal by the complainant against the order of acquittal the High Court ordered a retrial and directed the Magistrate to give an opportunity to the complainant to adduce the evidence of a handwriting expert, in order to establish the genuineness of the questioned document. The accused appealed to the Supreme Court.

Held:

An accused person should not be placed on trial for the same offence more than once, except in very exceptional circumstances. Though the complainant had the fullest opportunity of adducing all the evidence that would be necessary to prove the charge against the accused person, but he did not adduce expert evidence and also did not pray for examination of an expert. The prosecution took its chance of having a decision in its favour on the evidence adduced by it before the trial Court. That Court was not satisfied that evidence was adequately reliable to bring the charge home to the accused and acquitted him. On appeal the High Court could take a different view of the evidence, reverse the judgment and convert the order of acquittal into an order of conviction. It was however not justified to have put the accused to the botheration and expense of a second trial simply because the prosecution did not adduce all the evidence which should and could have been brought before the Court of first instance. Simply because the accused happened to be a lawyer would not be a ground for subjecting him to harassment a second time. Therefore, the order of retrial passed by the High Court was entirely erroneous. *Abinash Chandra Bose* v. *Bimal Krishna Sen*, AIR 1963 SC 316: (1963) 3 SCR 564: (1963) 1 Cri LJ 261.

Bench Strength **3**. Coram: **B.P. Sinha, C.J.** and *K.N. Wanchoo* and *J.C. Shah*, JJ. [Date of decision: 3-8-1962]

[10178] — Ss. 409, 405, 411 and 120-B — Criminal breach of trust — Ingredients — *Acting contrary to directions of person who had entrusted the property — Accused 4, a registered stockbroker, purchasing mutual fund securities in the name of a bank and later on selling them — Sale contrary to terms subject to which securities were issued but otherwise there was no violation of any statutory provision — Neither name lending bank nor issuing institution objecting to the sale — Held, Accused 4 being the real owner of securities, did not commit criminal breach of trust as the property sold was his own — For the same reason, charge under S. 411, of receiving/retaining stolen property, held, also not made out against him — Securities were purchased by another financial institution — Accused 3 was an officer in that institution — Accused 3 also acquitted of similar charges against him — Further held, Accused 3 could not also be convicted under the Prevention of Corruption Act, 1988 for the reason that purchase of securities of Rs 33 crores could not be made without authorisation from higher authorities and the transaction was legal —Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Prevention of Corruption Act, 1988, Ss. 13(1)(c), 13(1)(d) and 13(2)*

Accused 4, a registered stockbroker, purchased Canara Bank mutual fund units, CANCIGO, worth Rs 33 crores in the name of Andhra Bank and its subsidiary, Andhra Bank Financial Services Ltd. Interest on these units was credited to Accused 4's account. He sold these units before completing their lock-in period of one year to CANFINA, a subsidiary of Canara Bank. The sale was contrary to terms and conditions of mutual fund but otherwise there was no violation of any statutory provisions. CANFINA deducted amount of Rs 25 crores plus, which Accused 4 owed to them, and released rest of the amount to Accused 4.

It was also found that CANFINA purchased mutual fund from Accused 4 on the directions of Accused 3 who was an officer in CANFINA.

Accused 4 was charged of criminal breach of trust under Section 405 and for receiving/retaining stolen property under Section 411 of the Penal Code.

Accused 3 was also charged for criminal breach of trust under Sections 405 and 409 of the Penal Code, and also under Sections 13(1)(*c*), 13(1)(*d*) and 13(2) of the Prevention of Corruption Act, 1988.

Both the accused appealed to the Supreme Court against their conviction.

Main issue was whether Accused 4, who had purchased mutual fund units in the name of Andhra Bank and its subsidiary, had committed criminal breach of trust by selling the units to CANFINA. The Supreme Court while deciding this issue took note of the fact that the Supreme Court in an earlier case, *Canbank Financial Services Ltd. case*, (2004) 8 SCC 355, had held that Accused 4 had a transferable interest in the securities purchased in the name of Andhra Bank and its subsidiary (Accused 4 was Respondent 2 in that case).

Allowing the appeals and acquitting both Accused 3 and 4, of the abovementioned charges, *Held* :

For all practical purposes, CANCIGO units worth Rs 33 crores were purchased by Accused 4, and he transferred these units to CANFINA. Canara Bank Mutual Fund, CBMF, did not raise any objection in respect of transfer of the CANCIGO units by Accused 4. If at all, it was for CBMF to raise any objection but they did not raise any objection to transfer of CANCIGO units. CANFINA had succeeded in getting the proceeds of these CANCIGO units. Therefore, no offence of criminal breach of trust is committed by Accused 4. He has not acted contrary to the direction of any person who had entrusted these units to him and it is proved that it was Accused 4 himself who was apparent owner of these units. (Paras 18 and 19)

So long as CANFINA has no grievance or complaint against Accused 4, that he acted contrary to their directions and accepted CANCIGO units and paid money to Accused 4, no offence is made out against Accused 3 either of criminal breach of trust or conspiracy. (Para 21)

In the circumstances, no ingredient of criminal breach of trust is made out against either of the appellants. (Para 23)

The prosecution also could not prove any conspiracy by these accused persons to commit any criminal acts. So long as there was no such evidence, the offence of conspiracy is not proved against these appellants. (Para 24)

So long as the prosecution admits that CANCIGO units worth Rs 33 crores were purchased by making use of money owned by Accused 4, they were not a stolen property in his hands. Neither Andhra Bank nor Andhra Bank Financial Services Limited has any case that these CANCIGO units were stolen by Accused 4. As the offence of criminal breach of trust is not made, the conviction of Accused 4 under Section 411 is not sustainable and is liable to be quashed. So also, Accused 3 is not liable for the conspiracy to commit offence under Section 411 IPC. (Para 25)

CANCIGO units were worth Rs 33 crores and they were accepted with the proper authorisation by the higher authorities in CANFINA. It is highly improbable to believe that appellant-Accused 3 on his own decided to accept CANCIGO units worth Rs 33 crores without any instructions. CANFINA did not file any complaint alleging any unauthorised transaction carried out by him. It has already been held by the Supreme Court in *Canbank Financial Services Ltd.* that entire transaction was legal and CANFINA was entitled to the proceeds of these CANCIGO units and not the "Custodian" under the Act. Therefore, Accused 3 is also not guilty of offence punishable under Sections 13(1)(*c*) and 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act. (Para 26). *S. Mohan* v. *CBI*, (2008) 7 SCC 1: (2008) 3 SCC (Cri) 1: (2008) 106 Cut LT 360.

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision: 16-5-2008]

Canbank Financial Services Ltd. v. Custodian, (2004) 8 SCC 355, relied on

[10179] — Ss. 409 and 408 — Agent or servant — *Accused as promoter of a society lawfully received amount of share money and embezzled the same — Accused is an agent and not a servant — S. 409 and not S. 408 shall apply*

Having regard to the nature of the duties of the appellant as the Secretary of the Society, it is clear that his status was that of an agent and not a servant. Moreover, whether the appellant should be charged under S. 408 or S. 409 is of no importance in the present case, as the sentence imposed on him under S. 409 viz., four years' rigorous imprisonment could be maintained even under S. 408. *Chandi Prasad Singh* v. *State of U.P.*, AIR 1956 SC 149: (1955) 2 SCR 1035: 1956 Cri LJ 322, 325: (1956) 1 MLJ (SC) 88: 1956 ALJ 153.

Bench Strength **2**. Coram: *Vivian Bose* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 7-12-1955]

[10180] — Ss. 409, 420 and 405 — Quashing of prosecution — High Court cannot hold a parallel trial in exercise of power under — If offence prima facie falls under the Penal Code, launching of prosecution cannot be thwarted by High Court under S. 482 merely because penal action open under any other statute — *Cognizance of offence taken by Magistrate under S. 409 IPC against managing director and directors (appellants) of a public limited company on the basis of charge-sheet submitted by CBI and other material prima facie disclosing dishonest misappropriation of share and debenture moneys collected from public — Application filed by appellants under S. 482 seeking their discharge on ground of availability of penal provisions for such offence under Companies Act — Held, High Court justified in dismissing the application — Companies Act, 1956, Ss. 69, 63 and 73 — CrPC, 1973 — S. 482*

Though the Companies Act contains provisions regarding the issuance of prospectus, applications for shares and allotment thereof and provides different checks over the misuse of the fund collected from the public for issuance of shares or debentures, but where persons issue prospectus and collect moneys from public assuring them that they intend to do business with the public money for their benefit and the benefit of such public, but the real intention is to do no business other than collecting the moneys from the public for their personal gain, such persons cannot be said to be immune from the provisions of the Penal Code. The persons managing the affairs of such company cannot use the juristic entity and corporate personality of the company as a shield to evade themselves from prosecution for offences under the Penal Code, if it is established that primary object of the incorporation and existence of the Company is to defraud the public.

But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the shareholders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie an offence under the Penal Code has been disclosed on the materials produced before the court. For prosecution for offences under the Penal Code the complainant has to make out a prima facie case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. There is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished.

In the facts of the present case itself, the prosecution has to prove that the appellant as promotors or directors, had dishonest intention since the very beginning while collecting the moneys from the applicants for the shares and debentures or that having collected such moneys they dishonestly misappropriated the same. The ingredients of the different offences under the Penal Code need not be proved only by direct evidence: they can be shown from the circumstances of a particular case that the intention of the promotors or the directors was dishonest since the very inception or that they developed such intention at some stage, for their wrongful gain and causing wrongful loss to the investors. All the circumstances and the materials to prove such a charge have to be collected during the investigation and inquiry and ultimately have to be produced before the court at the stage of trial for a verdict as to whether the ingredients of offence in question have been established on behalf of the prosecution.

In the present case the quashing of the prosecution pending against the appellants only on the ground that it was open to the applicants for shares to take recourse to the provisions of the Companies Act, cannot be accepted. It is a futile attempt on the part of the appellants, to close the chapter before it has unfolded itself. It will be for the trial court to examine the matter on the materials produced on behalf of the prosecution. That exercise cannot be performed either by the High Court or by the Supreme Court. The trial court should proceed with the case in accordance with law.

The High Court should not, while exercising power under S. 482 of the Code, usurp the jurisdiction of the trial court. The power under S. 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the court. But that power cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to proceed. *Radhey Shyam Khemka* v. *State of Bihar*, (1993) 3 SCC 54: 1993 SCC (Cri) 591: (1993) 77 Comp Cas 356: 1993 Cri LJ 2888: (1993) 1 Crimes 1132.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 26-3-1993]

[10181] — Ss. 409, 420 and 424 r/w S. 37 — Quashing of proceedings — On facts, allowed — *Huge quantities of paddy alleged to have been diverted by Accused 1 and made to disappear with active assistance of Accused 2 to 9 and further that he purchased properties in name of benamis with their assistance — No specific role ascribed to appellants (Accused 2, 3, 6, 7 and 8) — Allegations were bald and vague — Hence, held, no useful purpose would be served by allowing the prosecution to continue — Proceedings against them liable to be quashed — CrPC, 1973, S. 482*

A-1 was the sole proprietor of a rice mill. Accused 2 to Accused 5 were the family members of Accused 1, whereas Accused 6 to Accused 8 were the son-in-law, the daughter of Accused 1 and the brother of the son-in-law of Accused 1 respectively. Accused 2 and Accused 3 were the two sons of Accused 1 who are aged about 28 and 25 years respectively. Accused 1 was purchasing paddy from the local paddy growers in the village and he issued vouchers to some of them, while to others promissory notes ranging from Rs 30,000 to Rs 3 lakhs were executed as security towards the purchase of paddy. He had also obtained Rs 30 lakhs as loan from SBI. However, his business declined and consequently he owed debts to the banks, several financial institutions and to the public and his liabilities aggregated to Rs 89,51,600. Therefore, on 24-6-2005, he filed an insolvency petition. Consequent upon filing of the aforesaid insolvency petition several representations were made to the District Collector by the villagers making allegations against Accused 1 and his family members. A charge-sheet was filed under Ss. 406, 420 and 424 r/w S. 37 IPC against Accused 1 to 9. In the said charge-sheet the police stated that Accused 1 to Accused 9, developed an evil idea by colluding themselves and fraudulently directed the loans and gold secretly in benami names in order to defraud the persons who supplied paddy to them. It was further stated that during the year 2005 Accused 1 purchased paddy crop from several farmers saying that he would pay the cost of paddy as per the existing market value. They blindly believed Accused 1 and unloaded huge quantities of paddy produced by them and entrusted the same with Accused 1. But Accused 1 diverted part of the paddy to Accused 5 who was running rice mill on the ground of inadequate power supply and secretly sold it for his own use. It was further stated that 10 days before that he had also diverted huge quantities to "NRI Industries". Eventually, Accused 1 gained unlawfully to the tune of Rs 1,20,00,000 by cheating the abovementioned paddy suppliers.

Accused 1 to Accused 9 including the appellants herein (Accused 2 and Accused 3) jointly filed petition under Section 482 CrPC for quashing the complaint and charge-sheet on the ground that it was only a civil liability arising out of breach of contract by Accused 1 in payment of price of paddy and, therefore, it was improper on the part of the police to come to their aid to recover the money under a transaction by filing criminal cases and that the said criminal complaint itself was a counterblast to the insolvency petition filed by Accused 1. However, High Court observed that accused had collected paddy from various agriculturists worth Rs 1,20,00,000 by making them to believe that the cost of paddy would be paid immediately but after having collected the paddy, they failed to pay the amount to the agriculturists and thereby they cheated those persons. So, it was held that there was prima facie material against all the accused i.e. Accused 1 to Accused 9. Accordingly, the High Court dismissed the criminal petition. Hence, the present appeal.

Partly allowing the appeal,

Held :

When at an initial stage a prosecution is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint filed prima facie establish the offence. It is also for the court to take into consideration any special feature that may appear in a particular case while considering whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose. (Para 31)

In the instant case, on perusing the report filed with SHO, and the charge-sheet submitted by him, it is found that most of the allegations in the aforesaid charge-sheet are mainly directed against Accused 1. (Para 33)

The allegations made against the other accused are that Accused 1 diverted huge quantities of paddy to NRI Industries, and made it disappear with the active assistance of Accused 2 to Accused 9 and that he purchased lands in the name of benamis with the assistance of Accused 6 and Accused 2. These are the only allegations made against the role of the present appellants, namely, Accused 2 and 3 and Accused 6, 7 and 8. Without ascribing any specific role to any one of them the aforesaid allegation appears to be very bald and vague. Similarly the allegations made against Accused 2 and Accused 3 that they had helped their father in purchasing some property is also very vague as no specific role is ascribed to them. (Paras 34 and 35)

Hence, no useful purpose would be served by allowing the prosecution to be continued against them. Proceedings as against the appellants herein i.e. Accused 2 and 3 and Accused 6 to 8 quashed. However, no opinion expressed so far as the allegations made in the said charge-sheet against Accused 1 and the other accused persons are concerned. Further clarified that observations were only with respect to the criminal proceedings and none of these observations should be construed as an opinion so far civil liability, if any, is concerned. (Paras 36 and 37). *Chunduru Siva Ram Krishna* v. *Peddi Ravindra Babu*, (2009) 11 SCC 203: (2009) 3 SCC (Cri) 1297.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dr. M.K. Sharma** , JJ. [Date of decision: 25-3-2009]

[10182] — S. 409 and S. 420 r/w S. 120-B — GPA-holder accepting factum of cancellation of GPA but thereafter executing the same — *High Court while dismissing revision petition observing that it was possible that the appellants were duped by the attorney who knew that his powers had been revoked but concealed the fact, but such arguments could be validly advanced by petitioners for establishing their bona fides during trial — Hence, held, no interference with impugned judgment called for — CrPC, 1973, S. 228* (Paras 2, 17 and 18)

In February 1987 complainant and his five family members executed general power of attorney (GPA) at Canada in favour of one *M* which was subsequently registered at Ferozepur. The GPA-holder sold a plot of land belonging to complainant to appellants for Rs 5 lakhs, and the sale deed was duly registered. In December 1989 appellants suddenly came to know that complainant had filed a suit for declaration that said GPA-holder had no authority to sell the property and/or to permanently alienate and dispose of the said property. An ex parte injunction order/status quo was granted on 2-12-1989 though the appellants in absence of knowledge of the same had got the sale deeds registered on 5-12-1989.

On 14-6-1990 an order was passed in the suit restraining appellants from dispossessing the complainant from the said property and to maintain status quo, whereas in fact appellants were already in possession of that property since 7-11-1989. In appeal filed by the appellants the learned ADJ ordered status quo with regard to ownership and possession of property.

On 30-6-1995, complainant lodged a complaint with Deputy Commissioner, who was related to him. The Commissioner summoned the appellants at his residence and asked them to cancel the sale deeds and to concede the claim of complainant, threatening them with dire consequences.

On 31-8-1995 after about six years FIR was lodged against appellants. On 29-5-1996 a report was submitted to SSP stating that FIR was intended to pressurise the appellants and no offence appeared to have been committed by them. In spite of that charge-sheet was filed against appellants. Charges were framed against appellants under Section 120-B read with Section 409 IPC and Section 120-B read with Section 420 IPC against appellants. Criminal revision was filed challenging maintainability of charges framed against them which was dismissed by the High Court by impugned order holding that there was sufficient ground to presume that unrebutted evidence of complainant constitutes triable offences. It was also found that details of property in respect of which it was executed were missing and though the power of attorney prima facie appeared to be a valid document, nevertheless on a plain reading thereof left one with uncertain feeling as regard its impact. Hence, the present appeal.

Dismissing the appeal, the Supreme Court held as above. *Chaman Lal* v. *State of Punjab*, (2009) 11 SCC 721: (2009) 2 ECrN 1057 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 31-3-2009]

Mohd. Khalid v. State of W.B., (2002) 7 SCC 334: 2002 SCC (Cri) 1734, relied on

American Jurisprudence, Vol. II, Section 23, p. 559; Halsbury's Laws of England, 4th Edn., Vol. 11, p. 44, para 58, cited

(10) Criminal breach of trust re dowry articles/stridhan

[10183] — S. 405 — Criminal breach of trust — Ingredients — Taking away of dowry articles by husband and in-laws — S. 405 IPC vis-à-vis special legislation contained in Dowry Prohibition Act, 1961, Ss. 3 and 4 — *Such an offence, where alleged, held on facts, should be tried under the special legislation rather than general provisions contained in the Penal Code — Further held, if any article was given by way of dowry, the question of its entrustment on behalf of wife would not arise — Dowry Prohibition Act, 1961, Ss. 3 and 4*

So far as the allegation in regard to criminal breach of trust is concerned, it related to the dowry articles. No allegation has been made that the appellants are guilty of commission of offence punishable under Section 3 and/or 4 of the Dowry Prohibition Act. If any dowry has been given, the same would attract the provisions of the special Act in preference to the general statute. Furthermore, if any article is given by way of dowry, the question of entrustment thereof for or on behalf of the bride would not arise. (Para 30)

Allegations made in FIR merely disclose that at the time of leaving the house, the appellants had taken with them certain articles. The said articles ought to be in lawful possession of Respondent 3 (wife). The offence of theft might have been committed. But when they are in joint possession, even no offence of theft would also be made out. (Para 31). *Harmanpreet Singh Ahluwalia* v. *State of Punjab*, (2009) 7 SCC 712: (2009) 3 SCC (Cri) 620: 2009 Cri LJ 3462.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

[10184] — Ss. 405 and 406 — Criminal breach of trust — Ingredients of — Prerequisites for offence under — Whether made out — Offering of sum as compensation for divorce by mutual consent — Effect of — *Allegations made in complaint against appellants (parents of husband) of misappropriation of her stridhan by respondent — Tenability — Held, allegation that A-2 (mother-in-law) had taken all the gifts/cash given by the invitees/guests attracts definition of breach of trust under S. 405 IPC — Entrustment of some properties and/or dominion over them, if any, attributed only against A-2 — No definite case of entrustment of any property made against A-1 — Offering of Rs 25 lakhs for grant of divorce by mutual consent as compensation to complainant, per se does not constitute offence under S. 406 IPC — Any gift made to bridegroom or his parents, whether in accordance with any custom or otherwise also would not constitute any offence under S. 406 IPC — Case under S. 406 IPC made out only against A-2 — Hence, directed that proceedings could continue against her*

The offence of criminal breach of trust as defined in Section 405 IPC may be held to have been committed when a person who had been entrusted in any manner with the property or has otherwise dominion over it, dishonestly misappropriates it or converts it to his own use, or dishonestly uses it, or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or wilfully suffers any other person so to do. (Para 53)

The essential ingredients for establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406 IPC with sentence for a period up to three years or with fine or with both, are:

(*i*) entrusting any person with property or with any dominion over property;

(*ii*) the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust. (Para 54)

The only allegation which brings the case within the purview of Section 406 is that Appellant 2 had taken all the gifts/cash given by the invitees/guests. Technically, this allegation would attract the definition of breach of trust within the meaning of Section 405 IPC. Entrustment of some properties and/or dominion over them, if any, therefore, is attributed only against Appellant 2. Other allegations made against the appellants are general in nature. Entrustment is said to have been made to the appellants and/or their son. No definite case of entrustment of any property has been made against Appellant 1. He is only said to have given back to the complainant's parent the entire clothes and jewellery. No demand was made by the respondent. (Para 56)

Offering of Rs 25 lakhs for grant of divorce by mutual consent as compensation to the complainant, which is three times of the amount of the value of "stridhana" and/or amount spent by the complainant's father per se does not constitute any offence of Section 406 of the Code. Any gift made to the bridegroom or his parents, whether in accordance with any custom or otherwise also would not constitute any offence under Section 406 of the Code. Prima facie a case under Section 406 IPC has been made out only against Appellant 2. (Paras 57 and 59)

The summoning order dated 21-3-2005 passed against the appellants except Appellant 2 is set aside. It is clarified that the proceedings can continue only against Appellant 2, that too in respect of Section 406 IPC only. (Para 61). *Bhaskar Lal Sharma* v. *Monica*, (2009) 10 SCC 604: (2009) 161 DLT 739.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 27-7-2009]

Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; State of Punjab v. Pritam Chand, (2009) 16 SCC 769; Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712: (2009) 3 SCC (Cri) 620, relied on

[10185] — Ss. 405 and 406 — Dowry articles constituting stridhan property given by parents of Hindu woman to the husband and his close relatives at the time of marriage — Dishonest misappropriation or conversion to own use of those articles by husband and others — *Whether by itself amounts to criminal breach of trust or a separate agreement for specific entrustment of those articles essential to constitute such offence*

Per majority

The concept of stridhan property of a married woman becoming a joint property of both the spouses as soon as she enters her matrimonial home and continues to be so until she remains there or even if there is a break in the matrimonial alliance, is in direct contravention of Hindu Law of Saudayika. Husband does not acquire joint interest in the property.

The husband is only custodian of the stridhan property entrusted to him. The entrustment is just like something which the wife keeps in a bank and can withdraw any amount whenever she likes without any hitch or hindrance and the husband cannot use the stridhan for his personal purposes unless he obtains the tacit consent of his wife. Even if the personal property of the wife is jointly kept it would be deemed to be expressly or impliedly kept in the custody of the husband. Simple entrustment of stridhan without creating any rights in the husband except putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the said articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan.

The view that as remedy under civil law was available, S. 406 IPC was inapplicable cannot be accepted. A criminal prosecution would not be completely barred merely because a civil remedy is available. Criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. If the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would not bar prosecution under S. 406 IPC and would not render the ingredients of S. 405 IPC nugatory or abortive.

The mere factum of the husband and wife living together does not entitle either of them to commit a breach of criminal law and if one does then he/she will be liable for all the consequences of such breach. In the case of stridhan property also, the title of which always remains with the wife, if the husband or any other member of his family who are in possession of such property, dishonestly misappropriate or refuse to return the same, they will be liable to punishment for the offence of criminal breach of trust under Ss. 405 and 406 IPC.

Per Varadarajan, J.

The most important ingredient of an offence under S. 406 IPC, which is alleged by the wife against her husband and other accused-respondents in her complaint in the present case is the entrustment of the dowry articles to the respondents and their dishonest conversion thereof to their own use. Whether the allegation made in the complaint amounts to entrustment as required by law to make out an offence under S. 406 IPC has to be examined in the background of what usually happens in Hindu marriages, namely, placing of the articles presented to the bride in the presence of the elders and others assembled for the occasion and removal thereof after the function is over. The minimum requirement for the purposes of S. 405 IPC in such cases is a specific separate agreement whereby the property of the wife or husband was entrusted to the husband or wife and/or his or her close relations. In absence of such separate agreement for specific entrustment it would not be possible to draw an inference of entrustment of custody or dominion over the property of one spouse to the other and his or her relations so as to attract the stringent provisions of S. 406 IPC, otherwise there would be disastrous effects and consequences on the peace and harmony which ought to prevail in matrimonial homes. The appropriate remedy would appear to be by way of a civil suit where there is scope for the parties to the marriage coming together at the instance of relations, elders and well-wishers and patching up their differences. *Pratibha Rani* v. *Suraj Kumar*, (1985) 2 SCC 370: 1985 SCC (Cri) 180: AIR 1985 SC 628: 1985 Cri LJ 817.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and Sabyasachi Mukharji, JJ. [Date of decision: 12-3-1985]

[10186] — Ss. 405 and 406 — Entrustment of stridhana property to the husband or any other member of the family — Dishonest misappropriation or conversion to own use of that property by the husband or such other person by itself amounts to criminal breach of trust — *Any further special agreement to establish that the property was given to the husband or other member of the family need not be established — Expression "entrustment" — Meaning of — When wife left matrimonial home or driven therefrom proof of entrustment of stridhana property would depend upon circumstances of the each case — On facts, a prima facie case of entrustment has been made out by the appellant-wife as the stridhana properties not returned to her by the husband*

When the wife entrusts her stridhana property with the dominion over that property to her husband or any other member of the family and the husband or such other member of the family dishonestly misappropriates or converts to his own use that property or wilfully suffers any other person to do so, he commits criminal breach of trust. The essential ingredients for establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406 IPC with sentence for a period up to three years or with fine or with both, are: (*i*) entrusting any person with property or with any dominion over property; (*ii*) the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all its imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.

In view of the finding that stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. It is always a question of fact in each case as to how the property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. No absolute or fixed rule of universal application can be laid down in that behalf. It requires to be established by the complainant or the prosecution, depending upon the facts and circumstances of the case, as to how and in what manner the entrustment of the stridhana property or dominion over her stridhana came to be made to the husband or any other member of the family or the accused person, as the case may be. *Rashmi Kumar* v. *Mahesh Kumar Bhada*, (1997) 2 SCC 397: 1997 SCC (Cri) 415.

Bench Strength 3. Coram: **K. Ramaswamy**, *S.B. Majmudar* and *G.T. Nanavati*, JJ. [Date of decision: 18-12-1996]

Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180, affirmed

[10187] — S. 406 — Complaint under, by wife against her husband, father-in-law, mother-in-law and in-laws — *Allegation of entrustment of articles and cash found to be sufficient for taking cognizance of offence — High Court not justified in quashing the complaint pending before the Magistrate — However, there being no justification for arraying, other than the husband, father-in-law and mother-in-law, the other in-laws as accused the* *order of the High Court as against in-laws not disturbed. Radha Rani* v. *Parmod Kumar Oberoi*, 1995 Supp (4) SCC 491: 1995 SCC (Cri) 396.

Bench Strength **2**. Coram: *K. Jagannatha Shetty* and *Yogeshwar Dayal*, JJ. [Date of decision: 15-4-1991]

[10188] — S. 406 — Entrustment of stridhan property to husband does not amount to partnership — Hence case under S. 406 maintainable

Per Fazal Ali and Mukharji, JJ.

It cannot be said that a bare act of keeping stridhan property in the custody of the husband constitutes a partnership and, therefore, a criminal case under S. 406 IPC is not maintainable. In a partnership the wife must be some clear and specific act indicate that the stridhan which has been entrusted to the husband is to be used for a partnership business and the losses of the firm, if any, would have to be shared by both. In other words, one of the essential conditions of a partnership firm is that every partner must have dominion over the property by virtue of the fact that he is a partner. A pure and simple entrustment of stridhan without creating any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the said articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under S. 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property. When the essential conditions of a partnership do not exist the mere act or factum of entrustment of stridhan would not constitute any co-ownership or legal partnership as defined under S. 4 of the Partnership Act. *Pratibha Rani* v. *Suraj Kumar*, (1985) 2 SCC 370: 1985 SCC (Cri) 180: AIR 1985 SC 628: 1985 Cri LJ 817.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**[1], A. Varadarajan[2] and Sabyasachi Mukharji, JJ. [Date of decision: 12-3-1985]

[10189] — S. 406 — Quashment not considered advisable due to stage proceedings had reached — However, directions issued to protect interests of appellant-accused — *Allegations pertaining to criminal breach of trust in relation to diamond encrusted heavy gold pendant, chain and earring set against appellant who was foster sister of complainant's husband, and a married lady coming from wealthy background — Held, undoubtedly allegations made are extremely wild and disgusting but how far they can be used to meet requirements of S. 406 IPC is a moot question — However, since FIR relating thereto has been lodged and cognizance also taken, only interests of appellant can be protected — Directed that appellant would not be required to attend the proceedings unless specifically directed by court to do so and that too in case of extreme necessity; that no coercive step shall be taken against her and that she shall be granted bail by court trying the case if it decides to try the offence by framing charge and court to be careful while considering framing of charge — FIR pertaining to S. 406 IPC not quashed* (Paras 14 to 16). *Vijeta Gajra* v. *State (NCT of Delhi)*, (2010) 11 SCC 618: AIR 2010 SC 2712: 2010 Cri LJ 3841: (2010) 92 AIC 76 (SC).

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 8-7-2010]

[10190] — Ss. 406, 415 and 420 — Criminal proceedings launched to harass husband and in-laws due to matrimonial differences — Matrimonial dispute arising in Canada whereas FIR lodged in India — *No prima facie case of cheating or criminal breach of trust made out — Superintendent of Police after conducting investigation concluding that husband and in-laws had not committed any offence, yet charge-sheet filed against appellants — Held, High Court ought to have exercised its discretion under S. 482 CrPC in favour of appellants — Proceedings in question, quashed — CrPC, 1973, S. 482*

Appellant 1 (husband) and Respondent 3 (wife) were married in India but settled in Canada. Sometime in early 2006, matrimonial differences arose between Appellant 1 and Respondent 3 and the parties started living separately. Appellant 1 moved a divorce petition against Respondent 3 sometime around 1-5-2006. Before that, Respondent 3's father came to India and lodged complaint against appellants sometime around 21-4-2006 under Sections 406 (criminal breach of trust) and 420 (cheating and dishonestly inducing delivery of property) IPC, inter alia alleging that Appellant 1 married Respondent 3 solely for the purpose of getting entry into Canada and settling there, and that appellants had taken away dowry articles belonging to Respondent 3. The Superintendent of Police, after investigation, concluded that no allegations was proved against appellants and therefore the case should be closed, yet a charge-sheet was filed against appellants.

The appellants moved High Court under Section 482 CrPC for quashing criminal proceedings but High Court refused to do so. The issue involved was whether any offence was prima facie made out against appellants, or the High Court ought to have exercised its discretionary jurisdiction under Section 482 in favour of appellants.

Allowing the appeal and quashing the proceedings,

Held :

It is not a case where the court has to undertake a difficult task of appreciating the evidence brought on record by the parties. The submission that marriage between Appellant 1 and Respondent 3 was solemnised only for the purpose of getting the family settled at Canada is far-fetched. For the purpose of constituting an offence for criminal breach of trust and/or cheating, the ingredients thereof as contained in Sections 405 and 415 respectively must be borne out from the records. (Paras 21 and 22)

The larger part of offence, if any, has been committed only in Canada. It is difficult to comprehend why Respondent 3's father had to come from Canada to Jalandhar (in India) to lodge an FIR. Respondent 3 and the first informant do not say that the inquiry report submitted by the Superintendent of Police on the representation made by Appellant 2 was incorrect. It has also not been stated that as to on what material, the charge-sheet had been submitted. There is no doubt in the peculiar facts and circumstances of this case that allegations contained in the FIR had been made with an ulterior motive to harass the appellants. Continuance of criminal proceeding against them would, therefore, amount to abuse of process of the court. (Para 32)

Upon taking a holistic view of the matter vis-à-vis statutory provisions, it has to be held that the appellants have made out an exceptional case to invoke the inherent jurisdiction of High Court under Section 482 of the Code. It was obligatory on the part of the High Court to exercise its discretionary jurisdiction to prevent abuse of process of the court. (Para 35). *Harmanpreet Singh Ahluwalia* v. *State of Punjab*, (2009) 7 SCC 712: (2009) 3 SCC (Cri) 620: 2009 Cri LJ 3462.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78: (2009) 1 SCC (Cri) 996; Hira Lal v. State of U.P., (2009) 11 SCC 89, relied on

Harmanpreet Singh Ahluwalia v. State of Punjab, Criminal Miscellaneous No. M-40020 of 2007 decided on 13-12-2007 (P&H), reversed

[10191] — Ss. 406, 494 and 498-A — Quashing of charge-sheet — Factors to be considered — Possibility of discharge under S. 239 CrPC — Nature of cases being warrant cases — Relevance — *FIR by appellant wife alleging that her respondent husband married another lady in presence of other accused persons, from which a child was born and that appellant was subjected to cruelty for refusing to consent to her abortion and was driven out from her matrimonial home — Charge-sheet under Ss. 406, 494 and 498-A IPC filed — High Court quashed charge-sheet under Ss. 406 and 494 IPC because of non-fulfilment of ingredients constituting offences under these sections — Sustainability — Held, while considering application for quashing of charge-sheet, allegations made in FIR and materials collected during course of investigation are required to be considered — Truthfulness or otherwise of allegation is not fit to be gone into at this stage as it is always a matter of trial — High Court ought not to have interfered after submission of charge-sheet and even before Magistrate examining as to whether accused persons deserved to be discharged under S. 239 CrPC — When a report is submitted to Magistrate, he is required to be prima facie satisfied that facts disclosed therein constitute an offence — Magistrate is not bound by conclusion of investigating agency in police report i.e. in charge-sheet and it is open to him, after exercise of judicial discretion, to take view that facts disclosed in report do not constitute any offence for taking cognizance — Quashing of Ss. 406 and 494 IPC from charge-sheet, even before exercise of discretion by Magistrate under S. 190 CrPC, undesirable — Moreover, all offences are triable by Magistrate and quashing of charge-sheet under Ss. 406 and 494 IPC had not resulted in exonerating accused persons from facing trial itself — Matter would have been different had offences under Ss. 406 and 494 IPC been triable as a sessions case — Herein, High Court ought to have allowed aforementioned provisions of CrPC their full play — For all these reasons, High Court erred in holding that charge-sheet does not reveal ingre-*

dients constituting offences under Ss. 406 and 494 IPC — Hence, impugned judgment set aside (Paras 13 to 20). *K. Neelaveni* v. *State*, (2010) 11 SCC 607: AIR 2010 SC 3191: 2010 Cri LJ 2819: (2010) 2 ECrN 541 (SC): (2010) 88 AIC 58 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **C.K. Prasad**, JJ. [Date of decision: 22-3-2010]

[10192] — Ss. 406, 498-A and 114 — Quashing of complaint — Grounds — Vague allegations — Matters to be alleged — *Held, for lodging a proper complaint mere mentioning of relevant sections and language of those sections not sufficient — Particulars of offence committed by each accused and role played by them in committing that offence need to be stated — In instant case, allegations related to dowry demand and misbehaviour against husband and parents-in-law (appellants) of complainant — However, said complaint was vague as it did not show which accused had committed what offence and exact role played by appellants in commission of offence(s) — Allegations against husband were somewhat precise, but he had already expired — Held, in such circumstance allowing prosecution to continue against aged appellants would be abuse of process of law — Besides, despite service of notice complainant neither appearing nor engaging counsel to represent her — Hence, said complaint liable to be quashed — CrPC, 1973, S. 482* (Paras 9 to 12). *Neelu Chopra* v. *Bharti*, (2009) 10 SCC 184.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 7-10-2009]

[10193] — Ss. 406, 498-A r/w S. 34 — Transfer petition — Disposed of in terms of settlement arrived at in between parties — *CrPC, 1973, S. 406 — Hindu Marriage Act, 1955, S. 13. Rajesh* v. *State of Rajasthan*, (2009) 4 SCC 199: (2009) 2 SCC (Cri) 242: 2009 Cri LJ 3041.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 23-1-2009]

[10194] — S. 406 r/w Ss. 4 and 6 of Dowry Prohibition Act, 1961 — Marriage gifts including ornaments received from wife's parents must be restored to the wife while driving her out of the matrimonial home — *Failure to do so would constitute offence punishable under S. 406, IPC r/w Ss. 4 and 6 of the Act. Madhu Sudan Malhotra* v. *Kishore Chand Bhandari*, 1988 Supp SCC 424: 1988 SCC (Cri) 854: 1988 BLJR 360.

Bench Strength **2**. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 7-12-1987]

(11) Criminal breach of trust by partner

[10195] — S. 405 — Dominion over property — Partnership assets in the hand of partner — *Mere existence of dominion over property not sufficient — Must be established that dominion was result of entrustment by special agreement between parties*

Upon the plain reading of S. 405, IPC it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law, etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of S. 405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. The prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been "entrusted" with dominion over partnership properties.

If the working partner was authorised to carry on the work of recovery of the dues of the partnership and to spend the money for business of the partnership i.e. if the money was required for the business of partnership it was not obligatory upon the accused to deposit it in the bank. The appellant working partner cannot be said to have been guilty of criminal breach of trust even with respect to the dues realised by him from certain person and in not depositing them in the bank as alleged by the prosecution. *Velji Raghavji Patel* v. *State of Maharashtra*, AIR 1965 SC 1433: (1965) 2 SCR 429: (1965) 2 Cri LJ 431.

Bench Strength **2**. Coram: *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 11-12-1964]

Bhuban Mohan Das v. Surendra Mohan Das, AIR 1951 Cal 69: 52 Cri LJ 723: ILA (1952) 2 Cal 23, approved

Jagannath v. Emperor, AIR 1932 Bom 57: 33 Cri LJ 317 and Queen v. Okhoy Coomar Shaw, 13 Beng LR 307, overruled

Followed in AIR 1968 SC 700: 1968 Cri LJ 803

[10196] — S. 406 — Dispute between partners of a firm — Criminal breach of trust alleged by one partner against the other — Magistrate issued process to the accused — Ingredients to be satisfied

That the offence of criminal breach of trust under S. 406 is not in respect of property belonging to the partnership but is an offence committed by the person in respect of property which has been specially entrusted to such a person and which he holds in fiduciary capacity. *Debabrata Gupta* v. *S.K. Ghosh*, (1970) 1 SCC 521: 1970 SCC (Cri) 221.

Bench Strength 2. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 23-2-1970]

[10197] — S. 406 — Partnership property in the hands of partner — Liability of partner for criminal breach of trust in respect of such property — *It must be shown that the property was specially entrusted to the accused under a special contract and he held that property in fiduciary capacity under the Partnership firm is not a legal entity but a legal mode of doing business by all the partners. Until the firm is dissolved as per law and the accounts settled, all the partners have dominion in common over the property and funds of the firm. Only after the settlement of accounts and allotment of respective shares, a partner becomes owner of his share. However, criminal breach of trust under Section 406 is not in respect of the property belonging to the partnership firm, but is an offence committed by a person in respect of the property which has been specially entrusted to such a person under a special contract and he holds that property in fiduciary capacity under special contract. If he misappropriates the same, it is an offence.* (Para 8)

In the instant case it is not the case of the complainant that the accused persons were entrusted with the dominion of the property of the firm in their capacity as partners of the complainant firm. On the other hand the complainant firm entered into a contract with the accused firm, entrusted a film for exhibition and for accounting the sale proceeds and to return the film. They had neither accounted for, nor returned the film. Under these circumstances it cannot be said that the imputations alleged against the appellant have been done in his capacity as a partner of the firm. Whether the offence has been made out, whether he is liable and what are the defences open to him are not matters at this stage for consideration. It is for the trial court to proceed with the trial and to deal with according to law. Therefore, the complaint cannot be quashed. (Para 10). *Anil Saran* v. *State of Bihar*, (1995) 6 SCC 142: 1995 SCC (Cri) 1051: AIR 1996 SC 204.

Bench Strength 2. Coram: *K. Ramaswamy* and *B.L. Hansaria*, JJ. [Date of decision: 24-8-1995]

(12) Trial, Proof and Other issues

See also CRIMINAL TRIAL in Vols. 18, 19 and 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

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(i) Acquittal justified

[10198] — Ss. 406 and 120-B — Acquittal — *Held, evidence against the appellant being of flimsy and of unreasonable nature which does not establish the guilt, conviction and sentence recorded by High Court set aside. Ramanlal Baldevdas Shah* v. *State of Gujarat*, 1992 Supp (2) SCC 547: 1992 SCC (Cri) 838: AIR 1992 SC 1916: 1992 Cri LJ 3164.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *R.M. Sahai*, JJ. [Date of decision: 5-8-1992]

(ii) Appeal/Revision

[10199] — S. 406 — Criminal breach of trust of monies belonging to Cooperative Society — Appellant found guilty and sentenced — *Concurrent findings of fact by two Courts cannot be interfered with in special leave appeal — Constitution of India, Art. 136*

The concurrent findings of the Courts below on question of fact cannot be interfered with in appeal under Art. 136 of the Constitution. *Shukla Labhshanker Maganlal* v. *State of Gujarat*, (1970) 3 SCC 220: 1971 SCC (Cri) 38.

Bench Strength 3. Coram: **S.M. Sikri**, *V. Bhargava* and *I.D. Dua*, JJ. [Date of decision: 28-10-1970]

[10200] — S. 408 — Contention that the accused did not receive money as part of duty as a clerk, not raised in High Court — *Question being one of fact Supreme Court not to permit the raising of the question. Madan Lal* v. *State of Punjab*, AIR 1967 SC 1590: (1967) 3 SCR 439: 1967 Cri LJ 1401.

Bench Strength **2**. Coram: *R.S. Bachawat* and **J.M. Shelat**, JJ. [Date of decision: 5-4-1967]

[10201] — Ss. 408 and 462 — Revision against remand of case for fresh trial by first appellate court in appeal against conviction — Proper mode of disposal — Need for examination of case on merits — *First appellate court remanding case for fresh trial and re-examination to fill lacunae in prosecution version — High Court in revision against said remand order holding that remand is impermissible in law and setting aside the remand order but confirming conviction by trial court but without any examination on merits — Unsustainability — Held, if remand for fresh trial is not permissible, High Court ought to have examined case on merits since first appellate court did not examine case on merits — Matter remitted to High Court for decision on merits — CrPC, 1973, Ss. 401, 374 and 386* (Para 8). *Rameshwar Prasad* v. *State of Rajasthan*, (2009) 4 SCC 471: (2009) 2 SCC (Cri) 508: (2009) 77 AIC 220 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *V.S. Sirpurkar* and *A.K. Ganguly*, JJ. [Date of decision: 5-3-2009]

[10202] — Ss. 408, 468 and 477-A — Revisional jurisdiction of High Court — Nature and scope of — Cannot be equated with appellate jurisdiction — Reappreciation of evidence not permissible unless it has resulted in gross miscarriage of justice — *On facts, High Court exceeded its jurisdiction in interfering with the conviction by reappreciating the evidence and by not examining several items of evidence relied upon by Sessions Judge in confirming the conviction — CrPC, 1973 — S. 401*

In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

In the instant case the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law. *State of Kerala* v. *Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452: 1999 SCC (Cri) 275: AIR 1999 SC 981: 1999 Cri LJ 1443.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *S. Rajendra Babu*, JJ. [Date of decision: 11-2-1999]

[10203] — S. 409 — Dismissal of criminal revision — Non-appearance of counsel of accused — Propriety — *Appellant-accused convicted and sentenced for offence under S. 409 IPC for alleged misappropriation of cash — Appeal dismissed upholding the conviction and sentence — In criminal revision in terms of S. 397 r/w Ss. 401 and 482 CrPC, as none appeared for appellant-accused, High Court dismissed revision petition after hearing counsel for the State — Submissions that as counsel for appellant-accused in High Court was appointed as counsel for the State, therefore, he could not have appeared for appellant — Also, as the position was not brought to the notice of appellant, therefore, he should not be made to suffer — Held, it is not in dispute that counsel appearing for appellant in criminal revision was appointed counsel for the State and so could not have appeared for appellant — Also, no material to show that appellant after having knowledge of such appointment of his counsel failed to appoint another lawyer — In the facts of the case, held, impugned order of High Court set aside and matter remitted to High Court for hearing afresh — Counsel for appellant undertaking to engage another counsel for appellant before High Court — Since matter was pending before High Court for nearly seven years, hence, High Court requested to dispose of criminal revision expeditiously if possible — CrPC, 1973, S. 397 r/w Ss. 401 and 482* (Paras 3, 4, 6 and 7). *Satin Chandra Pegu* v. *State of Assam*, (2006) 12 SCC 446: (2007) 2 SCC (Cri) 92: AIR 2007 SC 457: 2007 Cri LJ 309: (2007) 49 AIC 432 (SC): (2006) 204 ELT 517.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 15-11-2006]

(iii) Appreciation of evidence and proof

[10204] — Ss. 405 and 409 — Criminal breach of trust — Burden of proof — Initial burden on prosecution to prove entrustment of the property to accused — Actual manner of misappropriation of the property by accused need not be proved by it — *Once the initial burden is discharged by prosecution, onus would lie on accused to prove how the property entrusted to him was dealt with by him — Amount deposited by PW with respondent Postmaster for purchase of NSCs but the same having not been purchased, complaint made by PW with postal authorities — Respondent having come to know about initiation of inquiry by postal authorities, deposited the full amount with interest in two instalments in post office — Held, trial court rightly convicted respondent under S. 409 — High Court in revision, misdirected itself in taking the view that prosecution failed to prove misappropriation of the amount by respondent — Contention that no question was put to respondent while examining him under S. 313 CrPC as to whether the amount was given to him for his personal use or it was converted by him for his personal use, held, misconceived since while examining under S. 313 CrPC trial court was only required to ask such question which had been brought on record against the accused — CrPC, 1973, S. 313*

The respondent, a Postmaster, was holding an office of public trust. The complainant who was a teacher entrusted a certain amount to the respondent for the purpose of purchasing national savings certificates. As soon as the amount was received by the respondent on behalf of the postal authorities, it became public money. It was required to be utilised for the purpose for which the same was handed over to the respondent. The respondent being a public officer had the requisite knowledge that the amount carried interest as he had deposited the amount in two instalments along with a sum by way of interest. The respondent thought himself liable to pay the said amount with interest, so as to reimburse to the complainant the amount to which he was entitled by way of interest for depositing the said amount. The High Court erred in taking the view that the second ingredient of Section 405 IPC i.e. misappropriation of the amount by the respondent-accused had not been proved. The High Court, in exercise of its revisional jurisdiction, completely misdirected itself in opining that it was obligatory on the part of PWs to state in their complaint that the accused committed criminal misappropriation with the intention to utilise the amount for his personal use. The very fact that the respondent retained with him the entrusted amount is not disputed. If he did not utilise the amount for the purpose for which the same had been deposited, an offence must be held to have been committed. It was not necessary for the prosecution to bring on record material to show as to how the respondent had utilised the amount. In view of the admitted fact, it was for the respondent himself to prove the defence raised by him that the entire amount had not been paid to him by the complainant. (Paras 8 to 10)

The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor. (Para 11)

It is not possible to accept the further contention that no question was put to the respondent while he was being examined under Section 313 of the Code of Criminal Procedure, with a view to give him an opportunity to explain whether the amount was given to him for his personal use or he converted the money for his personal use. While examining the accused under Section 313 CrPC, the trial court is merely required to ask such question which has been brought on record as against the respondent. The respondent in fact had admitted the entire prosecution case for all intent and purport. The entire evidence which was adduced on behalf of the prosecution was made known to the accused. In his statement under Section 313 CrPC, he accepted that he had received a sum of Rs 8000 from the complainant and he had deposited the said amount together with interest, in two instalments. He has merely reiterated his defence, that the complainant had not paid to him the entire sum of Rs 8000, which has not been accepted by the trial court. Therefore, the High Court committed a manifest error in arriving at a finding that there has been infraction of the mandatory provisions of Section 313 CrPC. (Paras 13 and 14)

For the aforesaid reasons, the impugned judgment cannot be sustained and it is set aside accordingly. (Para 15). *State of H.P.* v. *Karanvir*, (2006) 5 SCC 381: (2006) 2 SCC (Cri) 460: AIR 2006 SC 2211: 2006 Cri LJ 2917.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

N. Bhargavan Pillai v. State of Kerala, (2004) 13 SCC 217: 2005 SCC (Cri) 142, relied on

[10205] — S. 409 — Court must adopt uniform standard in weighing circumstantial evidence

Where the question arose as to the responsibility for embezzlement as between the accused (the Civil Nazir) and his officer (Subordinate Judge) the Court cannot adopt varying standards as between the accused and the Subordinate Judge in weighing the circumstances against them. *Bhagat Ram* v. *State of Punjab*, AIR 1954 SC 621: 1954 Cri LJ 1645.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 9-2-1954]

(iv) Bail

[10206] — Ss. 405, 406, 408, 409, 420, 467, 468, 471 and 120-B — Bail — Entitlement to — Large economic scam in bank — *Huge amounts advanced to persons of dubious antecedents without taking steps to verify their creditworthiness in violation of applicable banking procedures and regulations — Accused-petitioner, a higher authority in that bank — Considering the facts and circumstances of the case, held, petitioner not entitled to be released on bail — CrPC, 1973, Ss. 439 & 437 — Banking Regulation Act, 1949, Ss. 18, 24 and 35-A — Constitution of India, Art. 136* (Para 16). *Rameshchandra Nandlal Parikh* v. *State of Gujarat*, (2006) 1 SCC 732: (2006) 1 SCC (Cri) 481: AIR 2006 SC 915: (2006) 194 ELT 140: (2006) 2 Guj LR 1365: 2006 Cri LJ 964.

Bench Strength **2**. Coram: *Y.K. Sabharwal, C.J.* and **B.N. Srikrishna** , J. [Date of decision: 13-1-2006]

[10207] — Ss. 406, 409, 420 and 120-B — Right to bail — Petitioner in jail for more than ten years — Need to come out to defend himself in forty-eight criminal cases pending in six different States and repay the amount for which the criminal cases had been instituted — *Depositors and investors had instituted cases against him in his capacity as ex-MD and ex-Director of the company concerned for commission of offences punishable under Ss. 406, 409 and 420 r/w S. 120-B IPC and S. 138 of NI Act — Bail with conditions and undertakings granted — Court and investigating agency given liberty to take action if petitioner misused the liberty granted to him — Negotiable Instruments Act, 1881, S. 138 — Constitution of India, Arts. 21 and 32*

As many as forty-eight pending cases in six different States had been instituted by different depositors and investors against the writ petitioner in his capacity as ex-MD and ex-Director of the company concerned for commission of offences punishable under Sections 406, 409 and 420 read with Section 120-B IPC and Section 138 of the NI Act. The petitioner as an undertrial prisoner remained in jail for more than ten years (i.e. since August 1998) before he approaching the Supreme Court under Article 32 for enforcement of fundamental rights guaranteed under Articles 14, 19, 20 and 21.

Allowing the appeal partly,

Held :

The petitioner deserves some relief. Although various cases are pending in different courts, the hard reality that the petitioner is in jail since more than ten years cannot be lost sight of. If the petitioner comes out of jail he may be able to make arrangement for repayment of amount and also to defend cases registered against him. On the overall facts and circumstances, the ends of justice would be served if appropriate court is directed to release him on bail on his executing a bond to the satisfaction of such court and the arresting officer. Assurance/undertaking of the writ petitioner-accused required to be filed for appearance in the court proceedings, surrender of passport (if any) to the police till final disposal of the case and liberty to the court concerned and the investigating agency to take required action if the petitioner misuses the liberty granted herein. (Paras 24, 31 and 32)

So far as consolidation of cases and trial of all the cases in one court is concerned such relief cannot be granted. Even in exercise of inherent powers the Supreme Court cannot direct an authority to act contrary to law even if it has ample jurisdiction to pass orders under Article 142 of the Constitution for doing complete justice between the parties in any case or matter. No retrospective effect has been given to Section 436-A CrPC. (Paras 31, 27 and 30). *Pramod Kumar Saxena* v. *Union of India*, (2008) 9 SCC 685: (2008) 3 SCC (Cri) 866: (2008) 70 AIC 4 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 19-9-2008]

V.K. Sharma v. Union of India, (2000) 9 SCC 449: 2001 SCC (Cri) 467; State of Punjab v. Rajesh Syal, (2002) 8 SCC 158: 2002 SCC (Cri) 1867, relied on

V.K. Sharma v. Union of India, (2000) 9 SCC 449: 2001 SCC (Cri) 467, ***held overruled***

[10208] — Ss. 406, 409, 420, 439, 471, 473 and 120-B — Anticipatory bail — Considerations/ Grounds — Indispensability of specialised treatment to accused suffering from several ailments (if deprived may lead to death of appellant-accused) and parity (as all forty-nine co-accused had been released on bail) — *Although appellant*

(12)(iv) Bail *(contd.)*

in disregard of law, not cooperating with investigation, whereby proceedings under Ss. 70 and 82 CrPC initiated, on facts, held, interest of justice would be served if anticipatory bail is granted subject to depositing Rs 40 lakhs with Bank in liquidation — Banking Regulation Act, 1949, S. 46 — CrPC, 1973 — Ss. 438, 70 and 82

An FIR was lodged against the appellant and thirteen other co-accused for alleged commission of offences punishable under Sections 406, 409, 420, 439, 471, 473, 120-B IPC and Section 46 of the Banking Regulation Act, 1949. The impugned order of the High Court rejected the appellant's plea of illness in his second application under Section 438 CrPC on the ground that the appellant, in disregard of law, had neither surrendered before the investigating officer nor extended cooperation in the investigation. Therefore, a proceedings under Sections 70 and 82 CrPC had also been initiated against the appellant.

Allowing the appeal partly,

Held :

On the facts and in the circumstances of the case and, more particularly, having regard to the health of the appellant, interest of justice would be served if the appellant is enlarged on anticipatory bail subject to certain conditions. There are as many as forty-nine accused, who were arrested and each one of them has already been enlarged on bail. According to the report of the government doctor the appellant is severely obese weighing 120 kg and he is not able to do his activities of daily living without at least two assistants. He is absolutely bedridden due to severe osteoarthritis below knee, lumbar canal stenosis, osteoporosis, diabetes and obesity and that he needs special toilet and bathroom. He has danger of having bedsores, pressure sores without specialised treatment and if left untreated, the diseases may lead to his death. Prognosis is not going to improve further due to increasing age and servile changes. (Paras 6 to 8)

The appellant is directed to deposit a sum of Rs 40 lakhs with the Bank in liquidation. (Para 10). *Sureshchandra Ramanlal* v. *State of Gujarat*, (2008) 7 SCC 591: (2008) 3 SCC (Cri) 212: (2008) 67 AIC 14 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **J.M. Panchal** , JJ. [Date of decision: 15-5-2008]

[10209] — **Ss. 406, 409, 420, 467, 471 and 120-B — Grant of bail, with stringent conditions — Interference with by Supreme Court — When warranted — Financial scam involving huge amount** — *High Court by impugned judgment granting bail to Respondent 1 accused of committing fraud of an unprecedented scale to tune of crores of rupees, imposing stringent conditions taking into consideration readiness and willingness on his part to make payment of Rs 2384 lakhs in instalments — Submission by appellant Bank that High Court erred in doing so insofar as it failed to take into consideration that total amount involved in the scam was huge viz. to tune of Rs 107 crores, and that in any event keeping in view offer made by appellant, he should at least be directed to pay Rs 41 crores — Held, power of the superior courts to enlarge an accused on bail is not in dispute — High Court while enlarging the first respondent on bail, taking into consideration the materials on record, had imposed stringent conditions which had not been contravened by him — Even if some contraventions had been made, the same could be brought to the notice of High Court — Further, submission that he may be directed to pay at least a sum of Rs 41 crores cannot be accepted because subject-matter of FIR was only Rs 8 crores — Besides, it is well settled that courts while granting bail cannot impose unreasonable conditions — Thus, in absence of any material brought on record that Respondent 1 had not complied with conditions imposed on him by High Court, impugned judgment cannot be interfered with — CrPC, 1973, Ss. 437 and 439* (Paras 14 to 16). *M.M. Cooperative Bank Ltd.* v. *J.P. Bhimani*, (2009) 8 SCC 727: (2009) 3 SCC (Cri) 937.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 31-7-2009]

Fida Hussain Bohra v. State of Maharashtra, (2009) 5 SCC 150: (2009) 2 SCC (Cri) 624; Ramathal v. Inspector of Police, (2009) 12 SCC 721; I. Glaskasden Grace v. Inspector of Police, (2009) 12 SCC 769, relied on

[10210] — **Ss. 406, 420, 467 and 120-B — Interim bail — Grant of — Propriety** — *Accused conspired in the siphoning off of the funds of a cooperative bank — He undertaking to deposit Rs 15 lakhs immediately and Rs 35 lakhs within six or eight months — He had been in jail for about 22 months — In these circumstances, held, accused to be released on interim bail for a period of six months — High Court to consider continuance of said bail, subject to further developments in the matter — CrPC, 1973, Ss. 439 and 437 — Constitution of India, Art. 136* (Para 3). *Babubhai Ratilal Patel* v. *State of Gujarat*, (2005) 12 SCC 536.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.N. Srikrishna*, JJ. [Date of decision: 5-8-2005]

[10211] — Ss. 406/420 — Anticipatory bail — Grant of, on unreasonable condition — Impropriety of — *FIR against appellant-accused under Ss. 406/420 IPC — Anticipatory bail granted to him, subject to deposit of Rs 15 lakhs in form of FDR in the name of trial court — Affirmed by High Court — Sustainability — Imposition of such condition, held, unreasonable, hence, set aside — Anticipatory bail granted on modified conditions — CrPC, 1973, S. 438* (Paras 7 and 8)

Having regard to the facts and circumstances of the present case, the imposition of condition to deposit the sum of Rs 15 lakhs in the form of FDR in the trial court is an unreasonable condition and, therefore, the said condition is set aside as a condition precedent for granting anticipatory bail to the appellant-accused. (Para 7)

On the other hand, it is directed that on executing a bond to the tune of Rs 25,000 with two solvent sureties to the satisfaction of the Magistrate concerned, and further that the accused shall make himself available for interrogation whenever is required and the accused should surrender his passport immediately to the Magistrate concerned where the matter is pending and would not leave this country without appropriate permission from the court, he would be entitled to the order granting him anticipatory bail. (Para 8). *Amarjit Singh* v. *State (NCT of Delhi)*, (2009) 13 SCC 769: (2002) 96 DLT 59.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *R.P. Sethi*, JJ. [Date of decision: 8-1-2002]

[10212] — Ss. 406/420/34 — Bail — Where appellants, charged with misappropriating Rs 75,000, had been in custody for 9 months and the earlier High Court order was that if trial did not commence within six months, prayer for bail could be renewed, held, case for grant of bail had been made out — *CrPC, 1973 — S. 437* (Para 4). *Ram Narayan Singh* v. *State of Bihar*, (2000) 9 SCC 55: 2000 SCC (Cri) 1157: AIR 2000 SC 1945.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 13-1-2000]

[10213] — Ss. 409, 420, 467, 468, 471/465 and 477-A r/w S. 120-B — Interim bail — Grant of during pendency of appeal — Grounds for — *Appellant convicted under Ss. 409, 420, 467, 468, 471/465 and 477-A r/w S. 120-B IPC and S. 13(2) r/w Ss. 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 and sentenced to imprisonment for four years by trial court — High Court rejecting his application for bail observing that he may renew his prayer for bail after serving half sentence — Appellant in jail for nearly two years, and no possibility of his appeal being heard in near future — Hence, interim bail granted to him — Prevention of Corruption Act, 1988, Ss. 13(1)(c) & (d) r/w S. 13(2) — CrPC, 1973, S. 389* (Paras 1, 4 and 5). *Dinesh Kumar Sinha* v. *State of Jharkhand*, (2009) 6 SCC 628: (2009) 3 SCC (Cri) 102: 2009 Cri LJ 2994.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.L. Dattu** , JJ. [Date of decision: 15-5-2009]

(v) Circumstantial evidence

See also under CRIMINAL TRIAL in Vols. 18, 19 and 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

[10214] — S. 409 — Circumstantial evidence — Fundamental rules relating to the proof of guilt

In cases where the evidence is of a circumstantial nature, it is well settled that the cumulative effect of the circumstances must be such as to negative the innocence of the accused and to bring the offences home to him beyond any reasonable doubt.

The courts below in taking the contrary view have failed to keep in mind the fundamental rule stated above relating to a proof of guilt based on circumstantial evidence and have proceeded on conjectures in a case where statedly the circumstances are more or less equally balanced. *Bhagat Ram* v. *State of Punjab*, AIR 1954 SC 621: 1954 Cri LJ 1645.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 9-2-1954]

On circumstantial evidence see more cases under S. 302

(vi) Double jeopardy

[10215] — S. 409 — Acquittal for offences under S. 409 IPC and S. 5 of Prevention of Corruption Act, 1947 — *Held, does not bar trial under S. 135, Customs Act and S. 85, Gold (Control) Act. A.A. Mulla* v. *State of Maharashtra*, (1996) 11 SCC 606: AIR 1997 SC 1441.

Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 28-10-1996]

[10216] — S. 409 — Charge of criminal breach of trust — Acquittal of person on charge of breach of trust in his capacity as cashier at a particular period — Subsequent trial for defalcation of money by same person not as a cashier at an earlier period — *Finding in previous trial does not operate as issue — Estoppel*

(12)(vi) Double jeopardy *(contd.)*

The question for decision was whether the finding of the High Court on the charge of criminal breach of trust with regard to the period December 8, 1960 and August 17, 1961, operated as issue-estoppel on a similar charge with regard to the period January 31, 1960 and November 30, 1960, when the appellant was not acting as cashier.

The basic principle underlying the rule of issue-estoppel is that the same issue of fact and law must have been determined in the previous litigation. If there is any likelihood of facts or conditions changing during the two periods which are under consideration then it is difficult to say that the prosecution would be bound by the finding in a previous trial on a similar issue of fact. The later finding must necessarily be in contradiction of the previous determination. There can be so such contradiction if the periods are different and the facts relating to the carrying on of the duties of a cashier are different. *Gopal Prasad Sinha* v. *State of Bihar,* (1970) 2 SCC 905: 1970 SCC (Cri) 584: AIR 1971 SC 458: 1971 Cri LJ 420.

Bench Strength **2**. Coram: **S.M. Sikri** and *I.D. Dua,* JJ. [Date of decision: 16-10-1970]

[10217] — S. 409 — Prohibition of a subsequent trial for the same offence — *Offence of criminal misconduct punishable under S. 5(2) of the Prevention of Corruption Act, 1947 is not identical in essence, import and content with an offence under S. 409, IPC — Therefore acquittal for an offence under S. 5(2), Prevention of Corruption Act, 1947 does not bar a trial under S. 409, IPC — CrPC, 1898 — S. 403 — Constitution of India — Art. 20(2) — CrPC, 1973 — S. 300*

The offence of criminal misconduct punishable under S. 5(2) of the Prevention of Corruption Act 2 of 1947 is not identical in essence, import and content with an offence under S. 409 of the Indian Penal Code. The offence of criminal misconduct is a new offence created by that enactment and it does not repeal by implication or abrogate S. 409 of the Indian Penal Code. Therefore there can be no objection to a trial and conviction under S. 409 of the Indian Penal Code even if the respondent has been acquitted of an offence under S. 5(2) of the Prevention of Corruption Act 2 of 1947. *State of M.P.* v. *Veereshwar Rao Agnihotri*, AIR 1957 SC 592: 1957 SCR 868: 1957 Cri LJ 892.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *Syed Jafer Imam, S.K. Das,* **P. Govinda Menon** and *A.K. Sarkar,* JJ. [Date of decision: 5-4-1957]

(vii) Expert evidence

[10218] — S. 408 — Complainant's evidence on handwriting of accused, held, sufficient — *Not necessary to examine handwriting expert. State of Gujarat* v. *Vinaya Chandra Chhota Lal Pathi*, AIR 1967 SC 778: (1967) 1 SCR 249: 1967 Cri LJ 668.

Bench Strength **3**. Coram: *V. Ramaswami, V. Bhargava* and **Raghubar Dayal** , JJ. [Date of decision: 2-9-1966]

[10219] — Ss. 409 and 467 — Thumb-impression not taken — *The fact that the thumb-impression of the appellant was taken on certain acknowledgment slips for the purpose of examination by the finger impression expert affords no basis for the conclusion that one of those slips must have been substituted in place of the original acknowledgment slip. D.C. Nanjappa* v. *State of Mysore*, (1970) 3 SCC 193: 1971 SCC (Cri) 11.

Bench Strength **2**. Coram: *S.M. Sikri* and **K.S. Hegde** , JJ. [Date of decision: 30-9-1970]

(viii) Investigation, Cognizance, Summons, etc.

[10220] — Ss. 405, 406, 418, 420, 427, 503, 504, 506/34 and 120-B — Direction by Magistrate for investigation of offences under — Requirements for — Power if properly exercised — *Magistrate allowing application filed by respondent SEPCO under S. 156(3) CrPC, and forwarding original complaint alleging commission of offences under Ss. 405, 406, 418, 420, 427, 503, 504, 506/34 and 120-B IPC, to SHO concerned directing him to register FIR after due enquiry, and to submit charge-sheet after investigation — Sustainability — Held, for proceeding under S. 156(3) what is required is a bare reading of complaint and whether it discloses a cognizable offence — Magistrate then instead of applying his mind to the complaint for deciding whether or not there are sufficient grounds for proceeding, may direct police to investigate — In instant case, offences alleged were all cognizable offences, and hence, Magistrate committed no illegality in passing direction for investigation, warranting any interference by High Court under Art. 226 of the Constitution — Single Judge as well as Division Bench rightly refused to interfere with such limited order — Moreover, challenge at this stage by appellants was premature and High Court rightly rejected their request — CrPC, 1973, S. 156(3)* (Paras 15 to 24)

The Magistrate only ordered investigation under Section 156(3) CrPC. The Magistrate perused the complaint without examining the merits of the claim that there is sufficient ground for proceeding or not and directed the police officer concerned for investigation under Section 156(3) CrPC. As rightly observed by the Single Judge of the High Court, the Magistrate did not bring into motion the machinery of Chapter XV CrPC. He did not examine the complainant or his witnesses under Section 200 CrPC which is the first step in the procedure prescribed under the said Chapter. The question of taking the next step of the procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, the Magistrate has merely allowed the application filed by the complainant/SEPCO under Section 156(3) CrPC and sent the same along with its annexure for investigation by the police officer concerned. (Para 22)

To proceed under Section 156(3) CrPC, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. In the case on hand, the Single Judge and the Division Bench of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding and, therefore, the Magistrate has not committed any illegality in directing the police for investigation. As a matter of fact, even after receipt of a report under Section 173, the Magistrate under Section 190(1)(*b*) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the investigating officer, hence, by directing the police to file charge-sheet or final report and to hold investigation, it cannot be construed that the Magistrate has exceeded his power as provided in Section 156(3). (Para 23). *Srinivas Gundluri* v. *SEPCO Electric Power Construction Corpn.*, (2010) 8 SCC 206: (2010) 3 SCC (Cri) 652: (2010) 93 AIC 17 (SC): 2010 Cri LJ 4457.

Bench Strength 2. Coram: **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision: 30-7-2010]

Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; Tula Ram v. Kishore Singh, (1977) 4 SCC 459: 1977 SCC (Cri) 621, relied on

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234, distinguished on facts

[10221] — Ss. 406 and 420 — Interference by High Court under S. 482 CrPC during investigation by police — Limitations of — Overstepping limits of judicial interference — Impermissibility — Offences under Ss. 406/420 IPC — *Held, it is statutory obligation and duty of police to investigate into crime and courts normally ought not to interfere and guide investigating agency as to in what manner investigation has to proceed — Jurisdiction under S. 482 conferred on High Court has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the test laid down in provision itself — Herein, interference by High Court, without recording any reasons, with investigation, which is within exclusive domain of police, by virtually directing police to investigate case from a particular angle and take certain steps, which the police, depending upon evidence collected and host of other circumstances, may or may not have attempted to take in its discretion, held, was overstepping limits of judicial interference — Constitution of India, Art. 226 — CrPC, 1973, Ss. 482 and 156*

In the instant case, the respondent lodged an FIR against the appellants alleging commission of offences under Sections 406 and 420 IPC. The police, having registered the case against the appellants, commenced its investigation. Even while the investigation was in progress, for some inexplicable reasons, the respondent moved the High Court under Section 482 CrPC, seeking directions to the police. The petition was filed within one week of registration of the crime, by which time the police had already started serious investigation. None of the appellants were impleaded as party-respondents to the petition filed under Section 482 CrPC. The State alone was impleaded as the respondent.

The High Court disposed of the same observing, inter alia, that it was obligatory on the part of the police to conduct investigation in accordance with law, including recording of statements from witnesses, arrest, seizure of property, perusal of various documents and filing of charge-sheet. The High Court accordingly directed the police to expedite and complete the investigation. The impugned order resulted in drastic consequences far-reaching in nature. Hence the present appeals.

Allowing the appeals,

Held :

It is the statutory obligation and duty of the police to investigate into the crime and the courts normally ought not to interfere and guide the investigating agency as to in what manner the investigation has to proceed. The High Court, without recording any reason whatsoever, directed the police that it is obligatory on their part to record statements from witnesses, arrest, seize property and file charge-sheet. It is difficult to discern as to how such directions resulting in far-reaching consequences could have been issued by the High Court in exercise of its jurisdiction under Section 482 CrPC, which also resulted in much harassment of the appellants. The High Court interfered with

(12)(viii) Investigation, Cognizance, Summons, etc. *(contd.)*

the investigation of crime, which is within the exclusive domain of the police, by virtually directing the police to investigate the case from a particular angle and take certain steps which the police, depending upon the evidence collected and host of other circumstances, may or may not have attempted to take any such steps in its discretion. (Paras 24, 25 and 31)

It is not necessary that every investigation should result in arrest, seizure of the property and ultimately in filing of the charge-sheet. The police, in exercise of its statutory power coupled with duty, upon investigation of a case, may find that a case is made out requiring it to file charge-sheet or may find that no case as such is made out. It needs no reiteration that the jurisdiction under Section 482 CrPC conferred on the High Court has to be exercised sparingly, carefully and with caution only where such exercise is justified by the test laid down in the provision itself. (Para 32)

There was no allegation of dereliction of any duty on the part of the investigating agency. There was also no allegation of any collusion and deliberate delay on the part of the investigating agency in the matter of investigation into the case, that had been promptly registered on the information lodged by the respondent. (Para 17)

The impugned order must be held to be an order passed overstepping the limits of judicial interference. Even in public interest litigation proceedings, appropriate directions may be issued and the purpose in issuing such directions is essentially to ensure performance of statutory duty by the investigating agency. The duty of the court in such proceedings is to ensure that the agencies do their duties in compliance with law. (Paras 28 and 29)

The High Court, in the instant case, did not even advert to the relevant facts. As stated in the order itself, it was more guided by the arguments made across the Bar that the police has not taken any steps to arrest the persons and seize the amounts involved in this case from the appellants though there is no such factual foundation as such laid in the petition. The High Court has altogether ignored the counter filed by the police that the police had already examined ten witnesses within a short span of time after the registration of crime and recorded their statements. (Para 30)

The submission made by the respondent that the High Court did not issue any directions but merely disposed of the petition with the observations reminding the police of its duty, is not impressive. The question that arises for consideration is whether there was any occasion or necessity to make those "observations" even if they are to be considered to be observations and not any directions. It is not even remotely suggested that there was any deliberate inaction or failure in the matter of discharge of duties by the police. There was no allegation of any subversion of processes of law facilitating the accused to go scot-free nor is there any finding as such recorded by the High Court in its order. (Para 35)

For the aforesaid reasons, the impugned judgment of the High Court cannot be sustained, and hence, is set aside. (Para 42). *D. Venkatasubramaniam* v. *M.K. Mohan Krishnamachari*, (2009) 10 SCC 488: (2009) 82 AIC 245 (SC): (2009) 3 APLJ 205 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 14-9-2009]

King Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203: AIR 1945 PC 18; State of W.B. v. S.N. Basak, AIR 1963 SC 447: (1963) 2 SCR 52; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; M.C. Mehta (Taj Corridor Scam) v. Union of India, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264; M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649: 2003 SCC (Cri) 628, relied on

[10222] — Ss. 406, 420, 423, 465, 477, 468, 471, 120-B, 124 and 34 — Power of Magistrate to recall order for investigation passed by him under S. 156(3) CrPC or for withdrawal of investigation — Unavailability of — Inherent powers, if any — *Held, powers of Magistrate are limited and he has no inherent powers — Ordinarily he has no power to recall his order — In the instant case investigation was directed by Magistrate in terms of S. 156(3) CrPC — He had no jurisdiction to recall said order — High Court erred in not interfering with his order recalling the investigation — Further held, High Court could have interfered therewith even suo motu when it was brought to its notice — CrPC, 1898, S. 561-A — CrPC, 1973, Ss. 156(3) & 320 and 482 & 483*

The appellants were depositors in a cooperative bank. Some of the borrowers had mortgaged their properties with the Bank. Alleging commission of offences under Ss. 406, 420, 423, 465, 477, 468, 471, 120-B, 124 and 34 IPC, Bank filed complaint petition before Judicial Magistrate against respondent-accused seeking direction against the police to register and investigate the case under S. 156(3) CrPC. The Magistrate upon considering the allegations granted the prayer. However, the complainant thereafter filed an application before Magistrate informing him that a compromise had been entered into by and between the accused and the Bank. Pursuant thereto, order directing enquiry was recalled by the Magistrate. A writ petition was filed by appellants challenging the same. The High Court by impugned judgment declined to interfere with the said order. Hence, the present appeal.

Allowing the appeals, the Supreme Court held as above. *Dharmeshbhai Vasudevbhai* v. *State of Gujarat*, (2009) 6 SCC 576: (2009) 3 SCC (Cri) 76: 2009 Cri LJ 2969.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 5-5-2009]

S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444; Dinesh Dalmia v. CBI, (2007) 8 SCC 770: (2008) 1 SCC (Cri) 36; S. Suresh v. Annappa Reddy, (2004) 13 SCC 424, followed

[10223] — Ss. 406, 420, 465, 467, 468 and 120-B — Order of Magistrate (that was set aside by High Court) was not clear as to nature of action taken by Magistrate on a complaint against police inaction — *Three alternative actions against police inaction can be taken as per* Minu Kumari case, *(2006) 4 SCC 359 — Either Magistrate can take cognizance, or direct police investigation or may even dismiss the complaint case based on the guidelines laid down in* Minu Kumari case — *Since the order of the Magistrate was not very clear and High Court had also not dealt with it, case remanded to trial court to decide the matter afresh as per the directions contained in* Minu Kumari case — *CrPC, 1973, Ss. 200 to 204 and 154(3)* (Paras 12 and 11). *Ketankumar Babulal Patel* v. *Kesarben Jesangji*, (2008) 14 SCC 605: (2009) 2 SCC (Cri) 870: 2009 Cri LJ 365: (2008) 70 AIC 12 (SC)(2).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 23-9-2008]

Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310, relied on

(ix) Joint trial/Re-trial/Consolidation/ Transfer of cases

[10224] — Ss. 406 & 120-B — Several offences under, committed in pursuance of criminal conspiracy — *Can be tried together in view of S. 235(1), CrPC, 1898. State of Bombay* v. *Umarsaheb Buransaheb Inamdar*, AIR 1962 SC 1153: 1962 Supp (2) SCR 711: (1962) 2 Cri LJ 259.

Bench Strength 3. Coram: *S.K. Das, K. Subba Rao* and **Raghubar Dayal** , JJ. [Date of decision: 23-1-1962]

See also AIR 1960 SC 661: 1960 Cri LJ 1013

[10225] — Ss. 406, 409, 420 and 120-B — Consolidation of cases and trial in one court by retrospective application of S. 436-A CrPC without any express provision for the same — Permissibility — Exercise of power under Art. 142 — Scope of interference in criminal matters — *Held, the Supreme Court cannot direct an authority to act contrary to law even if it has ample jurisdiction to pass orders under Art. 142 for doing complete justice (between the parties in any case or matter) — CrPC, 1973, S. 436-A — Negotiable Instruments Act, 1881, S. 138 — Constitution of India — Arts. 142, 32 and 21*

As many as forty-eight pending cases in six different States had been instituted by different depositors and investors against the writ petitioner in his capacity as ex-MD and ex-Director of the company concerned for commission of offences punishable under Sections 406, 409 and 420 read with Section 120-B IPC and Section 138 of the NI Act. The petitioner as an undertrial prisoner remained in jail for more than ten years (i.e. since August 1998) before he approaching the Supreme Court under Article 32 for enforcement of fundamental rights guaranteed under Articles 14, 19, 20 and 21.

Allowing the appeal partly,

Held :

The petitioner deserves some relief. Although various cases are pending in different courts, the hard reality that the petitioner is in jail since more than ten years cannot be lost sight of. If the petitioner comes out of jail he may be able to make arrangement for repayment of amount and also to defend cases registered against him. On the overall facts and circumstances, the ends of justice would be served if appropriate court is directed to release him on bail on his executing a bond to the satisfaction of such court and the arresting officer. Assurance/undertaking of the writ petitioner-accused required to be filed for appearance in the court proceedings, surrender of passport (if any) to the police till final disposal of the case and liberty to the court concerned and the investigating agency to take required action if the petitioner misuses the liberty granted herein. (Paras 24, 31 and 32)

So far as consolidation of cases and trial of all the cases in one court is concerned such relief cannot be granted. Even in exercise of inherent powers the Supreme Court cannot direct an authority to act contrary to law even if it has ample jurisdiction to pass orders under Article 142 of the Constitution for doing complete justice between the parties in

(12)(ix) Joint trial/Re-trial/Consolidation/Transfer of cases *(contd.)*

any case or matter. No retrospective effect has been given to Section 436-A CrPC. (Paras 31, 27 and 30). *Pramod Kumar Saxena* v. *Union of India*, (2008) 9 SCC 685: (2008) 3 SCC (Cri) 866: (2008) 70 AIC 4 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 19-9-2008]

V.K. Sharma v. Union of India, (2000) 9 SCC 449: 2001 SCC (Cri) 467; State of Punjab v. Rajesh Syal, (2002) 8 SCC 158: 2002 SCC (Cri) 1867, relied on

V.K. Sharma v. Union of India, (2000) 9 SCC 449: 2001 SCC (Cri) 467, held overruled

[10226] — Ss. 406, 420, 468, 471, 504, 506, 382 and 120-B — Transfer of cases — Factors to be considered — Directions that may be passed — Large number of cases filed by parties against each other which were pending in different courts of Punjab and Haryana and Chandigarh — *Petitioner seeking transfer of multiple cases by and against him to the Delhi High Court or any other High Court or courts subordinate to such High Court from Punjab and Haryana High Court and/or courts subordinate thereto, apprehending that justice would not be done; and since all cases arose out of the same transaction, contending that interest of justice would be subserved if all matters were clubbed together to avoid multiplicity of proceedings — Held, in exercising power under S. 406, indisputably convenience of parties, including witnesses to be produced at the trial is a relevant consideration therefor — On facts, apprehension expressed by petitioner did not appear to be well founded and it was undoubted that courts concerned would act impartially and petitioner Company, its Directors and officers facing trial would be dealt with very fairly — However, District Judges of Chandigarh and Ludhiana directed to consider desirability of transferring all criminal matters (as far as practicable and legally permissible) to one court so as to enable them to be disposed of one after the other — CrPC, 1973, S. 406* (Paras 1, 9, 10 and 14 to 16). *Shree Baidyanath Ayurved Bhawan (P) Ltd.* v. *State of Punjab*, (2009) 8 SCC 389: (2009) 3 SCC (Cri) 884: 2009 Cri LJ 4107: (2009) 81 AIC 40 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048, followed

[10227] — Ss. 408 and 477-A — Misjoinder of charges — Joint trial of six persons for the offences under — Conviction of only one — Legality of trial and conviction — *CrPC, 1898 — S. 239*

Charges under S. 408 and S. 477-A, Penal Code, could, in the circumstances of this case, be tried together and the joint trial of all the accused was proper and lawful. Our attention was not drawn to any provision of law against the legality of the joint trial. *Sushil Kumar Gupta* v. *Joy Shanker Bhattacharyya*, (1970) 1 SCC 504: 1970 SCC (Cri) 210: AIR 1971 SC 1543.

Bench Strength 2. Coram: *A.N. Ray* and **I.D. Dua** , JJ. [Date of decision: 23-2-1970]

[10228] — S. 409 — Retrial — Prosecution of a practising lawyer by a client under S. 409 — *An important document alleged to be in accused's handwriting alleged to be forged by the accused — Complainant not producing expert evidence — Trial court holding the document not proved and acquitting the accused — High Court ordering retrial in the appeal against acquittal and directing the Magistrate to afford an opportunity to the complainant to produce expert evidence — Order against well established rules of criminal jurisprudence is erroneous*

The accused, a practising lawyer, was prosecuted by the complaint, his client, under S. 409, IPC for misappropriating a sum of Rs 5000. The prosecution case was based on a letter alleged to have been written by the accused. The accused challenged the document as a forgery in material parts, but the complainant did not take any steps to get an expert on handwriting examined. The trial Court acquitted the accused. In appeal by the complainant against the order of acquittal the High Court ordered a retrial and directed the Magistrate to give an opportunity to the complainant to adduce the evidence of a handwriting expert, in order to establish the genuineness of the questioned document. The accused appealed to the Supreme Court.

Held :

An accused person should not be placed on trial for the same offence more than once, except in very exceptional circumstances. Though the complainant had the fullest opportunity of adducing all the evidence that would be necessary to prove the charge against the accused person, but he did not adduce expert evidence and also did not pray for examination of an expert. The prosecution took its chance of having a decision in its favour on the evidence adduced by it before the trial Court. That Court was not satisfied that evidence was adequately reliable to bring the charge home to the accused and acquitted him. On appeal the High Court could take a different view of the evidence, reverse the judgment and convert the order of acquittal into an order of conviction. It was however not justified to have put the accused to the botheration and expense of a second trial simply because the prosecution did not adduce all the evidence which should and could have been brought before the Court of first instance. Simply because the accused happened to be a lawyer would not be a ground for subjecting him to harassment a second time. Therefore, the order of retrial passed by the High Court was entirely erroneous. *Abinash Chandra Bose* v. *Bimal Krishna Sen*, AIR 1963 SC 316: (1963) 3 SCR 564: (1963) 1 Cri LJ 261.

Bench Strength **3**. Coram: **B.P. Sinha, C.J.** and *K.N. Wanchoo* and *J.C. Shah*, JJ. [Date of decision: 3-8-1962]

[10229] — S. 409 — Trial of accused under S. 105, Insurance Act after their conviction under S. 409, IPC — *Not barred by Art. 20(3) of Constitution. State of Bombay* v. *S.L. Apte*, AIR 1961 SC 578: (1961) 3 SCR 107: (1961) 1 Cri LJ 725.

Bench Strength **4**. Coram: *S.K. Das, A.K. Sarkar*, **N. Rajagopala Ayyangar** and *J.R. Mudholkar*, JJ. [Date of decision: 9-12-1960]

ILR 1956 Bom 685: 58 Bom LR 578, reversed

(x) Jurisdiction

[10230] — Ss. 405, 406, 409, 415, 420 and 417 — Absence of jurisdiction to issue summons — Dishonour of cheques — *Cheques issued by accused at place* ***AJ*** *where he resided — Subsequent statement of accused that he issued fabricated cheques knowingly with an intention to cheat the complainant and grab his money, was allegedly also made at place* ***AJ*** *— Hence held, the Magistrate at place* ***RP*** *(where the complainant resided) had no jurisdiction to issue the summons as there was nothing on record to show that any part of cause of action arose within its jurisdiction — Negotiable Instruments Act, 1881, S. 138 — CrPC, 1973 — Ss. 204, 190(1)(a) & 178*

Whereas the accused is a resident of the district *AJ*, the complainant is a resident of the district *RP*. Cheques were admittedly issued by the accused at his place. There is nothing on record to show that any part of the cause of action arose within the jurisdiction of the court concerned. Even if the alleged statements had been made by the accused, the same admittedly had been made only at the place where the accused resides. The Magistrate at place *RP*, therefore, had no jurisdiction to issue the summons. (Para 16). *Vir Prakash Sharma* v. *Anil Kumar Agarwal*, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370: 2007 Cri LJ 3735: (2007) 57 AIC 32 (SC): (2007) 5 All LJ 321.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 1-8-2007]

Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd., (2006) 3 SCC 658: (2006) 2 SCC (Cri) 98, relied on

[10231] — S. 406 — Direct cognizance of — Sessions Court has no jurisdiction to take cognizance of an offence directly except expressly provided so — *Special Court presided by Additional Sessions Judge constituted under S. 12-A of E.C. Act cannot get jurisdiction by a mere transfer of a case by the High Court — Essential Commodities Act, 1955, Ss. 12-A and 12-AA — CrPC, 1973 — S. 193. Jagdish Prasad Gupta* v. *State of Rajasthan*, 1995 Supp (3) SCC 386: 1995 SCC (Cri) 924.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *Dr. A.S. Anand*, JJ. [Date of decision: 29-3-1994]

[10232] — S. 406 — Jurisdiction of Special Court under 1992 Act — Accused involved in an offence relating to transactions in securities during the relevant period — *Held, can be tried by Special Court and not by a regular criminal court even though he is not a notified person as per S. 3(2) — Effect of notification under S. 3(2) — Also transfer of such cases to Special Court would be automatic — Notification by custodian not essential — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 7, 3(2) & (4) and 9-A*

The scheme of Section 7, in the light of the Preamble of the Act and the main purpose for enactment of the Act, appears to be that all criminal proceedings pertaining to prosecutions in connection with the accused involved in transactions in securities during the relevant period will lie before the Special Court and not before ordinary courts as the section starts with a non obstante clause stating that notwithstanding anything contained in any other law, only Special Courts will have exclusive jurisdiction to try such offences. It is of course true that once the Custodian notifies the name of any person in the Official Gazette as per sub-section (2) of Section 3 then certain civil consequences regarding attachment of his properties would follow as per Section 3 sub-section (3) automatically and that would empower the Custodian to deal with such properties in such manner as Special Court may direct as per sub-section (4) of Section 3 of the Act. On such notification of the person concerned the Custodian would also get jurisdiction and power to cancel contracts and agreements entered into by such notified person after following the procedure of Section 4 sub-section (1). It is also true that on and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) (Amendment) Act, 1994 as laid down by Section 9-A pending suits against such notified persons contemplated by the special provisions would also stand transferred for adjudication to the Special

(12)(x) Jurisdiction *(contd.)*

Court. Thus so far as civil suits are concerned the proceedings pending on the commencement of Amending Act of 1994 would stand transferred provided in the meantime after the main Act came into force in 1992 such defendants have got notified under Section 3 sub-section (2) of the Act. But that is a scheme pertaining to civil actions against notified persons. The offence referred to in sub-section (2) of Section 3 which is within the sweep of Section 7 of the Act must be an offence committed by any person and must have the following two characteristics:

1. Such offence must relate to transactions in securities; and

2. Such offence should be alleged to have been committed between 1-4-1991 and on or before 6-6-1992.

Once these two requirements are satisfied the Special Court will get jurisdiction to try such offences and, therefore, consequently to try the accused concerned who are alleged to have committed such offences cognizable by the Special Court. When the principal accused is the notified person even non-notified accused can be tried jointly with such principal accused as per Section 8 if they were jointly involved in such offences. But even that apart if the accused is the sole accused and he is not a notified person and if any criminal case is pending against such an accused in any court when the Act came into force then even such a criminal case provided two requirements of sub-section (2) of Section 3 qua such offence as seen earlier are satisfied will automatically stand transferred to the Special Court as laid down by the latter part of Section 7. If the Special Court can try transferred criminal cases which were filed prior to 6-6-1992 in regular courts wherein the accused were not notified persons as such cases would stand transferred to it for trial automatically on coming into force of the Act, then of necessity it must be held that even if such criminal cases are filed after coming into force of the Act, against non-notified persons involved in similar type of offences they could be tried by the Special Court. Any other view would result in creation of two conflicting types of jurisdictions for the Special Court functioning as per the same Section 7.

On a conjoint reading of Section 3 and its relevant provisions, therefore, it must be held that once the Custodian notifies a person in the Official Gazette under sub-section (2) of Section 3 he gets the power and jurisdiction to deal with such person's properties and transactions as laid down under Section 3 sub-section (4) and Section 4 and in such a case even the civil suits of notified persons would stand transferred as per Section 9-A of the Act. But so far as criminal proceedings are concerned even if the accused is not notified still the Special Court will have jurisdiction under Section 7 to deal with the offences alleged to have been committed by such an accused if the earlier mentioned two basic requirements of Section 3 sub-section (2) are satisfied. *Minoo Mehta* v. *Shavak D. Mehta*, (1998) 2 SCC 418: 1998 SCC (Cri) 645: AIR 1998 SC 831: (1998) 91 Comp Cas 895.

Bench Strength **2**. Coram: **S.B. Majmudar** and *M. Jagannadha Rao*, JJ. [Date of decision: 15-1-1998]

Canara Bank v. Nuclear Power Corpn. of India Ltd., 1995 Supp (3) SCC 81; Kudremukh Iron Ore Co. Ltd. v. Fairgrowth Financial Services Ltd., (1994) 4 SCC 246, distinguished

See also (2001) 6 SCC 16 at p. 22 where this decision has been criticised and explained

(xi) Limitation

[10233] — Ss. 406/420 — Scope — Bar of limitation to taking cognizance of offences — *On facts, the bar to the offence under S. 500, Indian Penal Code operated from the day of the offence under S. 469(1)(a) CrPC, that is, when the complaint under Ss. 406/420, Indian Penal Code was filed against the present complainant — Date of acquittal of present complainant in those proceedings not relevant — On facts S. 470(1) CrPC not applicable — CrPC, 1973 — Ss. 468, 469 and 470(1)*

A complaint for commission of offence under Ss. 406/420, Indian Penal Code was made by the appellant against the respondent on March 15, 1972 which resulted in acquittal on April 1, 1975, confirmed by the High Court on May 15, 1975. The respondent filed the present complaint under S. 500, Indian Penal Code on February 11, 1976. The appellant's application to the High Court under S. 482, Criminal Procedure Code against the issue of summons was rejected.

Held :

According to the complaint, the offence under S. 500, Indian Penal Code was committed on March 15, 1972, which was the date of the offence within the meaning of S. 469(1)*(a)* of the Code, and the period of three years' limitation would be calculated with reference to that date for purposes of the bar provided by S. 468. But the complaint under S. 500, Indian Penal Code was filed on February 11, 1976, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation.

The High Court reasoned that no "cause of action" arose till the present respondent was acquitted on April 1, 1975. But the question of "cause of action" could not really arise in this case as the controversy relates to the commission of an offence. The High Court erred in taking a contrary view.

On facts S. 470(1) has no application. It is an essential requirement of the sub-section that the person who seeks its benefit should be able to establish that he was "prosecuting" another prosecution in one court or the other referred to in the sub-section. But it is not the case of the respondent that he was prosecuting the appellant in any other prosecution. It is also not his case that that prosecution related to the "same facts" within the meaning of the proviso to the sub-section. *Surinder Mohan Vikal* v. *A.L. Chopra*, (1978) 2 SCC 403: 1978 SCC (Cri) 215: AIR 1978 SC 986: 1978 Cri LJ 764.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **P.N. Shinghal** , JJ. [Date of decision: 28-2-1978]

(xii) Other issues

[10234] — S. 409 — High Court setting aside order of discharge and directing commitment for trial under S. 409 — *Held, order of the High Court did not revive the committal proceedings and therefore did not attract the 1973 Code by virtue of proviso to S. 484 — The High Court did not order any fresh enquiry in terms of S. 437, CrPC, 1898 but straightaway committed him to Sessions — CrPC, 1973, S. 484, Proviso. M.R. Dhawan* v. *Delhi Admn.*, (1978) 2 SCC 184: 1978 SCC (Cri) 186: AIR 1978 SC 1011: 1978 Cri LJ 769.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 13-3-1978]

(xiii) Quashment/Stay/Civil proceedings

See also '(4)(ii) Dishonest intention — Mens rea — Civil dispute(s) only', above

See also under 'Ss. 415-420 — Cheating', below

See also under CrPC, 1973, S. 482, in Vol. 18, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 2 of *SC on CrPC and Criminal Trial*

[10235] — Ss. 405, 406 and 408 — Stay by High Court — Inherent power of the High Court — When to be exercised — Complaint under Ss. 405, 406 and 408 IPC during pendency of civil litigation between the parties for dissolution of partnership firm and rendition of accounts — *Order of High Court staying the filing of the final report under S. 173 CrPC by the police till disposal of the suit not sustainable — Such an order also caused delay — Constitution of India, Art. 21 — CrPC, 1973 — Ss. 482 and 173*

The width of power of the High Court under Section 482 CrPC, in principle, is very expansive but in practice the power is exercised in exceptional cases. The inherent power of the court is not an unrestricted power to make any order which the High Court desires to pass. The power is meant to be exercised to give effect to any order under CrPC or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is of utmost importance that criminal cases be disposed of expeditiously as right of an accused to have speedy trial is a right which flows from Article 21 of the Constitution. Far from ensuring a speedy trial the High Court placed an embargo at the pre-trial stage by staying the filing of final report by the police under Section 173 CrPC. The impugned order serves no useful purpose, nay, it is wholly extraneous to the purposes for which the power is preserved. (Para 5). *Usha Ahuja* v. *State of Haryana*, (1999) 7 SCC 486: 1999 SCC (Cri) 1283: AIR 1999 SC 3242.

Bench Strength **2**. Coram: *K. Venkataswami* and **S.S.M. Quadri** , JJ. [Date of decision: 24-8-1999]

[10236] — Ss. 405, 406, 409, 415, 420 & 417 — Criminal breach of trust and cheating — Complaint filed alleging commission of offences of, where cheques issued by accused towards purchase price, got dishonoured — Quashing of, justified as said offences not made out — Essentially a civil dispute — *Where allegations contained in complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence, the complaint can be quashed — Cheques issued by accused towards payment regarding purchase of welding rods, got dishonoured — On demand of said money, accused allegedly stating that he had issued fabricated cheques knowingly with an intention to cheat the complainant and grab his money — Complaint filed alleging commission of offences of criminal breach of trust and cheating — Held, non-payment or underpayment of price of goods by itself does not amount to commission of offence of cheating or criminal breach of trust — It is essentially a civil dispute — Merely because the accused issued cheques which got dishonoured, the same by itself would not mean that he cheated the complainant — There was no allegation as to act of inducement on the part of the accused and intention to cheat the complainant from the very inception — Thus, in the absence of allegations in the complaint showing existence of ingredients of the alleged offences, held, the said offences not made out — Complaint was liable to be quashed — Negotiable*

(12)(xiii) Quashment/Stay/Civil proceedings *(contd.)*

Instruments Act, 1881, S. 138 — CrPC, 1973 — S. 482. Vir Prakash Sharma v. *Anil Kumar Agarwal*, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370: 2007 Cri LJ 3735: (2007) 57 AIC 32 (SC): (2007) 5 All LJ 321.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 1-8-2007]

Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

[10237] — Ss. 405, 406 and 420 — Prosecution under — Agreement providing for remedy of arbitration no bar — *Agreement in relation to commercial transaction containing an arbitration clause — Criminal prosecution for breach of such contract, if such breach even prima facie constituted a criminal offence, held, not barred merely because of the presence of the arbitration clause in the agreement — CrPC, 1973, Ss. 200, 203 and 204 — Arbitration and Conciliation Act, 1996, Ss. 7 and 8*

For the alleged breach of the agreement in relation to commercial transaction, it is open to Respondent 2 to proceed against the appellants for his redressal for recovery of money by way of damages for the loss caused, if any. Merely because there is an arbitration clause in the agreement, that cannot prevent criminal prosecution against the accused if an act constituting a criminal offence is made out even prima facie. (Para 22). *S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil** , JJ. [Date of decision: 18-10-2001]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47, followed

[10238] — Ss. 405, 420, 468 and 471 — Quashing of complaint — When justified — Act constituting both civil and criminal wrong — Civil suits for recovery of dues compromised on receiving payments from the companies concerned — *Even if offence of cheating is prima facie constituted, compromise decree passed in such suits would amount to compounding of offence of cheating — Delay in completing investigation — No action taken against the erring officials despite allegation made against them in the FIRs — Held, in the circumstances of the case, the High Court was justified in quashing the complaint — CrPC, 1973 — S. 482*

For the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not.

A particular act may constitute both civil wrong as well as criminal wrong and merely because a civil action is also pursued, it does not render the criminal action impermissible. In the facts of the case, long after the completion of civil suits, the further investigation in connection with the complaints may not be expedient. It may be noted that the opinion given by the Senior Manager (Legal) that the credit facility which was given to DAIL for its tobacco division should be transferred to the newly formed Company, namely, New Tobacco Company Limited, it cannot be held to be per se mala fide or illegal in view of the provisions of Section 394 of the Companies Act. That apart, the legal opinion of the said Senior Manager (Legal) was placed for consideration by the highest administrative body of the Bank i.e. the Board of Directors and the decision was taken by the Board that the credit liability which stood in favour of DAIL should be transferred in favour of the New Tobacco Company Limited. In the aforesaid circumstances, even if the Senior Manager (Legal) or any other officer of the Bank had not acted properly, in view of the fact that the ultimate decision was taken by the Board of Directors, it cannot be reasonably held that some of the officers of the Bank connived and misled the Board. It may be noted that no allegation has been made against the members of the Board.

In the instant case there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the companies concerned. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating. It is also to be noted that a long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, the said complaint should not be pursued any further. *CBI* v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591: 1996 SCC (Cri) 1045: AIR 1996 SC 2452.

Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 9-7-1996]

[10239] — S. 406 — Proceedings against petitioner for shortage of paddy and rice procured by him for FCI — *Quashment — Arbitration agreement between petitioner and respondent permitting shortage up to certain limit and for payment of penalty beyond that at rates prescribed in the agreement — Matter referred to and pending arbitration — Meanwhile criminal proceedings under S. 406, IPC initiated and cognizance taken by Magistrate — In appeal against High Court's refusal to quash the criminal proceedings, held that matter being purely of a civil nature, the proceedings must be quashed — CrPC, 1973 — S. 482. Bal Kishan Das* v. *P.C. Nayar*, 1991 Supp (2) SCC 412: 1991 SCC (Cri) 1055: AIR 1991 SC 1531: 1991 Cri LJ 1837.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 26-3-1991]

[10240] — S. 406 — Quashment not considered advisable due to stage proceedings had reached — However, directions issued to protect interests of appellant-accused — *Allegations pertaining to criminal breach of trust in relation to diamond encrusted heavy gold pendant, chain and earring set against appellant who was foster sister of complainant's husband, and a married lady coming from wealthy background — Held, undoubtedly allegations made are extremely wild and disgusting but how far they can be used to meet requirements of S. 406 IPC is a moot question — However, since FIR relating thereto has been lodged and cognizance also taken, only interests of appellant can be protected — Directed that appellant would not be required to attend the proceedings unless specifically directed by court to do so and that too in case of extreme necessity; that no coercive step shall be taken against her and that she shall be granted bail by court trying the case if it decides to try the offence by framing charge and court to be careful while considering framing of charge — FIR pertaining to S. 406 IPC not quashed* (Paras 14 to 16). *Vijeta Gajra* v. *State (NCT of Delhi)*, (2010) 11 SCC 618: AIR 2010 SC 2712: 2010 Cri LJ 3841: (2010) 92 AIC 76 (SC).

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 8-7-2010]

[10241] — Ss. 406, 418, 420 and 120-B — Quashing of complaint and criminal proceedings — Abuse of process of court — *Transaction of sale of land by appellants to Respondent 2 Society — Cheques issued by Respondent 2 in favour of appellant dishonoured by bank because of insufficiency of amount in the account of drawer — FIR lodged under Ss. 406, 420 and 120-B IPC — As a counterblast complaint filed by Respondent 2 against appellants alleging offences under Ss. 418, 420, 423, 504 and 120-B IPC — Appellants filing petition for quashing of the complaint/FIR filed by Respondent 2 — Allegations in the complaint read as a whole not indicating, expressly or impliedly, any intentional deception on the part of the appellants right from the beginning of the transaction — Thus prima facie the allegations made by Respondent 2 not constituting offence punishable under S. 420 or allied offences mentioned in the complaint — Held, continuing the criminal proceedings against the appellants would amount to an abuse of process of the court — High Court erred in refusing to quash the complaint and the proceeding — CrPC, 1973 — S. 482*

The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same. That being the position the case comes within the first category of cases enumerated in *State of Haryana* v. *Bhajan Lal* and as such warrants interference by this Court. (Para 16). *Hridaya Ranjan Prasad Verma* v. *State of Bihar*, (2000) 4 SCC 168: 2000 SCC (Cri) 786: AIR 2000 SC 2341: 2000 Cri LJ 2983.

Bench Strength **2**. Coram: *K.T. Thomas* and **D.P. Mohapatra** , JJ. [Date of decision: 31-3-2000]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

[10242] — Ss. 406, 419, 420 and 120-B — Matter, on facts, of civil liability and not criminal — Hence cognizance taken by Magistrate deserved to be quashed under S. 482 CrPC — Inherent jurisdiction of High Court — When to be exercised — *Held, should be exercised in extreme exceptions — Criminal complaint filed by the complainant alleging that the appellants had refused to execute the written agreement transferring the plot in his favour for which he had already paid part consideration pursuant to an oral agreement — Cognizance under Ss. 406, 419, 420 and 120-B IPC taken by the Magistrate — High Court by the impugned order dismissing appellants' petition for quashing the cognizance — Held, version of the complainant was self-contradictory since at one place he had stated that the oral agreement to sell*

(12)(xiii) Quashment/Stay/Civil proceedings *(contd.)*

took place in July 2002, while at the other he alleged that he started paying consideration amount between 15-7-2000 and 15-12-2002 — No prima facie case was made out against the appellants involving them in the commission of alleged offences — Even if the allegations made in the complaint are accepted to be true and correct the appellants cannot be said to have committed any offence of cheating or criminal breach of trust — Neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant — Averments of the complaint and the statements of the complainant and his witnesses recorded by the Magistrate would amount to civil liability **inter se** *the parties and not criminal liability — Hence, cognizance taken by the Magistrate was clearly an abuse of the process of court warranting interference in the interest of justice — Instant case was a case of extreme exception where the High Court ought to have exercised its inherent jurisdiction and power to set aside the unwarranted and unjustified order of the Magistrate — Impugned order quashed — CrPC, 1973 — S. 482* (Paras 4, 10 and 11). *Ram Biraji Devi* v. *Umesh Kumar Singh*, (2006) 6 SCC 669: (2006) 3 SCC (Cri) 176: AIR 2006 SC 2035: 2006 Cri LJ 2782: (2006) 102 Cut LT 385.

Bench Strength **2**. Coram: *Ashok Bhan* and **L.S. Panta** , JJ. [Date of decision: 11-5-2006]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47, distinguished

[10243] — Ss. 406 and 420 — Criminal breach of trust and cheating — Pleadings — Ingredients of the offence not averred in criminal complaint filed one year after civil suit — *Civil suit was filed alleging negligence and breach of contractual obligations — Held, breach of contract simpliciter does not constitute an offence — Allegations in the criminal complaint must disclose the necessary ingredients therefor — Court can for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents — Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court — Superior courts while exercising inherent power should also strive to serve the ends of justice — CrPC, 1973, S. 482*

The parties had entered into a contract of carriage. The first respondent approached the appellants for delivery of six consignments valued at US $98,715.29 to the original consignee, M/s Universal Apparels (EPZ), Mombassa, Kenya. By reason of a fax message, the appellants asked their counterparts in Mombassa, Kenya to confirm delivery of consignment asking it to see that the cargo is delivered only against presentation of original bills of lading. The goods in question were said to have been delivered by the agent of the petitioner to the original consignee without their producing the bills of lading. The respondent complainant issued a notice to the accused persons attributing negligence to the agencies in delivering the cargo without the original bill of lading, committing a breach of carriage and acting in violation of their contract and obligation. A claim for a sum of US $84,353.31 was made and a suit filed by the respondent herein. More than one year after filing of the said suit a complaint petition was filed against the appellants for committing criminal breach of trust by causing criminal misappropriation of the valuable property of the complainant.

An application for quashing of the order issuing summons to the appellant was dismissed by the High Court which held that the allegations made in the complaint prima facie disclosed the offence of breach of trust.

Challenge in this appeal is to the order of the High Court.

Allowing the appeal,

Held :

The allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. No allegation whatsoever was made against the appellants in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, the court can for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. (Para 16). *All Cargo Movers India (P) Ltd.* v. *Dhanesh Badarmal Jain*, (2007) 14 SCC 776: AIR 2008 SC 247: (2007) 60 AIC 92 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513, followed

Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228: (2006) 1 SCC (Cri) 746; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121, relied on

[10244] — Ss. 406 and 420 — Criminal proceedings initiated with ulterior motive — Continuance of such proceedings — Impermissibility of — Ingredients for exercising power under Art. 226 of Constitution and S. 482 CrPC, to prevent abuse of process of any court or to secure ends of justice, restated — *On facts, trial court taking cognizance of offence punishable under Ss. 406 and 420 IPC against appellants in a complaint filed by respondent — High Court declining to interfere under S. 482 CrPC with the order passed — Sustainability — Complaint nothing but abuse of process of law, being a counterblast to the proceedings initiated by appellants under S. 138, NI Act, 1881 against respondent — Held, perusal of complaint showed ulterior motive — Proceedings initiated by respondent clearly amounted to abuse of process of law — Hence, relying on* Bhajan Lal case, *1992 Supp (1) SCC 335, reiterating that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, held, proceedings initiated before trial court, by the respondent, stand quashed — Negotiable Instruments Act, 1881, S. 138 — CrPC, 1973, Ss. 482, 190 and 200* (Paras 2, 4, 18 to 20). *Mahindra & Mahindra Financial Services Ltd.* v. *Rajiv Dubey*, (2009) 1 SCC 706: (2009) 1 SCC (Cri) 603: (2009) 74 AIC 71 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 4-12-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[10245] — Ss. 406 and 420 — Quashing of FIR — Scope of jurisdiction of High Court — Tests — Offences of fraud, cheating, etc. alleged — *Whether offences alleged in FIR prima facie made out — Whether criminal proceedings initiated only to cause harassment to accused and continuance thereof would amount to abuse of process of court — Disputed question of fact not required to be gone into by Court — But documents of unimpeachable character can be taken into consideration — Although Court should not encourage the practice of initiating criminal proceedings when large number of disputes could ordinarily be determined by civil courts, but Court cannot go beyond its jurisdiction to interfere with the criminal proceedings otherwise genuine — Plausible defence of accused not good enough for exercise of inherent powers — FIR lodged by appellant on charges under Ss. 406, 420 and 436 IPC alleging that blank cheques were issued by appellant to respondents which were later fraudulently used by respondents — Respondents after issuing notice on appellant filed complaint petition under Ss. 138 and 141 of Negotiable Instruments Act alleging dishonour of certain cheques issued by appellant and also filed application under S. 482 for quashing of FIR — Quashing application allowed by High Court taking the view that FIR was lodged only to pre-empt respondents from filing the complaint petition — Held, on facts, High Court erred in going into merits of the case and interfering with the criminal proceedings — However, since allegedly the blank cheques were earlier given to respondents for use for business purposes when relation between the parties were good but the alleged fraudulent use took place few years thereafter when dispute arose between them, S. 420 IPC not attracted as fraudulent inducement must be there at the inception and not at a later stage to attract S. 420 IPC — But S. 406 IPC was invocable — Hence investigation should be confined to charge under S. 406 IPC only — CrPC, 1973 — S. 482*

The private parties were Directors of the appellant Company and were closely related. The Company had two units. The Managing Director of the Company was one *L*. Allegedly, pursuant to negotiations between *L* on the one hand and Accused 2 and 3 Directors on the other, signed blank cheques were handed over by *L* to the said accused persons during period 2000 to 2004 as process for obtaining cheques from the Managing Director had been taking considerable time. However, dispute between the parties arose in 2005. A company petition was filed before the High Court. A scheme for arrangement submitted by the parties was approved, pursuant whereto one unit was transferred to Accused 1 and the other unit to *L*. For that purpose the units were demerged. *L* allegedly made oral requests to Accused 2 and 3 to return the unused signed blank cheques. However, allegedly on the premise that Respondents 2 and 3 entered into a conspiracy to misuse the said cheques *L* filed an informal complaint with the police in 2006 with an endorsement that there was no role for the police at that stage. The respondents thereafter issued a letter stating that with a view to repay a part of the institutional liability of Respondent 1 a cheque had been drawn by the appellant in favour of Respondent 1 which had been deposited for collection.

(12)(xiii) Quashment/Stay/Civil proceedings *(contd.)*

A first information report was then lodged by the appellant alleging that the blank signed cheques issued in the year 2001-2002 had been fraudulently used. Legal notices were, however, issued by Respondent 1 upon the appellant with regard to dishonour of three cheques. On or about 13-11-2006 an application was filed before the High Court for quashing the first information report. On 6-12-2006, a complaint petition was filed by Respondent 1 under Sections 138 and 141 of the Negotiable Instruments Act against the appellant and also its Chairman and Managing Director. The High Court not only considered the ingredients for the offences under Sections 406, 420 and 463 IPC but also the background facts leading to the dispute between the parties so as to enable it to ascertain whether the ingredients thereof stood satisfied or not. It proceeded on the basis that in view of the demerger scheme, the conduct of the appellant in keeping mum for a long time for getting the unused blank cheques returned is tell tale. It entered into the question as to whether the complaint petition was filed only with a view to pre-empt the respondents herein to take recourse to the remedies available to them to initiate a criminal proceeding under Section 138 of the Negotiable Instruments Act or the complaint petition in effect and substance should be permitted to be raised only by way of defence. It was held that the said complaint petition was filed on the basis whereof the first information report was directed to be lodged only to pre-empt the accused from filing a complaint petition under Section 138 of the Negotiable Instruments Act and that even taking the allegations in the complaint to be true and correct, they did not make out a prima facie case of cheating or criminal breach of trust or forgery. Accordingly, the High Court held that continuation of the proceedings amounted to abuse of process of the Court.

Allowing the appeal in part,

Held:

In this case what has failed to attract the attention of the High Court was that maintainability of a criminal proceeding like the present one should not be determined only upon raising a presumption in terms of Section 139 of the Negotiable Instruments Act, it being a rebuttable one. (Para 23)

The High Court should have further taken into consideration the fact that in the event, the defence of the appellant is accepted in the criminal case, it will have no remedy to prosecute the respondents again. To contend that the acquittal of the appellant would have been the springboard for filing a complaint will not be correct. Nobody knows when the criminal case would come to an end. In a given situation, even it may become barred by limitation. It must also be borne in mind that commercial expediencies may lead a person to issue blank cheques. The course of action in the aforementioned situation, which could be taken recourse to was to make an attempt to find out as to whether the complaint petition even if given face value and taken to be correct in its entirety constitutes an offence under Sections 420, 406 and 463 of the Penal Code or not. (Para 24)

Ingredients of cheating are:

(*i*) deception of a person either by making a false or misleading representation or by other action or omission; and

(*ii*) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. (Para 25)

Sections 415 read with Section 420 IPC indicates that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage. In this case blank cheques were handed over to the accused during the period 2000-2004 for use thereof for business purposes but the dispute between the parties admittedly arose much thereafter i.e. in 2005. Thus no case for proceeding against the respondent under Section 420 of the Penal Code is, therefore, made out. (Paras 26 to 28)

Filling up of the blanks in a cheque by itself would not amount to forgery. Whereas in the complaint petition, allegations have been made that it was Respondents 2 and 3 who had entered into a conspiracy to commit the said offence as indicated hereinbefore, in the counter-affidavit, it has been alleged that the employees of the respondent Company did so. (Para 29)

Although, Section 120-B IPC has been added, there does not exist any averment that Respondents 2 and 3 had entered into any conspiracy with their employees. No case for proceeding with the offence of forgery against the respondents has, thus, also been made out. (Para 30)

However, a case for proceeding against the respondents under Section 406 IPC has been made out. A cheque being a property, the same was entrusted to the respondents. If the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 IPC may be found to have been made out. It may be true that even in a proceeding under Section 138 of the Negotiable Instruments Act, the appellant could raise a defence that the cheques were not meant to be used towards discharge of a lawful liability or a debt, but the same by itself would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed. (Para 31)

The respondents were keeping watch over the matter. As soon as a first information report was lodged, a notice was immediately sent. A quashing application was filed within a few days of the lodging of the first information report. The investigation was not allowed to take place at all. Whereas it would have been the duty of the court to uphold and/or to protect the personal liberty of an accused in a case, but where the first information report prima facie discloses commission of a cognizable offence, the High Court, ordinarily, should not have interfered with investigation thereof by the statutory authority. (Para 32)

Investigation by IO may now be confined to the charge under Section 406 IPC. (Para 33). *Suryalakshmi Cotton Mills Ltd.* v. *Rajvir Industries Ltd.*, (2008) 13 SCC 678: AIR 2008 SC 1683: (2008) 63 AIC 146 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 9-1-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Indian Oil Corp. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776; B. Suresh Yadav v. Sharifa Bee, (2007) 13 SCC 107, relied on

[10246] — Ss. 406 and 420 — Quashing of proceedings — When warranted — *Petitioner entering into an agreement to sell certain property in Delhi for consideration of Rs 4.5 lakhs out of which Rs 3.5 lakhs was paid by the complainant respondent — Balance amount was to be paid at the time of registration of sale deed and delivery of possession — Respondent alleging that in spite of three legal notices having been given, the petitioner failed to honour the agreement and thus cheated him — He, therefore, filing complaint under S. 406 and S. 420 IPC in the criminal court at **M** since the agreement was reached there and the amount paid thereat — Held, such complaint is an abuse of process of the court and hence liable to be quashed — Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under S. 420 or S. 406 of the Penal Code is not made out so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money — Merely because the petitioner had failed to honour the agreement, it cannot be said that he had cheated the respondent — Further, on facts held, complaint filed at **M** against the petitioner who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent — Respondent granted liberty to pursue such other remedy under the civil law as may be available to him — Contract Act, 1872, Ss. 37, 51 and 52 — CrPC, 1973 — S. 468* (Paras 1, 2, 6 and 7). *Murari Lal Gupta* v. *Gopi Singh*, (2005) 13 SCC 699: (2006) 2 SCC (Cri) 430.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur* and *P.P. Naolekar*, JJ. [Date of decision: 25-10-2005]

[10247] — Ss. 406 and 420 — Taking cognizance — Material relevant for — *Where the statement made in the complaint and statements made under S. 202 CrPC taken on face value made out the offence, taking of cognizance, held, justified — At this stage other materials could not be considered by High Court to quash the cognizance — However, at the stage of framing of charge, the accused could argue as to whether the materials permitted the framing of the charge — CrPC, 1973 — Ss. 190, 200, 202 and 482*

On the basis of a complaint under Sections 406 and 420 IPC, the Magistrate issued process but subsequently recalled the same in respect of Section 420. The High Court refused relief to the accused under Section 482 and directed the Magistrate to reconsider the framing of charge under Section 420. The Supreme Court on facts found that the accused could not be required to face trial under Section 420.

In respect of the offence under Section 406 IPC, the accused contended that while framing of charge the court was duty-bound to look into the prima facie materials.

Rejecting this contention,

Held :

But that stage has not reached in the present case. The Magistrate has merely taken cognizance of the offence and has issued process and therefore at this stage the question of consideration of other materials does not arise and the court will have to take a view taking into account the fact that all the statements made in the complaint as well as the statement made under Section 202, if taken on their

(12)(xiii) Quashment/Stay/Civil proceedings *(contd.)*

face value, an offence can be said to have been made out. Applying that standard, it is held that there was no error in taking cognizance of the offence. However, it would be open to the accused while framing charge to argue as to whether the materials do permit framing of a charge. (Para 4). *Ajay Mehra* v. *Durgesh Babu*, (2002) 9 SCC 709.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 16-2-2001]

[10248] — Ss. 406, 420 and 120-B — Complaint under, not constituting the offences thereunder — Held, liable to be quashed under S. 482 CrPC — Inherent powers of High Court — Object and manner of exercise of, restated — *Where in the complaint under Ss. 406, 420 and 120-B IPC, no offence was made out against the accused, held, the Magistrate committed a manifest error in issuing process and the High Court erred in not invoking its inherent powers to correct that error — CrPC, 1973 — Ss. 482, 200, 202, 203 and 204*

In the present case, except against Appellant 7, no offence was made out against the remaining appellants. The High Court failed to exercise jurisdiction under Section 482 CrPC to correct the manifest error committed by the Magistrate in issuing process against Appellants 1-6 and 8 when the alleged acts against them did not constitute offences for want of satisfying the ingredients of the offences. The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 CrPC, having due regard to the position of law explained in various decisions of Supreme Court, and whereas while exercising power under Section 482 CrPC the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. Therefore, the exercise of power under Section 482 CrPC should be consistent with the scope and ambit of the same in the light of the decisions of the Supreme Court. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 CrPC to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred. (Paras 23, 24 and 27). *S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil** , JJ. [Date of decision: 18-10-2001]

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507, relied on

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615, explained

[10249] — Ss. 406, 420, 467, 468 and 120-B — Quashing of criminal proceedings — *Merely because the accused has right to plead at the time of framing of charges that there is no material for framing of charges he is not debarred from invoking the inherent jurisdiction of the court at the earliest point of time when the Magistrate has taken cognizance — On facts, even if the allegations made in complaint and the statement of the complainant and his witnesses are taken on their face value no offence is made out — Complaint quashed not only against the appellants but also against those two accused who did not prefer any appeal — CrPC, 1973 — S. 482*

Merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Code, he is not debarred from approaching the court even at an earlier point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. Power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. *Ashok Chaturvedi* v. *Shitul H. Chanchani*, (1998) 7 SCC 698: AIR 1998 SC 2796.

Bench Strength **2**. Coram: *Sujata V. Manohar* and **G.B. Pattanaik** , JJ. [Date of decision: 13-8-1998]

[10250] — Ss. 406, 467 r/w Ss. 34 and 120-B — Criminal proceedings when can be quashed at preliminary stage by High court under — *Summons issued on a complaint filed by a trustee alleging that Secretary and Manager of the trust property in conspiracy with the co-trustee and his wife created tenancy in respect of the property in favour of the co-trustee's wife — Defence case that the property intended for tenancy and accordingly co-trustee's wife, being an independent person having her own income, inducted as tenant at the rate of rent which outgoing tenant was paying as higher rent was not chargeable under existing law — Tenant-wife volunteering to surrender the tenancy in response to a notice — On facts and in view of strained relationship between settlor of the trust and the co-trustee and his wife, held, High Court justified in quashing the proceedings as ingredients of criminal offence wanting — It was a civil wrong — Trusts Act, 1882, S. 53 — CrPC, 1973 — S. 482*

When a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Having regard to the relevant documents including the trust deed as also the correspondence following the creation of the tenancy, the submissions advanced on behalf of the parties, the natural relationship between the settlor and the trustee as mother and son and the fall out in their relationship and the fact that the wife of the co-trustee was no more interested in the tenancy, it must be held that the criminal case should not be continued. *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692: 1988 SCC (Cri) 234: AIR 1988 SC 709: 1988 Cri LJ 853.

Bench Strength 3. Coram: **Ranganath Misra**, *G.L. Oza* and *M.M. Dutt*, JJ. [Date of decision: 9-2-1988]

[10251] — Ss. 406, 494 and 498-A — Quashing of charge-sheet — Factors to be considered — Possibility of discharge under S. 239 CrPC — Nature of cases being warrant cases — Relevance — *FIR by appellant wife alleging that her respondent husband married another lady in presence of other accused persons, from which a child was born and that appellant was subjected to cruelty for refusing to consent to her abortion and was driven out from her matrimonial home — Charge-sheet under Ss. 406, 494 and 498-A IPC filed — High Court quashed charge-sheet under Ss. 406 and 494 IPC because of non-fulfilment of ingredients constituting offences under these sections — Sustainability — Held, while considering application for quashing of charge-sheet, allegations made in FIR and materials collected during course of investigation are required to be considered — Truthfulness or otherwise of allegation is not fit to be gone into at this stage as it is always a matter of trial — High Court ought not to have interfered after submission of charge-sheet and even before Magistrate examining as to whether accused persons deserved to be discharged under S. 239 CrPC — When a report is submitted to Magistrate, he is required to be prima facie satisfied that facts disclosed therein constitute an offence — Magistrate is not bound by conclusion of investigating agency in police report i.e. in charge-sheet and it is open to him, after exercise of judicial discretion, to take view that facts disclosed in report do not constitute any offence for taking cognizance — Quashing of Ss. 406 and 494 IPC from charge-sheet, even before exercise of discretion by Magistrate under S. 190 CrPC, undesirable — Moreover, all offences are triable by Magistrate and quashing of charge-sheet under Ss. 406 and 494 IPC had not resulted in exonerating accused persons from facing trial itself — Matter would have been different had offences under Ss. 406 and 494 IPC been triable as a sessions case — Herein, High Court ought to have allowed aforementioned provisions of CrPC their full play — For all these reasons, High Court erred in holding that charge-sheet does not reveal ingredients constituting offences under Ss. 406 and 494 IPC — Hence, impugned judgment set aside — Penal Code, 1860, Ss. 482, 190, 173(2) and 239* (Paras 13 to 20). *K. Neelaveni* v. *State*, (2010) 11 SCC 607: AIR 2010 SC 3191: 2010 Cri LJ 2819: (2010) 2 ECrN 541 (SC): (2010) 88 AIC 58 (SC).

Bench Strength 2. Coram: *D.K. Jain* and **C.K. Prasad**, JJ. [Date of decision: 22-3-2010]

(12)(xiii) Quashment/Stay/Civil proceedings *(contd.)*

[10252] — Ss. 406, 498-A and 114 — Quashing of complaint — Grounds — Vague allegations — Matters to be alleged — *Held, for lodging a proper complaint mere mentioning of relevant sections and language of those sections not sufficient — Particulars of offence committed by each accused and role played by them in committing that offence need to be stated — In instant case, allegations related to dowry demand and misbehaviour against husband and parents-in-law (appellants) of complainant — However, said complaint was vague as it did not show which accused had committed what offence and exact role played by appellants in commission of offence(s) — Allegations against husband were somewhat precise, but he had already expired — Held, in such circumstance allowing prosecution to continue against aged appellants would be abuse of process of law — Besides, despite service of notice complainant neither appearing nor engaging counsel to represent her — Hence, said complaint liable to be quashed — CrPC, 1973, S. 482* (Paras 9 to 12). *Neelu Chopra* v. *Bharti*, (2009) 10 SCC 184.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 7-10-2009]

[10253] — Ss. 406/120-B — Quashment — Relevant considerations — Preventing abuse of process of court or securing ends of justice — Nature of dispute — Quashment of proceedings relating to TDS — *Where proceeding is of civil nature which cannot be adjudicated by criminal court, High Court would be justified in exercising its inherent jurisdiction and quashing the same — High Court erred in refusing to exercise its jurisdiction under S. 482 and passing a cryptic order without assigning any reasons therefor when complaint did not disclose any offence of criminal nature — In face of assertion made by appellants that deduction towards income tax were made from salaries of all employees liable to pay the same in view of statutory provisions of IT Act, appropriate remedy for respondent was to approach authority/officer concerned — Moreover, report of SI had indicated that matter in issue was civil in nature — Proceedings against appellants quashed — IT Act, 1961, Ss. 192, 200, 206, 271-C, 276-B & 276-BB — CrPC, 1973, S. 482*

A private complaint was filed by the respondent before ACJM under Sections 461/468/406 read with Section 120-B IPC against the appellants alleging discrimination by unduly deducting Rs 1640 p.m. from the monthly salary as income tax and a further wrongful deduction of Rs 3050 on account of cooperative loan issued by the appellants/Company. It was also stated in the complaint that the amount so deducted was not deposited with the Income Tax Authority and should be refunded back. The ACJM directed SI to conduct an inquiry into the allegations made in the complaint. On 30-4-2004, the appellants informed that the amount of income tax deducted in consonance with Section 192 of the Income Tax Act being deposited in due course as tax to the credit of the respondent employee in terms of Section 199 of the Income Tax Act as uniformly done in respect of every employee and also produced Form 16 of the respondent for the period from 1-4-2003 to 31-3-2004. The report submitted by SI showed that complaint in issue was civil in nature. However, JM issued summons against the appellants for an offence under Sections 406/120-B of the Penal Code. In response to the summons, the appellants made an application under Section 205 of the Code before the Judicial Magistrate which was rejected. Subsequently, vide order dated 12-9-2005, the Judicial Magistrate issued warrant of arrest against the appellants.

The appellant's application under Section 482 CrPC for quashing the complaint and order dated 12-9-2005 was dismissed by the impugned judgment. Hence, the present appeal.

Allowing the appeal,

Held :

In the complaint, the respondent mentioned about the filing of a writ petition in 1991 before the High Court of Calcutta and the order passed therein in 2003. He also referred to his contempt petition before the High Court. He alleged that due to the direction of the High Court, which was issued at his instance, the officers entered into a criminal conspiracy and with a view to pressurise him for withdrawing the said contempt, started threatening him and illegally deducting Rs 1640 per month from his monthly salary as income tax though he did not fall within taxable income category. It was also pointed out that a sum of Rs 3050 had been deducted from his salary illegally on account of cooperative loan although, in the previous month, the deduction was only to the extent of Rs 50. (Paras 10 to 13)

A perusal of Sections 192, 200, 206, 271, 276-B and 276-BB of the Income Tax Act, makes it clear that it is obligatory on the part of the persons responsible for paying any income chargeable under the head "salaries", at the time of payment, to deduct income tax computed on the basis of the rates in force for the financial year on the estimated income of the assessee and pay the same to the authority concerned. They also make it clear that on failure to deduct tax at source they shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such persons failed to deduct or pay.

They also show that failure to pay tax to the credit of the Central Government in certain cases or pay the tax collected at source under Section 276-BB shall be punishable with imprisonment. (Para 23)

In the case on hand, it is the categorical stand of the appellant management that the amount of tax that has been deducted from the respondent's salary as TDS under the head "salaries" in terms of Section 192 is uniformly done in respect of each and every employee of the Company and the amount so deducted is deposited to the credit of the employees including the respondent in terms of Section 199. They also produced a copy of Form 16 being the certificate under Section 203 of the Income Tax Act, 1961 for the tax deducted at source from the income of the respondent. (Para 24)

The JM had forwarded the complaint to SI for conducting an inquiry who had concluded that "the matter is civil in nature" and forwarded the same to the Additional CJM with a request to clarify the same. In spite of that the ACJM after recording stand of complainant had found that there was sufficient ground for proceeding against accused. It is not clear on what grounds ACJM had found so. From the materials placed, particularly, the contents of the complaint, relevant statutory provisions of the Income Tax Act, report of the SI, the complaint does not disclose any case to proceed against the accused persons as arrived at by the Additional CJM. Even if the respondent had some grievance with the appellants about non-promotion, direction of the High Court, pendency of contempt, etc. it is not a case for criminal prosecution. If he is very much interested to vindicate his grievance, the respondent could have very well approached the officer concerned of IISCO or the Income Tax Authority concerned. Though in the complaint, it is stated that the respondent had sent a notice under registered post with acknowledgment due on 17-11-2003, admittedly, no such proof had been placed before the Court. In fact, the appellants stoutly denied the receipt of such a notice. (Paras 26 and 27)

In spite of all the details and materials since the Additional CJM issued summons, the appellants approached the High Court under Section 482 of the Code for quashing the same. The High Court, by the impugned order, without adverting to any of the abovementioned relevant materials passed a cryptic order refusing to exercise its inherent jurisdiction which is unsustainable in law. (Para 28). *Rajeswar Tiwari* v. *Nanda Kishore Roy*, (2010) 8 SCC 442: (2010) 3 SCC (Cri) 915.

Bench Strength 2. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 19-8-2010]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Sardar Trilok Singh v. Satya Deo Tripathi, (1979) 4 SCC 396: 1979 SCC (Cri) 987; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, considered and relied on

[10254] — Ss. 406/420 — Omnibus statement of misrepresentation and absence of details as to how the complainant was duped — Abuse of process of court/law — Jurisdiction of High Court, for quashing criminal proceedings — *Held, can be exercised even when application for discharge of the accused pending with the trial Judge — Such power should be exercised cautiously to prevent abuse of process of court — FIR lodged by GM of a Finance Company roping in the appellants and their family members in order to coerce them to refund the amount borrowed by them from the Company — Consequent proceedings initiated for alleged offence under Ss. 406/420 IPC — Complaint under S. 138 of Negotiable Instruments Act already pending against the appellants and others — Held on facts, FIR and the criminal prosecution for the alleged offence under Ss. 406/420 IPC amounted to abuse of process of law and hence the proceedings liable to be quashed — Constitution of India, Art. 227 — CrPC, 1973 — Ss. 482 and 227, 239 & 245*

Respondent 2, GM of a Finance Company, lodged a first information report against seven persons including the two appellants alleging that they as Directors of an Automobile Company had taken a short-term loan of Rs 50 lakhs from the Finance Company but the cheques drawn by them by way of repayment of the loan with interest on presentation were dishonoured by the bank for insufficient funds. Police submitted a charge-sheet for offence under Sections 406/420 IPC against the two appellants and their family members describing all of them as Directors of the said Automobile Company. But during investigation the appellants were found to be not Directors of the said Company. In counter-affidavit filed on behalf of the complainant, apart from making an omnibus statement that the first appellant with dishonest intention and misrepresentation got the loan, nothing had been said as to what those misrepresentations were, how the Finance Company was duped, what were the roles played by the appellants and others in the alleged offence and why the charge-sheet was filed only against the appellants and their family members leaving out the other Directors of the Automobile

(12)(xiii) Quashment/Stay/Civil proceedings *(contd.)*

Company. Though criminal complaint under Section 138 of the Negotiable Instruments Act was already pending at the time of filing the FIR but the charge-sheet relating to the alleged offence under Sections 406/420 IPC did not show if the investigating agency looked into the complaint filed under Section 138 of the said Act. The appellants filed an application under Section 482 CrPC seeking quashing of the criminal proceedings pending against them under Sections 406/424 IPC in the Court of CJM. The High Court dismissed the application. Allowing the appeal,

Held :

In the present case the whole attempt of the complainant is evidently to rope in all the members of the family particularly the appellants who are the parents of the Managing Director of the Automobile Company without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed. Accordingly, the judgment of the High Court is set aside and prosecution of the appellants under Sections 406/420 IPC is quashed. (Paras 14 and 15)

Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. The Supreme Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. Merely because the accused persons had already filed an application in the Court of Additional Judicial Magistrate for their discharge, it cannot be urged that the High Court cannot exercise its jurisdiction under Section 482 of the Code. Though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial. (Paras 8 and 7). *G. Sagar Suri* v. *State of U.P.*, (2000) 2 SCC 636: 2000 SCC (Cri) 513: AIR 2000 SC 754: 2000 Cri LJ 824: 2000 All LJ 496.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa** , JJ. [Date of decision: 28-1-2000]

State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Ashok Chaturvedi v. Shitul H. Chanchani, (1998) 7 SCC 698: 1998 SCC (Cri) 1704, relied on

***Followed in** All Cargo Movers India (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776*

[10255] — S. 409 — Criminal breach of trust — Matter pertaining to civil suit — *Charge not sustainable where the title of the property in question and relationship between the parties not clear — Matters determinable in a civil suit*

In view of the long and intimate relations between the respondent and the family of the complainant and the numerous transactions between them, it is difficult to determine the extent to which the complainant was duped or persuaded by misrepresentations to part with her rights in properties. She had a remedy by civil suit, for the declaration of her rights in and return of the properties, still open to her.

It is not possible to fasten criminal liability, beyond reasonable doubt, upon the respondent before the right and the title to the properties in question is properly established by the complainant by means of a civil suit. The High Court was correct in coming to the conclusion, having regard to all the facts and circumstances of the case, that a dispute of an essentially civil nature had to be decided between the complainant and the respondent before any question of criminal liability could be satisfactorily adjudicated upon. *Supdt. & Remembrancer of Legal Affairs* v. *Birendra Chandra Chakravarty*, (1974) 3 SCC 661: 1974 SCC (Cri) 191: AIR 1974 SC 290: (1974) 2 SCR 481: (1975) MLJ (Cri) 24: 1974 Cri LJ 341.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 17-11-1973]

[10256] — Ss. 409 and 405 — Cognizance of offence taken under, against director of a public limited company — *Application filed by the director under S. 482 CrPC seeking discharge on ground of availability of penal provisions for such offence under Companies Act — Held, High Court justified in dismissing the application. Radhey Shyam Khemka* v. *State of Bihar,* (1993) 3 SCC 54: 1993 SCC (Cri) 591: (1993) 77 Comp Cas 356: 1993 Cri LJ 2888: (1993) 1 Crimes 1132.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 26-3-1993]

[10257] — Ss. 409, 420 and 120-B — Exercise of revisional powers by High Court for quashing charges — Maintainability — Charges of corruption against cooperative bank officials — *Chargesheet under Ss. 409, 420 and 120-B IPC together with S. 13 (1)(d) r/w S. 13(2), PC Act, 1988, filed against respondent-accused, Chairman and Directors of Cooperative Bank, who were also members of the Loan Committee, for sanctioning loans without verifying eligibility of borrowers to receive such loans or the end-use of such loans and intentionally acting in an illegal manner to enable borrowers to avail of the loans — Trial court directing framing of charges — In revision thereagainst, High Court quashing the charges framed on the ground that respondents were members of the Loan Committee and as such members they were only required to consider loan cases which were put up to them by Bank Manager concerned for the grant of loan and it was for the Branch Managers of various branches to verify the facts regarding entitlement for grant of loan before submitting the same to the Loan Committee and hence, it could not be said that respondents had acted illegally and had wrongly sanctioned loans to the borrowers concerned — Sustainability — Appellant, inter alia, contending that in going into factual aspects of the matter, High Court travelled beyond its revisional powers in coming to findings of fact, which were yet to be established on evidence — Tenability — Held, undoubtedly, in the inquiry report of District Vigilance Committee, role attributed to respondents in sanctioning loans was shown to be purely managerial where the groundwork had been completed by Branch Managers, but as members of Loan Sanctioning Committee, they had acted inefficiently — It was also suggested that Chairman and Chief Executive Officer of the Bank had connived with other accused in defrauding the Bank — Hence, held, High Court erroneously quashed charges framed against respondents — Consequently, orders impugned set aside and charges framed by trial court restored — Trial court directed to proceed with trial — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2) — CrPC, 1973, Ss. 401 & 397 and 228* (Paras 5, 10, 43, 44 and 50 to 52). *State of M.P.* v. *Rameshwar,* (2009) 11 SCC 424: (2009) 3 SCC (Cri) 1421: (2009) 77 AIC 102 (SC): 2009 Cri LJ 2415.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-4-2009]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Nikhil Merchant v. CBI, (2008) 9 SCC 677: (2008) 3 SCC (Cri) 859, distinguished

[10258] — Ss. 409, 420 and 405 — Quashing of prosecution — High Court cannot hold a parallel trial in exercise of power under — If offence prima facie falls under the Penal Code, launching of prosecution cannot be thwarted by High Court under S. 482 merely because penal action open under any other statute — *Cognizance of offence taken by Magistrate under S. 409 IPC against managing director and directors (appellants) of a public limited company on the basis of charge-sheet submitted by CBI and other material prima facie disclosing dishonest misappropriation of share and debenture moneys collected from public — Application filed by appellants under S. 482 seeking their discharge on ground of availability of penal provisions for such offence under Companies Act — Held, High Court justified in dismissing the application — Companies Act, 1956, Ss. 69, 63 and 73 — CrPC, 1973 — S. 482*

Though the Companies Act contains provisions regarding the issuance of prospectus, applications for shares and allotment thereof and provides different checks over the misuse of the fund collected from the public for issuance of shares or debentures, but where persons issue prospectus and collect moneys from public assuring them that they intend to do business with the public money for their benefit and the benefit of such public, but the real intention is to do no business other than collecting the moneys from the public for their personal gain, such persons cannot be said to be immune from the provisions of the Penal Code. The persons managing the affairs of such company cannot use the juristic entity and corporate personality of the company as a shield to evade themselves from prosecution for offences under the Penal Code, if it is established that primary object of the incorporation and existence of the Company is to defraud the public.

But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys

(12)(xiii) Quashment/Stay/Civil proceedings *(contd.)*

from the investors and the misappropriation of the fund collected from the shareholders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie an offence under the Penal Code has been disclosed on the materials produced before the court. For prosecution for offences under the Penal Code the complainant has to make out a prima facie case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. There is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished.

In the facts of the present case itself, the prosecution has to prove that the appellant as promotors or directors, had dishonest intention since the very beginning while collecting the moneys from the applicants for the shares and debentures or that having collected such moneys they dishonestly misappropriated the same. The ingredients of the different offences under the Penal Code need not be proved only by direct evidence: they can be shown from the circumstances of a particular case that the intention of the promotors or the directors was dishonest since the very inception or that they developed such intention at some stage, for their wrongful gain and causing wrongful loss to the investors. All the circumstances and the materials to prove such a charge have to be collected during the investigation and inquiry and ultimately have to be produced before the court at the stage of trial for a verdict as to whether the ingredients of offence in question have been established on behalf of the prosecution.

In the present case the quashing of the prosecution pending against the appellants only on the ground that it was open to the applicants for shares to take recourse to the provisions of the Companies Act, cannot be accepted. It is a futile attempt on the part of the appellants, to close the chapter before it has unfolded itself. It will be for the trial court to examine the matter on the materials produced on behalf of the prosecution. That exercise cannot be performed either by the High Court or by the Supreme Court. The trial court should proceed with the case in accordance with law.

The High Court should not, while exercising power under S. 482 of the Code, usurp the jurisdiction of the trial court. The power under S. 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the court. But that power cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to proceed. *Radhey Shyam Khemka* v. *State of Bihar*, (1993) 3 SCC 54: 1993 SCC (Cri) 591: (1993) 77 Comp Cas 356: 1993 Cri LJ 2888: (1993) 1 Crimes 1132.

Bench Strength **2.** Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 26-3-1993]

[10259] — Ss. 409, 422, 426 and 120-B — Quashment — Matters to be considered — Motivated proceedings — Complaint filed against appellants (bank officials) as counterblast to action taken by them in their official capacity for realising loan amount due — *Intention behind initiating criminal proceedings to prevent public servants from discharging their duties — Effect — Held, complaint clearly abuse of judicial process to harass appellants — Averments and allegations in complaint not disclosing commission of any offence by appellants — Instant case a classic illustration of non-application of mind by trial court where Magistrate not scrutinising even contents of complaint, leave aside material documents available on record — Magistrate remaining a silent spectator at the time of recording of preliminary evidence before summoning appellants — High Court committing manifest error in disposing of S. 482 petition without even adverting to basic facts which were placed before it for its consideration — Hence, criminal proceedings quashed — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 17 and 19 — CrPC, 1973, S. 482*

In the instant case, Bank *P* sanctioned a loan amount to a proprietary concern owned by one *J* (borrower). *J* furnished security of five guarantors, including respondent complainant, who in turn deposited FDRs, each duly signed, authorising the Bank to appropriate proceeds of FDRs along with interest if timely payments were not made by the borrower.

After passing of about one year, the Bank realised that the loan account had become totally irregular since the borrower was not paying any amount whatsoever as undertaken in terms of the agreement. First appellant (Senior Manager of the Bank), on realising that recovery of bank loan had become impossible, adjusted some amounts from FDRs furnished by guarantors as security towards dues of borrower.

The Bank vide its notice informed borrower and guarantors that the loan account should be regularised to which there was no response. This was followed by the Bank lodging an FIR against borrower and guarantors including the respondent for cheating and for misappropriation of hypothecated goods. The respondent complainant being aggrieved by the action of the Bank in appropriating FDRs, filed complaint case under Ss. 409, 422, 426 and 120-B IPC against appellants (Bank officials). The trial court took cognizance of the case and directed non-bailable warrant of arrest against appellants. The appellants being aggrieved by trial court's order, filed a petition under S. 482 CrPC before High Court for quashing the criminal proceedings, which was dismissed. Hence the present appeal.

Allowing the appeal,

Held :

The averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realise and recover the amounts due to the Bank from the borrower as well as the guarantors. The complaint obviously was filed as a counterblast to the proceedings already initiated by the Bank including the FIR lodged by the first appellant (Senior Manager of the Bank) against the complainant and the borrower for the offences of cheating and misappropriation. (Para 33)

Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. (Para 34)

The case on hand is a classic illustration of non-application of mind by the Magistrate. The Magistrate did not scrutinise even the contents of the complaint, leave aside the material documents available on record. The Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants. The criminal law was set in motion by the Magistrate by mere asking to do so by the complainant. (Paras 27 and 34)

The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 CrPC without even adverting to the basic facts which were placed before it for its consideration. It almost abdicated its duty in refusing to exercise its jurisdiction under Section 482 CrPC, though the case on hand required its interference in order to prevent abuse of the process by a court subordinate to it. (Paras 28 and 35)

A clear case is made out requiring interference to secure the ends of justice. Hence, impugned order of the High Court is set aside and the criminal proceedings arising out of complaint case are quashed. (Paras 35 and 36). *M.N. Ojha* v. *Alok Kumar Srivastav*, (2009) 9 SCC 682: (2009) 82 AIC 134 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **B. Sudershan Reddy** , JJ. [Date of decision: 21-8-2009]

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613, relied on

(xiv) Witnesses

[10260] — Ss. 409, 467, 471 and 411 — Appellant, Bank clerk accused of forging bills and getting payments — Approver's evidence, if valid — *Corroboration of approver's evidence, whether adequate — Omission by approver to state to police some facts, whether fatal — Conviction upheld*

Omissions by approver in his statement to the police is not fatal. It may be that when the approver gave his police statement he did not know that he would be granted pardon and possibly for that reason had not come out with all the facts known to him and he did so while he was making his statement before the Magistrate as he knew by then that he would be tendered pardon on condition that he would disclose all the facts known to him. The omission in the police statement, therefore, by itself would not necessarily have rendered his evidence unreliable. In considering whether the approver's evidence passed the test of reliability, the Court would have to consider whether taken as a whole and in the light of the facts and circumstances of the case it was a credible version or not. *Madan Mohan Lal* v. *State of Punjab*, (1970) 2 SCC 733: 1970 SCC (Cri) 509: AIR 1970 SC 1006: 1970 Cri LJ 898.

Bench Strength **2**. Coram: **J.M. Shelat** and *G.K. Mitter*, JJ. [Date of decision: 1-4-1970]

(13) Sentence/Fine/Compensation/Other punishment/relief

See also '(8)(v) Criminal breach of trust by public servant (S. 409) — Corruption cases — Sentence', above

[10261] — S. 406 — Sentence — *Amount defalcated surrendered by accused and thereafter, accused remaining in jail till his release on bail — In the circumstances, sentence of one year's RI reduced to the period already undergone. Diannatius* v. *State of Kerala*, 1987 Supp SCC 189: 1988 SCC (Cri) 57(2).

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 14-1-1987]

[10262] — Ss. 406 and 420 — Compromise — Compounding of offence — Offences under Ss. 406/420 IPC, compoundable with permission of the court — *In view of compromise between the parties, Supreme Court directing them to file an application under S. 320 before the court concerned — CrPC, 1973, S. 320(2)* (Para 2). *Raja Ram Kashyap* v. *State of U.P.*, (2009) 14 SCC 248.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

[10263] — Ss. 406, 477-A and 420 r/w S. 120-B — Sentence — Occurrence taking place about 20 years ago — *Sentence reduced to the period already undergone — However, sentence of fine with default clause refrained — No law point laid down. Natvarlal Nathalal Patel* v. *State of Gujarat*, (1993) 1 GLH 516.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *R.M. Sahai*, JJ. [Date of decision: 5-8-1992]

— S. 410 *See also* Ss. 411 and 410

[10264] — Ss. 410 and 401 — Acquittal by courts below under S. 401 — Upheld by Supreme Court — No alternative charge under S. 410 — Nor plea for conviction under S. 410 canvassed in courts below — *In such situation Supreme Court cannot in appeal under Art. 136 convict under S. 410 especially when findings of fact were that none of the acquitted were found in possession of stolen property knowing it to be stolen — CrPC, 1973, S. 386. Pandara Nadar* v. *State of T.N.*, 1991 Supp (2) SCC 458: 1991 SCC (Cri) 1069: AIR 1991 SC 391: 1991 Cri LJ 468.

Bench Strength **2**. Coram: *Kuldip Singh* and *K. Ramaswamy*, JJ. [Date of decision: 20-11-1990]

[10265] — Ss. 410, 411, 403 and 405 — Stolen property — Extended meaning of expression "stolen property" — *Held, the expression covers not only the property obtained by theft but also property obtained by robbery, extortion, criminal misappropriation and criminal breach of trust — Offence of dishonest retention of stolen property is almost contemporaneous with offence of dishonestly receiving stolen property — Further held, offence under S. 411 is directed against receiver of stolen property and not against the principal offender, namely, thief or the person who commits other offences mentioned in S. 410 — Conviction of principal offender is therefore not a prerequisite for conviction of person who receives stolen property — On facts held, A-1, A-2 and A-4 who were bank officials, had committed criminal breach of trust and therefore money received through them by A-3 (a broker in securities) was stolen property — A-3 was therefore guilty of offence under S. 411*

An extended meaning is given to words "stolen property" which are used in the four sections subsequent to Section 410. Not only things which have been stolen, extorted or robbed but also things which have been obtained by criminal misappropriation or criminal breach of trust, are within the meaning assigned to these words. (Para 179)

A-1, A-2 and A-4 were involved in the offence of criminal breach of trust and accordingly funds which were transferred to A-3's account, fall within the definition of stolen property. (Para 180)

Section 411 as also succeeding sections are directed not against principal offender, namely, thief, robber or misappropriator but against persons who trade in stolen articles and are receivers of stolen property. Principal offenders are therefore outside the scope of this section. Accordingly, conviction of principal offender is not a prerequisite to conviction of receiver of stolen property under this section. However, in the present case the principal offenders i.e. A-1, A-2 and A-4 have been held guilty of criminal breach of trust, therefore, A-3's conviction would be even more clearly established from the facts and circumstances of the case. (Para 181)

The offence of dishonest retention of property is almost contemporaneous with the offence of dishonestly receiving stolen property. A person who dishonestly receives property and retains it, must obviously continue to retain it. (Para 182)

It is the duty of the prosecution in order to bring home the guilt of a person under Section 411 to prove that: (*1*) stolen property was in possession of the accused; (2) some person other than the accused had possession of the property before the accused got possession of it; and (*3*) the accused had knowledge that the property was stolen. It has been conclusively established by the prosecution that A-3 was guilty of an offence under Section 411, since he had dishonestly received stolen property. (Para 183). *Mir Nagvi Askari* v. *CBI*, (2009) 15 SCC 643.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

[10266] — Ss. 410 and 414 — Scope and application — Theft of bales of cloth — Recovery of a large quantity of each item from the house of accused — *Accused giving no explanation about the recovery of such a large quantity of various items of cloth from his house — Articles recovered within few days of theft — Labels of the firms to whom stolen items of cloth belonged present on the items — Manuscript writings of dealers whose bales were stolen present on a number of items recovered — Held, circumstance warrant a finding that property was stolen property. Ajendranath* v. *State of M.P.*, AIR 1964 SC 170: (1964) 3 SCR 289: (1964) 1 Cri LJ 129, 130: 1964 MLJ (Cri) 226.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 23-4-1963]

— S. 411 *See also* Ss. 302, 392 and 411
See also Ss. 302, 394, 397 and 411
See also Ss. 302 and 411
See also Ss. 302, 460, 397 and 411
See also Ss. 394, 307 and 411
See also Ss. 394, 395, 397 and 411
See also Ss. 395, 411 and 412
See also Ss. 405, 409, 411 and 120-B
See also Ss. 409, 467, 471 and 411
See also Ss. 410, 411, 403 and 405
See also Ss. 412 and 411
See also Ss. 457, 380, 411, 413 and 414
See also Ss. 468, 411 and 420

[10267] — S. 411 — Accused found in possession of stolen goods within two days of theft — Presumption by Court that the accused received the goods knowing them to be stolen not improper — *Absence of explanation by accused regarding the possession — Conviction, held, proper — Presumption under Illus. (a) to S. 114 of Evidence Act could be drawn against him. Virumal Mulchand* v. *State of Gujarat*, (1974) 3 SCC 565: 1974 SCC (Cri) 43: AIR 1974 SC 334: 1974 Cri LJ 277.

Bench Strength **3**. Coram: **H.R. Khanna**, *A. Alagiriswami* and *R.S. Sarkaria*, JJ. [Date of decision: 21-9-1973]

[10268] — S. 411 — Accused received crime article (ornaments) knowing them to be stolen property can be convicted under S. 411 on the basis of presumption under S. 114, Ill. (a) — *Evidence Act, 1872 — S. 114 Ill. (a). Nagappa Dondiba Kalal* v. *State of Karnataka*, 1980 Supp SCC 336: 1981 SCC (Cri) 278: AIR 1980 SC 1753: 1980 Cri LJ 1270.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 29-7-1980]

[10269] — S. 411 — Applicability of S. 114 Ill (a), Evidence Act where murder and robbery forming part of the same transaction — *What should be the maximum length of time lapse between the commission of the robbery or theft and recovery of the stolen articles to justify presumption under Ill. (a) — Penal Code, 1860, S. 411*

In this case murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under Illustration (*a*) to S. 114 of the Evidence Act is that the appellant committed murder as well as robbery. The proved circumstances raised the inference that the appellant alone and no one else was guilty of the offence of murder and robbery. The false denial by itself is an incriminating circumstance. The nature of presumption under Illustration (*a*) to S. 114 must depend upon the nature of the evidence adduced.

No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles are of the latter kind, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. There was no lapse of time between the date of his arrest and the recovery of the stolen property. *Earabhadrappa* v. *State of Karnataka*, (1983) 2 SCC 330: 1983 SCC (Cri) 447: AIR 1983 SC 446: 1983 Cri LJ 846.

Bench Strength **2**. Coram: **A.P. Sen** and *E.S. Venkataramiah*, JJ. [Date of decision: 11-3-1983]

[10270] — S. 411 — Circumstantial evidence — Recovery of a wrist-watch and a gold ring belonging to the deceased from possession of the accused persons on disclosure statements made by them — *Held, this circumstance not sufficient to hold the accused persons guilty of being participants in the crime of murder more particularly when the prosecution had led evidence to show that other accused persons had disposed of some of the* *articles of deceased and got converted others into different ornaments — They could only be held liable for being in possession of stolen property — Evidence Act, 1872, S. 27. Anshad* v. *State of Karnataka*, (1994) 4 SCC 381: 1994 SCC (Cri) 1204.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 22-4-1994]

[10271] — S. 411 — Crucial points for consideration in a case under the section — *Identity of the goods be established*

The crucial points in a case under S. 411 for the courts to consider are: (1) whether the property before the Court were stolen property and (2) whether the same had been attached from the possession of the appellant. If either of these points was not proved the offence could not be brought home. *Mahabir Sao* v. *State of Bihar*, (1972) 1 SCC 505: 1972 SCC (Cri) 234: AIR 1972 SC 642: 1972 Cri LJ 458.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar** , JJ. [Date of decision: 5-1-1972]

[10272] — S. 411 — Essential elements of — *Prosecution must prove that accused had knowledge that property recovered from his possession was stolen property or that he had reason to believe that it was stolen property. Ganesh Chandra Paramanik* v. *State of W.B.*, Criminal Appeal No. 55 of 1956.

[Date of decision: 19-8-1958]

[10273] — S. 411 — FIR lodged promptly giving full particulars of the missing currency notes — *Recovery of the notes made within a week thereafter from the appellants, witnessed by independent and reliable eyewitnesses — In the circumstances held, plea of planting of the notes on the appellants not acceptable. Satish Chandra* v. *State of U.P.*, (1983) 2 SCC 141: 1983 SCC (Cri) 367: AIR 1983 SC 347: 1983 Cri LJ 683: 1983 ALJ 278.

Bench Strength **2**. Coram: **V.D. Tulzapurkar** and *A. Varadarajan*, JJ. [Date of decision: 3-2-1983]

[10274] — S. 411 — Identity of ornaments worn by the deceased established by four close relations and the goldsmith — *Failure to hold text identification parade, held, not fatal — Evidence Act, 1872, S. 9. Nagappa Dondiba Kalal* v. *State of Karnataka*, 1980 Supp SCC 336: 1981 SCC (Cri) 278: AIR 1980 SC 1753: 1980 Cri LJ 1270.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 29-7-1980]

[10275] — S. 411 — Ingredients of — Requirements for — Duty of prosecution

It is the duty of prosecution in order to bring home the guilt of a person under S. 411, to prove, (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the property was stolen property. *Trimbak* v. *State of M.P.*, AIR 1954 SC 39: 1954 Cri LJ 335, 336.

Bench Strength **2**. Coram: **M.C. Mahajan** and *N.H. Bhagwati*, JJ. [Date of decision: 12-3-1953]

[10276] — S. 411 — Nature of inquiry under is a subjective one

Lord Widgery, C.J. in *Atwal* v. *Massey*, laid down that in order to establish an offence under S. 22 of the (English) Theft Act, 1968 which is similar in terms to S. 411 of the Indian Penal Code it was not sufficient to show that the goods had been received in circumstances which would have put a reasonable man on enquiry; the question was a subjective one; was the appellant aware of the theft or did he believe the goods to be stolen or did he, suspecting the goods to be stolen, deliberately shut his eyes to the circumstances. *Satnarain Sao* v. *State of Bihar*, (1972) 3 SCC 881: 1973 SCC (Cri) 86: AIR 1972 SC 1561: (1973) 1 SCR 207: 1972 Cri LJ 1048.

Bench Strength **2**. Coram: **A.N. Grover** and *M.H. Beg*, JJ. [Date of decision: 18-4-1972]

Atwal v. Massey, (1971) 3 All ER 881, relied on

[10277] — S. 411 — Possession of stolen property — Accused entitled to acquittal if explanation given by him might reasonably be true

Section 114 of Evidence Act provides that the court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. If an explanation were given which the jury think might reasonably be true, and which is consistent with innocence, although they were not convinced of its truth, the prisoners were entitled to be acquitted inasmuch as the prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused. *Satnarain Sao* v. *State of Bihar*, (1972) 3 SCC 881: 1973 SCC (Cri) 86: AIR 1972 SC 1561: (1973) 1 SCR 207: 1972 Cri LJ 1048.

Bench Strength **2**. Coram: **A.N. Grover** and *M.H. Beg*, JJ. [Date of decision: 18-4-1972]

Atwal v. Massey, (1971) 3 All ER 881; Otto George Gfeller v. King, AIR 1943 PC 211: 45 Cri LJ 241 and Rex v. Abramovitch, (1914) 86 LJ (KB) 391, approved

[10278] — S. 411 — Possession of stolen property — Presumption that can be raised — Rebuttal of — *Effect*

The presumption from recent possession of stolen property is an optional presumption of fact under S. 114, Indian Evidence Act. It is open to the court to convict an appellant by using the presumption where the circumstances indicate that no other reasonable hypothesis except the guilty knowledge of the appellant is open to the prosecution.

But where the explanation given by the accused was good enough to raise serious doubts about the sustainability of the charge, the accused was entitled to acquittal. *Karnal Singh Uttam Singh* v. *State of Maharashtra*, (1976) 1 SCC 882: 1976 SCC (Cri) 204: AIR 1976 SC 1097: 1976 Cri LJ 842.

Bench Strength **2**. Coram: **M.H. Beg** and *P.K. Goswami*, JJ. [Date of decision: 19-11-1975]

Otto George Gfeller v. King, AIR 1943 PC 211: 45 Cri LJ 241, followed

[10279] — S. 411 — Receiver of stolen articles pleading himself to be a pawnbroker — *Proof of avocation of pawnbroker — Not proved, conviction upheld*

Where the accused stated that he worked as a contractor and took things on pawn and advanced money and in the course of business took the cycle which was alleged to be stolen property in pledge.

Held :

(*i*) The first and the most important fact is that the accused had sought to prove a document in support of the transaction of pledge. That document was not duly proved.

(*ii*) Apart from the alleged stolen cycle several other cycles were found in the possession of the accused which he claimed to have been pledged with him or with members of his family which would normally have been done if the version given by him that the business of pawnbrokers was being carried on had any truth in it.

(*iii*) Pawnbrokers are ordinarily and in normal course expected to maintain some books of account or some documents which could contain the particulars of the transactions relating to pledge. In their absence it could not be said that the stolen articles found in possession of the accused came into his possession by means of an honest transaction. *Satnarain Sao* v. *State of Bihar*, (1972) 3 SCC 881: 1973 SCC (Cri) 86: AIR 1972 SC 1561: (1973) 1 SCR 207: 1972 Cri LJ 1048.

Bench Strength **2**. Coram: **A.N. Grover** and *M.H. Beg*, JJ. [Date of decision: 18-4-1972]

[10280] — S. 411 — Receiver of stolen property — In absence of charge and in view of appeal before SC being heard 17 years after the occurrence, on the peculiar facts, held, improper to record a conviction in appeal. *Kedar Nath* v. *State of M.P.*, 1993 Supp (1) SCC 7: 1993 SCC (Cri) 276: AIR 1991 SC 1224: 1991 Cri LJ 989.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 8-11-1990]

[10281] — S. 411 — Receiving stolen property — Presumption from mere discovery — When cannot be drawn — *Imputation of knowledge if proper on facts*

The High Court while disposing an appeal against acquittal, took the view that the accused having given no explanation regarding his knowledge of the place from which the ornaments were taken out, it must be presumed that he must have kept the ornaments there and that the fact that the field did not belong to the accused and that the place was accessible to others would not show that the ornaments were not in his possession but were kept by someone else, in the absence of a statement from the accused explaining the circumstances under which he came to know about the ornaments.

Held :

It was not the correct way of approaching the decision of a case under S. 411, IPC. When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles.

From the bare fact that accused was residing in the complainant's village his knowledge that the ornaments were stolen property could not legitimately be concluded. *Trimbak* v. *State of M.P.*, AIR 1954 SC 39: 1954 Cri LJ 335, 336.

Bench Strength **2**. Coram: **M.C. Mahajan** and *N.H. Bhagwati*, JJ. [Date of decision: 12-3-1953]

[10282] — S. 411 — Recovery — Held, on facts, doubtful — Circumstantial evidence — Theft and murder — *Recovery of gold jewellery and other articles belonging to the deceased from the respective* ***jhuggis*** *of the accused-appellants at their instance — Doubt in respect of — PW 5, who was stated to have witnessed the recovery, did not enter any of the* ***jhuggis*** *and, therefore, had not seen the actual recovery — Further, difference in the tim-*

ing of the recovery proceedings between the evidence of PW 5 and IO — Evidence of PW 19 indicating that the recovered goods were deposited in the malkhana even before the recovery proceedings started — Thus, alleged recovery, held on facts, doubtful — Conviction liable to be set aside — Evidence Act, 1872, Ss. 27 and 114 Ill. (a) — Recovery of gold jewellery and other articles belonging to the deceased from the houses of the accused persons — Doubt in respect of — PW 5, who was stated to have witnessed the recovery, did not enter any of the jhuggis and, therefore, had not seen the actual recovery — Further, difference in the timing of the recovery proceedings between the evidence of PW 5 and IO — Evidence of PW 19 indicating that the recovered goods were deposited in the malkhana even before the recovery proceedings started — Thus, alleged recovery, held on facts, doubtful (Paras 10 to 13). *Kuldip Singh* v. *State of Delhi*, (2003) 12 SCC 528: AIR 2004 SC 771: (2004) 109 DLT 190.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

Limbaji v. State of Maharashtra, (2001) 10 SCC 340: 2002 SCC (Cri) 1044; Gulab Chand v. State of M.P., (1995) 3 SCC 574: 1995 SCC (Cri) 552, distinguished on facts

[10283] — S. 411 — Recovery of ring of deceased from the appellant 8 days after murder — No valid explanation offered by the appellant — *Held, in circumstances, appellant liable to be convicted under S. 411 — Evidence Act, 1872, S. 114 Ill. (a). Gulab Singh* v. *State of U.P.*, 1995 Supp (4) SCC 502: 1994 SCC (Cri) 1783.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 16-9-1992]

[10284] — S. 411 — Sentence — Two years' RI and fine of Rs 500 imposed — Reduction of — *Offence occurred about 19 years back when accused-appellant was 27-28 years — He already suffered imprisonment for 9 months — He was granted exemption from surrendering by order of Supreme Court counsel for the appellant after arguing the matter requested to issue notice to the appellant-accused to engage other advocate but the request was refused — Keeping in view all the facts and circumstances of the case, held, the order of conviction under S. 411 cannot be disturbed but the sentence of rigorous imprisonment should be reduced to the period of imprisonment already undergone. Ram Kalyan* v. *State of Rajasthan*, (2000) 8 SCC 149: 2000 SCC (Cri) 1471: AIR 2000 SC 3157.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **Shivaraj V. Patil** , JJ. [Date of decision: 6-9-2000]

[10285] — S. 411 — Separate recoveries of stolen currency notes from four accused — *Conviction of the two accused-appellants based on testimony of independent and reliable eyewitnesses, held, not improper merely because of acquittal of the other two accused for lack of testimony of reliable witnesses. Satish Chandra* v. *State of U.P.*, (1983) 2 SCC 141: 1983 SCC (Cri) 367: AIR 1983 SC 347: 1983 Cri LJ 683: 1983 ALJ 278.

Bench Strength **2**. Coram: **V.D. Tulzapurkar** and *A. Varadarajan*, JJ. [Date of decision: 3-2-1983]

[10286] — S. 411 — Statement distinctly relating to discovery is admissible in evidence whether confessional or not — *Accused in a case under S. 411, IPC, stating that he had hidden the ornaments and will show the place — Whole of the statement including the portion "where he had hidden the ornaments" is admissible — Evidence Act, 1872 — S. 27*

Section 27 is an exception to Ss. 25 and 26 of Evidence Act, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to discovery of a fact may be proved under S. 27.

It is only that part which distinctly relates to the discovery which is admissible; but if any part of the statement distinctly relates to the discovery it will be admissible wholly and the court cannot say that it will excise one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not.

Where in a case under S. 411, IPC, the accused stated that he would show the place where he had hidden the ornaments, the whole of the statement relates distinctly to the discovery of the ornaments and is admissible under S. 27 of the Indian Evidence Act. The words "when he had hidden them" have nothing to do with the past history of the crime and are distinctly related to the actual discovery that took place by virtue of that statement. Also these words by themselves though they may show possession of the appellant would not prove the offence, for after the articles have been recovered, the prosecution has still to show that the articles recovered are connected with the crime, i.e., in this case, the prosecution will have to show that they are stolen property. *K. Chinnaswamy Reddy* v. *State of A.P.*, AIR 1962 SC 1788, 1793: (1963) 3 SCR 412: (1963) 1 Cri LJ 8.

Bench Strength **3.** Coram: *B.P. Sinha, C.J.* and **K.N. Wanchoo** and *J.C. Shah*, JJ. [Date of decision: 25-7-1962]

But see also Prabhoo v. State of U.P., AIR 1963 SC 1113: (1963) 2 Cri LJ 182

[10287] — S. 411 — Stolen property — Identification of — Common article with a description different from the one given in the complaint — *Difficult to say that the article is a stolen property*

In the case of a common article like a pipe which does not bear any distinctive mark and which again is shown demonstrably to have a diameter which is 'obviously' less than the one described in the complaint, it will be difficult to say that the property before the court was stolen property. *Mahabir Sao* v. *State of Bihar*, (1972) 1 SCC 505: 1972 SCC (Cri) 234: AIR 1972 SC 642: 1972 Cri LJ 458.

Bench Strength 2. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar** , JJ. [Date of decision: 5-1-1972]

[10288] — S. 411 — Stolen property shown to have been directly brought into the shop of the accused from the place of theft — *Held, prosecution still has to show that in respect of the property recovered from the possession of the accused he had reason to believe that it was stolen property — Showing that partner of the accused paid the driver who brought the goods, held, not sufficient — Presence of the accused in the shop does not prove his complicity. Mohan Lal* v. *State of Maharashtra*, (1979) 4 SCC 751: 1980 SCC (Cri) 173: AIR 1979 SC 1718: 1979 Cri LJ 1328.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 6-4-1979]

[10289] — S. 411 — Stolen watch handed over to accused in presence of police — *Seizure of such watch cannot sustain conviction — It cannot be said to have been seized from the accused. Naba Kumar Das* v. *State of W.B.*, (1974) 3 SCC 582: 1974 SCC (Cri) 60: AIR 1974 SC 777: 1974 Cri LJ 512.

Bench Strength 2. Coram: *S.N. Dwivedi* and **Y.V. Chandrachud** , JJ. [Date of decision: 14-11-1973]

[10290] — S. 411 — Sufficiency of evidence — *Dacoity case — Search of suspect and alleged recovery of four 'bronze churis' — Police officer recording them in seizure memo as four 'bangles' made of 'brass' — Articles not sealed — Held, conviction under S. 411, IPC cannot be sustained on the basis of such seizure and sole evidence of the police officer. Naba Kumar Das* v. *State of W.B.*, (1974) 3 SCC 582: 1974 SCC (Cri) 60: AIR 1974 SC 777: 1974 Cri LJ 512.

Bench Strength 2. Coram: *S.N. Dwivedi* and **Y.V. Chandrachud** , JJ. [Date of decision: 14-11-1973]

[10291] — Ss. 411 and 302 — Circumstantial evidence — *Presence of the accused around the time and place of occurrence along with the cattle of the deceased, held on facts, by itself not sufficient to raise irresistible conclusion about participation of the accused in commission of murder of the deceased — But the accused's possession of the cattle, which the deceased had taken to the field on the day of occurrence having been proved, held, accused must be convicted under S. 411, Penal Code. Joga Gola* v. *State of Gujarat*, 1981 Supp SCC 66: 1982 SCC (Cri) 141: AIR 1982 SC 1227.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 18-1-1980]

[10292] — Ss. 411 and 302 — Recovery of watch belonging to the deceased at the instance of the accused — Does not connect him with murder — However, he can be punished under S. 411 for being in possession of stolen property — *Evidence Act, 1872 — S. 114 Ill. (a). Surjit Singh* v. *State of Punjab*, AIR 1994 SC 110: 1993 Cri LJ 3901.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 23-3-1993]

[10293] — Ss. 411 and 392 — Robbery in dark night — Identification of accused being doubtful, conviction under S. 392 not sustainable — *However, in view of recovery of stolen articles from the possession of the accused conviction under S. 411 upheld — Having regard to long lapse of time and also recovery of articles of ordinary nature sentence reduced to the period already undergone. Shankar Lal Yadav* v. *State of M.P.*, 1994 SCC (Cri) 1409.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 10-9-1992]

[10294] — Ss. 411, 394 and 302 — Recovery of gold ornaments of the deceased from the appellant within three days of the murder — *On facts, however, held he could only be convicted under S. 411, Indian Penal Code — Prosecution cannot benefit from accused's failure to explain his possession — Burden on prosecution to prove its case affirmatively — Conviction under Ss. 394 & 302 thereby substituted and sentenced to 3 years' RI and fine of Rs 5000 — Evidence Act, 1872, S. 114. Nagappa Dondiba Kalal* v. *State of Karnataka*, 1980 Supp SCC 336: 1981 SCC (Cri) 278: AIR 1980 SC 1753: 1980 Cri LJ 1270.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 29-7-1980]

[10295] — Ss. 411 and 396 — Recovery of crime articles — Long delay in recovery — Evidentiary value of such articles — *Gold chain, gold bangles, torchlight, gold ring and gold ear-flowers allegedly stolen at the time of murder — Recovery of such articles from the accused persons three long months after the incident, held, too artificial to be believed — Even otherwise, no presumption of involvement of the accused persons in the murder could be drawn at this late stage — More so when they were acquitted of the charge under S. 396 IPC and there was no charge under S. 411 IPC — Evidence Act, 1872, S. 114 Ill. (a) — Evidence Act, 1872, S. 27. Shabad Pulla Reddy* v. *State of A.P.*, (1997) 8 SCC 495: AIR 1997 SC 3087: 1997 Cri LJ 3753.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 20-8-1997]

[10296] — Ss. 411 and 404 — Circumstantial evidence — Failure of accused to offer satisfactory explanation for possession of the stolen property — Effect — *Held, though not an incriminating circumstance by itself, would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it is for him to offer an explanation — Evidence Act, 1872, Ss. 114 Ill. (a), 106 and 3 — CrPC, 1973 — S. 313* (Para 15). *Ganesh Lal* v. *State of Rajasthan*, (2002) 1 SCC 731: 2002 SCC (Cri) 247: 2002 Cri LJ 967.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Ashok Bhan*, JJ. [Date of decision: 31-10-2001]

Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447; Gulab Chand v. State of M.P., (1995) 3 SCC 574: 1995 SCC (Cri) 552, relied on

[10297] — Ss. 411 and 410 — Offence of dishonestly receiving stolen property can only be in respect of "stolen property" — Meaning of

There can be no offence of dishonestly receiving stolen property unless the property which is alleged to be the subject of such receiving, answers the description of "stolen property" given in S. 410, Penal Code. Only such property possession whereof has been transferred by theft, or extortion or criminal misappropriation or other offences allied to them as mentioned in S. 410, falls within the definition of "stolen property". *Chandmal* v. *State of Rajasthan*, (1976) 1 SCC 621: 1976 SCC (Cri) 120: AIR 1976 SC 917: 1976 Cri LJ 679.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **R.S. Sarkaria** , JJ. [Date of decision: 7-11-1975]

[10298] — Ss. 411 and 412 — Seizure of stolen articles and cash from a hutment allegedly belonging to the appellants who were sleeping outside the hutment — *Absence of evidence to show that appellants were owners of the hutment — Articles seized found to be of common use — No evidence led to establish identity of the articles as stolen property — Conviction set aside. Manik Devrao Shinde* v. *State of Maharashtra*, 1995 Supp (4) SCC 468: 1994 SCC (Cri) 1761.

Bench Strength **3**. Coram: *A.M. Ahmadi, M.M. Punchhi* and *K. Ramaswamy*, JJ. [Date of decision: 15-9-1992]

[10299] — Ss. 411 and 412 — Time factor between theft and recovery of material — Hard and fast rule if possible — Recovery of the barrel of a gun after nine months — *Drawing presumption under Illus. (a) to S. 114 of Evidence Act if proper*

Illustration (*a*) to S. 114, Evidence Act makes it plain that the time factor has a material bearing and the Court must keep it in view before it can draw the presumption in accordance with the illustration. The presumption can be raised if a person is found to be in possession of stolen goods soon after the theft. If, however, a long period elapses between the date of the theft and the date on which a person is found to be in possession of the stolen articles, the Court would not be justified in drawing the presumption in accordance with the above illustration. The question as to how much period should elapse after the theft in order to rule out the presumption under Illustration (*a*) would depend on the nature of the stolen article and the facts of each case. If the stolen article recovered from the accused is one which frequently changes hand, in such a case much shorter period would be required before the Court would be entitled to draw the presumption under the above illustration. On the contrary, if the stolen article found in the possession of the accused is one which does not normally change many hands, the Court may draw the presumption under the illustration even after the lapse of a number of months. Again, if the stolen articles recovered from the possession of the accused are some rare books or paintings of a great master or some idol of historical value, the Court will be well justified in drawing a presumption against the person found in possession under the above illustration even after the lapse of a period of more than one year. As against that, if the stolen goods of which the accused is found in possession comprise clothes or other articles which are easily available in the market, the Court may well decline to draw the presumption after the lapse of a much shorter time.

In the present case the article recovered from the appellant was the barrel of a gun which had been carried away by the dacoits as a result of dacoity. The barrel bore the number of the gun. Such a barrel of a gun does not normally change many hands. The nature of the article in question is such that there was bound to arise suspicion in the mind of the person to whom the article was handed over. No satisfactory explanation has been furnished by the appellant for his possession of the barrel. It cannot be said that the appellant acquired the possession of the barrel innocently. Looking to the peculiar nature of the stolen article recovered from the appellant, there is no cogent ground to interfere with the view of the High Court and the trial Court that a presumption can be drawn against the appellant in accordance with Illustration (*a*) to S. 114 of the Indian Evidence Act after the expiry of a period of eight or nine months from the date of dacoity. *Alisher* v. *State of U.P.*, (1974) 4 SCC 254: 1974 SCC (Cri) 416: AIR 1974 SC 1830: 1974 Cri LJ 897.

Bench Strength **3**. Coram: **H.R. Khanna**, *V.R. Krishna Iyer* and *R.S. Sarkaria*, JJ. [Date of decision: 28-9-1973]

— S. 412 *See also* Ss. 120-B, Ss. 302/34, 394 and 412

See also Ss. 395, 411 and 412
See also Ss. 395 and 412
See also Ss. 396 and 412
See also Ss. 397 and 412

[10300] — S. 412 — Discovery of pant, bushshirt and ring at the instance of the accused — *Held, in the circumstances of the case, evidence of recovery rightly rejected by the High Court as it was not probable that while committing dacoity the accused had taken away clothes also along with the gold ring and buried them in the courtyard of the house — Evidence Act, 1872 — S. 27. Shambhu Dayal* v. *Subhash Chandra*, 1998 SCC (Cri) 900: AIR 1998 SC 1732.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 19-2-1998]

[10301] — S. 412 — Dishonestly receiving articles looted in dacoity — In pursuance of confessional statement made by the second accused, looted articles recovered — *Held, evidence of recovery acceptable and hence second accused liable to be convicted under S. 412 and sentenced to the period of imprisonment already undergone. Tahir Mohd.* v. *State of M.P.*, 1993 Supp (2) SCC 697: 1993 SCC (Cri) 760: AIR 1993 SC 931: 1993 Cri LJ 193.

Bench Strength **3**. Coram: *S. Ratnavel Pandian, Kuldip Singh* and *R.M. Sahai*, JJ. [Date of decision: 12-2-1992]

[10302] — S. 412 — Recovery of stolen clothes — If conviction under S. 412, sustainable

That the presumption arising under S. 114, Illustration (*a*) of the Evidence Act, can only make Sheonath guilty of either theft or as receiver of stolen property. (S. 411, IPC)

The recovery of only two articles from him, absence of his name in the FIR and non-identification of him by the eyewitnesses, point only to the conclusion that he was not a participant in the dacoity.

Sheonath cannot be guilty of S. 412, IPC, as the prosecution failed to prove that he knew or had reason to believe that the property had been transferred to him by the commission of dacoity. *Sheonath* v. *State of U.P.*, (1969) 3 SCC 116: 1970 SCC (Cri) 15: AIR 1970 SC 535: 1970 Cri LJ 601.

Bench Strength **2**. Coram: **S.M. Sikri** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 15-10-1969]

[10303] — S. 412 — Seizure of incriminating articles along with pledge-deed from pawn brokers immediately after occurrence in pursuance of disclosure statements made by the appellants — *Articles proved to be the articles belonging to the family of the deceased — Evidence regarding recovery found by lower courts to be reliable and satisfactory — No interference by the Supreme Court called for. Suraj Pal* v. *State of Haryana*, (1995) 2 SCC 64: 1995 SCC (Cri) 313.

Bench Strength **2**. Coram: *G.N. Ray* and **Faizan Uddin** , JJ. [Date of decision: 9-11-1994]

[10304] — Ss. 412 and 395 — Applicability — Delayed recovery of stolen articles — *Held, warranted conviction for possession of stolen property and not for dacoity — Hence, S. 412 and not S. 395 attracted — Dacoity in rural area — Goods stolen recovered in a surrounding place — Presumption of conscious possession of stolen property — Evidence Act, 1872, S. 114, Ill. (a)*

Merely because certain stolen articles were recovered from the accused they cannot be held to be dacoits by invoking the presumption unless there is a recent possession. In this case admittedly, there is a lapse of nearly three or four months. In these circumstances, it would be safe particularly when they were acquitted by the trial court to convict them only for the offence of being in possession of the stolen property.

A serious dacoity took place and must be known to all the people in the village as well as in the surrounding places. The accused who were found to be in possession of the stolen property which is the subject-matter of the dacoity would be held liable under S. 412 IPC. *Narayan Singh* v. *State of M.P.*, 1994 Supp (1) SCC 62: 1994 SCC (Cri) 232.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 31-3-1993]

[10305] — Ss. 412 and 395 — Articles recovered soon after commission of dacoity and shown to have been stolen in course of dacoity — *Held, conviction under S. 412 would be proper — Conviction under S. 395 on the basis of presumption under S. 114. Evidence Act, on facts, not sustainable — Sentence of 4 years' RI reduced to 2 years' RI — Conviction and sentence modified accordingly. Amar Singh* v. *State of M.P.*, (1982) 3 SCC 214: 1982 SCC (Cri) 700(2): AIR 1982 SC 129: 1982 Cri LJ 610.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *A.N. Sen*, JJ. [Date of decision: 6-3-1981]

[10306] — Ss. 412 and 396 — Conviction under S. 412 when charge of dacoity not proved — Legality — *Certain documents alleged to be property involved in the dacoity seized from the accused consequent to a statement made by him to Circle Inspector of Police — Accused charged under Ss. 396 and 412 IPC — High Court holding him not guilty under S. 396 — In such circumstances, held, it would be presumed that the accused had no knowledge of the dacoity — Onus to prove that the accused had such knowledge, held, lay on the prosecution — In the absence of such proof, the accused could not be held guilty under S. 412 IPC, more so when he had specifically denied the recovery — Further held, the said statement of the accused although admissible under S. 27, Evidence Act to establish that the documents were recovered on the information given by the accused, anything more stated by him therein having no direct bearing on the recovery itself, held, not admissible in evidence to bind the accused — Evidence Act, 1872, Ss. 27 and 114*

The appellant together with certain others was convicted under Sections 396, 302 and 412 IPC by the trial court. However, the High Court found the appellant not guilty under Sections 302 and 396 but confirmed his conviction under Section 412. The appellant contended that after acquittal under Section 396, in the absence of any additional material to establish the charge under Section 412, the appellant could not be convicted under Section 412. On the other hand the prosecution contended that at the time of seizure of documents, viz., Exts. P-36 to P-40 (which pertained to the lorry involved in the dacoity), the appellant had made a statement to the Circle Inspector of Police wherein the appellant had accepted that the documents seized from him were received by him at the time of the dacoity. The prosecution added that in such a situation a legitimate inference could be drawn that Exts. P-36 to P-40 were the property involved in the dacoity which was received by the appellant.

Allowing the appeal,

Held :

When the Court held that the appellant was not guilty of the offence of dacoity, it should be presumed that the appellant had no knowledge of the dacoity during which offence the documents seized from him were allegedly stolen. In the instant case what the prosecution has established is that the appellant was in possession of Exts. P-36 to P-40 which the prosecution alleges, belonged to a lorry involved in a dacoity but that part of the knowledge of dacoity cannot be presumed by the mere possession of these documents unless the prosecution adduced some evidence to show that the appellant had the knowledge of such dacoity. The alleged statement given by the appellant to the police at the time of seizure of Exts. P-36 to P-40 can be used by the prosecution for establishing that those documents were recovered on an information given by the appellant which would be admissible under Section 27 of the Evidence Act. Beyond that, anything stated which has no direct bearing on the recovery itself cannot be admissible in evidence to bind the appellant. (Para 4)

Since the onus of proving that the appellant had received those documents knowing or having believed that those documents were involved in a dacoity lay on the prosecution and the prosecution failed to discharge this onus on the material on record, the appellant could not be held guilty of the offence under Section 412 IPC, more so when he had specifically denied the recovery. (Para 5). *K. Venkateshwara Rao* v. *State*, (2002) 6 SCC 247: 2002 SCC (Cri) 1290.

Bench Strength 2. Coram: **N. Santosh Hegde** and *D.M. Dharmadhikari*, JJ. [Date of decision: 23-7-2002]

[10307] — Ss. 412 and 396 — Presumption under S. 114 Ill(a), Evidence Act — When can be drawn — Whether the possessor of stolen article is a thief himself or only a receiver of stolen property — Determination of — Circumstances to be considered — *Where murder and robbery/dacoity form part of the same transaction a presumption can be drawn that the possessor was the murderer also — Possession of silver todal within two days of* *dacoity — Absence of evidence to show that the accused concealed it, nor was he in possession of any other stolen property involved in the dacoity — Held, in the circumstances, it would not be sound to draw a presumption beyond his being a receiver of stolen property — Evidence Act, 1872 — S. 114 Ill. (a)*

Illustration (*a*) indicates two stages for a presumption. First is that the possessor could be the thief himself and the second is that the possessor could have been only a receiver of the stolen property with the requisite knowledge. Apparently, the former is of aggravated degree and the latter is of a lesser degree. If possession of the stolen article with the accused alone is established in evidence, it is a difficult task for the court to choose between the two stages of presumption envisaged in the illustration. The nature of possession of the articles, the place or mode of concealment, the manner in which they were dealt with by the accused, the length of the intervening period, the number of stolen articles possessed by him are all factors which would assist the court in drawing a presumption that the possessor was the thief himself. Similarly, if the possession is associated with any other indication or incriminating circumstance there may be justification for drawing the more aggravated presumption. In a case where robbery (or dacoity) and murder are so interconnected with each other as to become integral parts of the same transaction, the court can go to the extent of drawing the presumption that the possessor was the murderer also.

In the present case the accused was found in possession of silver *todal*, not immediately after the murder, but within two days of the dacoity. He was found openly moving about with the ornament keeping it on his person. There is quite a variation in the evidence as to whether the silver *todals* was on the person of the deceased, as deposed to by her mother, when she left with her father or whether the father had the same throughout, as evidenced by the story put up by the prosecution. There is no evidence to show that he concealed it, nor was he in possession of any other stolen property involved in the dacoity. On the facts and circumstances of this case, it would not be sound to draw a presumption beyond his being a receiver of the stolen property with the requisite knowledge. *Net Raj Singh* v. *State of M.P.*, (1997) 3 SCC 525: 1997 SCC (Cri) 506.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K.T. Thomas** , JJ. [Date of decision: 19-12-1996]

[10308] — Ss. 412 and 396 — Recovery of stolen articles — Proof of — *Neither the police officer who made the recovery nor the witnesses who were present at the time of recovery examined in the court — Evidence of the Investigating Officer who verified the records relating the recovery of stolen articles not sufficient to prove such recoveries. Kalika Tiwari* v. *State of Bihar*, (1997) 4 SCC 445: 1997 SCC (Cri) 600: AIR 1997 SC 2186: 1997 Cri LJ 2531.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K.T. Thomas** , JJ. [Date of decision: 25-3-1997]

[10309] — Ss. 412 and 411 — Conviction under S. 412 — Court must come to a definite conclusion that the accused was in possession of the stolen property knowingly or had reason to believe that its possession had been transferred by the commission of dacoity — *Otherwise conviction only under S. 411 proper*

For the purposes of conviction under S. 412, IPC, the court must come to the conclusion that the dishonest receiver of the stolen property should be in possession of the same knowing or having reason to believe that its possession had been transferred by the commission of dacoity.

But where the only finding was that the accused bought the property knowing it to be stolen, the conviction should be under S. 411 and not S. 412. *Moinuddin Mozumdar* v. *State of Assam*, (1972) 3 SCC 322: 1972 SCC (Cri) 521: AIR 1972 SC 635: 1972 Cri LJ 456.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar** , JJ. [Date of decision: 15-12-1971]

[10310] — S. 412 and S. 411 — Receiving stolen property pertaining to dacoity — Punishment for, when warranted — *No evidence to show that accused had full knowledge that ornaments purchased by them were subject of dacoity — One of the accused, N, claiming that he had purchased them under receipt from some person but that person not examined as defence witness — Hence held, all accused can at best be charged under S. 411 — Sentence of imprisonment reduced to three years from ten years* (Para 10). *Narayan Prasad* v. *State of M.P.*, (2005) 13 SCC 247: (2006) 2 SCC (Cri) 161: AIR 2006 SC 204: 2006 Cri LJ 123.

Bench Strength **2**. Coram: *Arun Kumar* and **A.K. Mathur** , JJ. [Date of decision: 8-11-2005]

[10311] — S. 412 or S. 411 — Ingredients of offence under S. 412 — *Knowledge that articles were stolen in a dacoity essential — Prosecution must prove such knowledge — Mere unexplained* *possession of stolen articles would give rise to a presumption that accused knew that articles were stolen in which case S. 411 and not S. 412 would be attracted. Achyut Das* v. *State of Assam*, (1994) 1 SCC 387: 1994 SCC (Cri) 526: AIR 1994 SC 968: 1994 Cri LJ 1119.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 29-10-1993]

— S. 413 *See also* Ss. 457, 380, 411, 413 and 414

— S. 414 *See also* Ss. 410 and 414

See also Ss. 457, 380, 411, 413 and 414

[10312] — S. 414 — Applicability — Ingredient of reason to believe that property was stolen not proved — Goods recovered at the instance of accused not proved to be belonging to stolen taxi *— Accused also had no prior knowledge that they were actually stolen goods — Accused also not being put any question under S. 313 CrPC regarding ownership of goods recovered — Effect — On facts, held, it is not safe to convict the accused*

On facts, it is not safe to rely on the evidence of the prosecution to convict *P* under Section 414 IPC. For convicting *P* the courts below relied on recoveries made. There is no evidence to establish that the property allegedly recovered at the instance of *P* belonged to the stolen taxi or that *P* had prior knowledge that the goods recovered were actually stolen goods. No specific question under Section 313 CrPC was also put to *P* in regard to the ownership of the goods recovered. Therefore, by giving benefit of doubt, *P*'s conviction is set aside and his bail bonds are discharged. (Paras 9 and 10). *Kailash* v. *State of Rajasthan*, (2009) 16 SCC 708: (2010) 3 SCC (Cri) 393.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 3-12-2002]

[10313] — S. 414 — Essentials of *— Person whom the accused helped in concealing stolen property not known — For a conviction under the section it is not necessary to trace and convict the person actually committing theft*

Section 414, IPC makes it an offence for a person to assist voluntarily in stealing or disposing of or making away with property which he knows or has reason to believe to be stolen property. It is not necessary for a person to be convicted under S. 414, IPC that another person must be traced out and convicted of an offence of committing theft. The prosecution has simply to establish that the property recovered is stolen property and that the appellant provided help in its concealment and disposal. *Ajendranath* v. *State of M.P.*, AIR 1964 SC 170: (1964) 3 SCR 289: (1964) 1 Cri LJ 129, 131: 1964 MLJ (Cri) 226.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 23-4-1963]

[10314] — S. 414 — Quashing of criminal proceedings at initial stage — Power should be very sparingly and cautiously exercised *— At that High Court should not sift or appreciate the evidence and come to the conclusion that no prima facie case is made out — On facts, High Court not justified in quashing the proceedings — CrPC, 1973 — S. 482*

The inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out.

In the present case the High Court exceeded its jurisdiction by trying to appreciate the evidence and coming to a conclusion that no offence is made out. The High Court was wholly unjustified in invoking its inherent power under Section 482 of the Code of Criminal Procedure to quash the cognizance taken inasmuch as the allegation in the FIR and material referred to in the charge-sheet do make out an offence under Section 414 of the Indian Penal Code, so far as the respondent is concerned. *State of Bihar* v. *Rajendra Agrawalla*, (1996) 8 SCC 164.

Bench Strength **2**. Coram: *K. Ramaswamy* and **G.B. Pattanaik** , JJ. [Date of decision: 18-1-1996]

Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, followed

[10315] — S. 414 — Sessions Judge acquitting several accused of offences under, holding that property not proved as "stolen property" *— Appeal preferred against only few of accused — High Court competent to reverse the order in respect of the respondents. Ajendranath* v. *State of M.P.*, AIR 1964 SC 170: (1964) 3 SCR 289: (1964) 1 Cri LJ 129, 131: 1964 MLJ (Cri) 226.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 23-4-1963]

SECTIONS 415-420 — CHEATING

See also 'Ss. 405-409 — CRIMINAL BREACH OF TRUST', ABOVE

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— S. 420 r/w S. 120-B *See also* S. 120-B, S. 420 r/w S. 120-B, S. 477 r/w S. 120-B and S. 5(1)(d) r/w S. 5(2), PC Act, 1947 r/w S. 120-B IPC

See also Ss. 406, 477-A and 420 r/w S. 120-B

See also Ss. 409 and S. 420 r/w S. 120-B

See also Ss. 465, 468, 471 and 420 r/w S. 120-B

— Ss. 420/34 *See also* Ss. 120-B, 420/34 and 477-A/34

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— Ss. 420/120-B *See also* Ss. 420/511, 420/120-B, 468 and 477-A

(1) Ss. 415-420 and other provisions of law

[10316] — Ss. 419, 420, 465, 467 and 473 — Impersonation as a CA, etc. — Expression "without prejudice to any other proceedings" used in sub-section (2) of Ss. 24-A, 25 and 26 CA Act — Significance — Prosecution under IPC — Maintainability — *Where a person is alleged to have committed offences under Ss. 24, 24-A and 26 CA Act as also under IPC but in absence of complaint under S. 28 CA Act before Magistrate's Court, no cognizance of offences punishable under Ss. 24, 24-A and 26 CA Act could be taken, held, prosecution under IPC can still be commenced against him — Prosecution under IPC cannot be disallowed on ground that 1949 Act is a special statute vis-à-vis IPC — Chartered Accountants Act, 1949, Ss. 24, 24-A, 25, 26 and 28*

The respondent, who passed the examination of Chartered Accountant but is not a member of the appellant Institute, is alleged to have represented himself before the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act on the basis of power of attorney or as legal representative and submitted documents such as audit reports and certificates required to be issued by the Chartered Accountants by preparing forged seals. He is also said to have impersonated himself as Chartered Accountant and prepared audit reports for monetary consideration. Person authorised by the appellant Institute submitted a complaint in this regard in police station alleging commission of offences punishable under Section 24 of the Chartered Accountants Act and Sections 419, 420, 468, 472 and 473 IPC. After conducting investigation the police filed challan in the Court of CJM who passed an order for framing charges against the respondent under Sections 419, 468, 471 and 472 IPC. The respondent challenged the order by filing revision under Section 397 CrPC. The Additional Sessions Judge remitted the case to the trial court with the direction to decide whether there were sufficient grounds for framing charges under Sections 419, 420, 465, 467 and 473 IPC read with Sections 24 and 26 of the Chartered Accountants Act. After remand, the trial court held that there was no basis for framing any charge against the respondent under IPC and that cognizance of offence under Sections 24 and 26 of the Act cannot be taken because no complaint had been filed by or under the order of the Council before the Magistrate. The appellant questioned the orders of the Additional Sessions Judge and the trial court by filing revisions. The High Court dismissed both the revisions. It held that even though prima facie case was made out against the respondent under Sections 24, 24-A and 26 of the Act, the Magistrate could not have taken cognizance because no complaint was filed under Section 28 and the report submitted by the police could not be made basis for punishing him on the allegation of contravention of any of those provisions. The court also referred to Sections 2(*d*), 4, 5 and Section 195(1)(*b*)(*ii*) CrPC and held that in the absence of a complaint filed by the court concerned, the Magistrate was not competent to frame charges against the respondent and that in view of the special mechanism contained in the Act for prosecution of a person violating Sections 24, 24-A and 26 of the Act, he cannot be prosecuted under IPC.

The question which arises for consideration in the present appeals is whether Sections 24, 24-A and 26 of the Chartered Accountants Act operate as a bar against prosecution of a person who is charged with allegations which constitute an offence or offences under other laws including the Penal Code.

Allowing the appeals,

Held :

The prohibition contained in Section 28 against prosecution of a person except on a complaint made by or under the order of the Council or of the Central Government is attracted only when such person is sought to be prosecuted for contravention of the provisions contained in Section 24 or sub-section (1) of Sections 24-A, 25 or 26 and not for any act or omission which constitutes an offence under IPC. The object underlying the prohibition contained in Section 28 is to protect the persons engaged in profession of Chartered Accountants against false and untenable complaints from dissatisfied litigants and others. However, there is nothing in the language of the provisions contained in Chapter VII from which it can be inferred that Parliament wanted to confer immunity upon the members and non-members from prosecution and punishment if the action of such member or non-member amounts to an offence under IPC or any other law. (Paras 18 and 21)

The use of expression "without prejudice to any other proceedings which may be taken against him" in sub-section (2) of Sections 24-A and 26 and somewhat similar expression in sub-section (2) of Section 25 show that contravention of the provisions contained in sub-section (1) of those sections can lead to filing of complaint under Section 28 of the Act and if the particular act also amounts to an offence under IPC or any other law, then a complaint can also be filed under Section 200 CrPC or a first information report lodged with the police under Section 156 CrPC. The said expression cannot be given a restricted meaning in the context of professional and other misconducts which may be committed by a member of the Institute and for which he may be punished under Section 21-B(3) because the violation of Sections 24 to 26 can be committed by a person who may or may not be a Chartered Accountant as defined in Section 2(*b*). (Para 19)

In other words, if the particular act of a member of the Institute or a non-member or a company results in contravention of the provisions contained in Section 24 or sub-section (1) of Sections 24-A, 25 or 26 and such act also amounts to criminal misconduct which is defined as an offence under IPC, then a complaint can be filed by or under the order of the Council or of the Central Government under Section 28, which may ultimately result in imposition of the punishment prescribed under Section 24 or sub-section (2) of Sections 24-A, 25 or 26 and such member or non-member or company can also be prosecuted for any identified offence under IPC. (Para 20)

Held :

The provisions contained in Chapter VII of the Act neither define cheating by personation or forgery or counterfeiting of seal, etc. nor provide for punishment for such offences. If it is held that a person acting in violation of Section 24 or contravening sub-section (1) of Sections 24-A and 26 of the Act can be punished only under the Act even though his act also amounts to one or more offence(s) defined under IPC and that too on a complaint made in accordance with Section 28, then the provisions of Chapter VII will become discriminatory and may have to be struck down on the ground of violation of Article 14. (Para 23)

Such an unintended consequence can be and deserves to be avoided in interpreting Sections

24-A, 25 and 26 keeping in view the settled law that if there are two possible constructions of a statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to the attack of unconstitutionality should be avoided in preference to the other which makes it rational and immune from the charge of unconstitutionality. That apart, the court cannot interpret the provisions of the Act in a manner which will deprive the victim of his right to prosecute the wrongdoer for the offences defined in Sections 416, 463, 464, 468 and 471 by filing the first information report or complaint under the relevant provisions of CrPC. (Para 24)

The respondent could have been simultaneously prosecuted for contravention of Sections 24, 24-A and 26 of the Act and for the offences defined under IPC but in view of the bar contained in Article 20(2) of the Constitution read with Section 26 of the General Clauses Act, 1897 and Section 300 CrPC, he could not have been punished twice for the same offence. (Para 25)

The argument that the Act is a special legislation vis-à-vis IPC and a person who is said to have contravened the provisions of sub-section (1) of Sections 24, 24-A, 25 and 26 cannot be prosecuted for an offence defined under IPC, which found favour with the High Court does not commend acceptance. (Para 36)

The impugned order is set aside and the matter is remitted to the trial court for considering whether the allegations contained in the complaint constitute any offence under IPC. If the trial court comes to the conclusion that the allegations do constitute one or more offence(s), then it shall proceed against the respondent in accordance with law. However, it is made clear that in the absence of a complaint having been filed under Section 28, no charges be framed against the respondent for the alleged contravention of Sections 24, 24-A or 26 of the 1949 Act. (Para 46). *Institute of Chartered Accountants of India* v. *Vimal Kumar Surana*, (2011) 1 SCC 534.

Bench Strength **2**. Coram: **G.S. Singhvi** and *A.K. Ganguly*, JJ. [Date of decision: 1-12-2010]

Maqbool Hussain v. State of Bombay, AIR 1953 SC 325: 1953 SCR 730: 1953 Cri LJ 1432; T.S. Baliah v. ITO, AIR 1969 SC 701: (1969) 3 SCR 65; State of Bombay v. S.L. Apte, AIR 1961 SC 578: (1961) 3 SCR 107: (1961) 1 Cri LJ 725; Collector of Customs v. Vasantraj Bhagwanji Bhatia, (1988) 3 SCC 467: 1988 SCC (Cri) 679; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27; State of Rajasthan v. Hat Singh, (2003) 2 SCC 152: 2003 SCC (Cri) 451, relied on

Halsbury's Laws of England, Hailsham Edn., Vol. 9, pp. 152-53, para 212, cited

Jeewan Kumar Raut v. CBI, (2009) 7 SCC 526: (2009) 3 SCC (Cri) 475; Jamiruddin Ansari v. CBI, (2009) 6 SCC 316: (2009) 2 SCC (Cri) 1033, distinguished

[10317] — Ss. 419, 420, 467 and 468 — Scope and applicability of S. 28, Societies Registration Act — *High Court quashing the charge-sheet submitted under various provisions of IPC by applying S. 28 of the Act, observing that some other allegations prima facie made out an offence under S. 4 of the Act and hence, since provisions of S. 28 were breached, the proceedings were unsustainable — Held, S. 28 provides procedure for trial of offences punishable under the 1860 Act itself and not for offences punishable under the Penal Code — Hence, impugned order set aside and matter remanded to trial court for decision afresh — CrPC, 1973, S. 482 — Societies Registration Act, 1860 — Ss. 28, 4 and 27* (Paras 3, 5 and 6). *Sarvesh Kumar Singh* v. *Jai Govind Mishra*, (2006) 9 SCC 206: (2006) 2 SCC (Cri) 618.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 21-11-2005]

[10318] — S. 420 — Investigation of offence under, along with an offence under S. 7 of Essential Commodities Act — *Held, not improper. Pravin Chandra Mody* v. *State of A.P.*, AIR 1965 SC 1185: (1965) 1 SCR 269: (1965) 2 Cri LJ 250.

Bench Strength **3**. Coram: *K. Subba Rao*, **M. Hidayatullah** and *J.R. Mudholkar*, JJ. [Date of decision: 15-9-1964]

[10319] — S. 420 — Presentation and encashment of a false bill by a clerk of an office as a bill of the office — *Offence held covered by Item 3 of Schedule to West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and exclusively triable by Special Court. Sunil Kumar Paul* v. *State of W.B.*, AIR 1965 SC 706: (1964) 7 SCR 70: (1965) 1 Cri LJ 630.

Bench Strength **3**. Coram: *K. Subba Rao*, *K.C. Das Gupta* and **Raghubar Dayal**, JJ. [Date of decision: 6-3-1964]

[10320] — Ss. 420 and 120-B — Bar to criminal proceedings, if any — Offence under Ss. 420 and 120-B IPC, as well as S. 138 of the Negotiable Instruments Act — *Held, taking cognizance of criminal proceedings is not barred under the RBI Act — Bar under Ss. 45-QA and 58-E of the RBI Act applies only to offences committed under the RBI Act — High Court, held, rightly acted by not quashing the order of cognizance taken by the criminal court — Negotiable Instruments Act, 1881, S. 138 — CrPC, 1973, S. 482 — Reserve Bank of India Act, 1934 — Ss. 45-QA and 58-E. Prudential Capital Mkt. Ltd.* v.

State of Bihar, (2000) 9 SCC 539: 2001 SCC (Cri) 644: AIR 2000 SC 3668.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 3-4-2000]

[10321] — Ss. 420 and 471 — Acquittal under S. 471 but conviction under S. 420 — The reasoning of acquittal inconsistent with that of conviction — *Maintainability of order of conviction under S. 420*

(*i*) We are inclined to accept the contention of the learned counsel for the appellant that once the conviction under S. 471, IPC, has been set aside the High Court was not justified in convicting him under S. 420.

(*ii*) In the absence of an appeal by the State against the acquittal of the appellant under S. 471, IPC, we do not think we can permit the respondent to raise this ground (viz., that the acquittal of the appellant by the High Court of the offences under S. 471, IPC, is erroneous). *Hira Lal Panna Lal Mahi* v. *State of Gujarat*, (1969) 3 SCC 756.

Bench Strength **3**. Coram: *J.M. Shelat*, *V. Bhargava* and **C.A. Vaidialingam**, JJ. [Date of decision: 24-4-1969]

[10322] — Ss. 420, 486, 467 and 466/471 — Framing of charge for commitment — Complaint under Ss. 420, 486, 468, 465/67 — *Offence under S. 467 being prima facie established by the evidence — Magistrate not framing any charge under S. 467 and acquitting the accused under Ss. 420, 486, 467, 466/471 after trial — Improper for the Magistrate to drop the charge under S. 467 over which he had no jurisdiction — He was bound to frame charge under S. 467 and commit the case to the Court of Sessions — High Court justified in remanding the case for retrial after framing charge under S. 467 — CrPC, 1898 — Ss. 210, 417(3) & 423(1)*

J filed a complaint against 5 appellants. Honorary Magistrate I Class, who tried the case framed charges under Ss. 420, 468, 406 and 465/471 IPC against various accused. Though the evidence and allegations in the complaint prima facie disclosed an offence under S. 467 IPC no charge under S. 467 IPC was framed. Since an offence under S. 467 IPC was triable exclusively by a Sessions Judge the Magistrate would have in the event of framing a charge under S. 467 IPC committed the case to the Court of Sessions. The Magistrate acquitted the accused and on appeal the High Court set aside the order of acquittal and ordered a retrial.

If the Magistrate had applied his mind to the problem he would have seen easily that a prima facie case of forgery was made out. He should then have considered whether the receipts were valuable security or not. If he had done that he would have seen that the main offence would prima facie be one under S. 467, Indian Penal Code read with S. 471 and the other offences were subsidiary. It was thus not proper for him to choose for trial only such offence over which he had jurisdiction and to ignore other offences over which he had none. His duty clearly was to frame a charge under S. 467, Indian Penal Code and to commit the appellants to stand their trial before the Court of Sessions.

It was open to the High Court, while hearing an appeal under S. 417(3) of the Code to direct the Magistrate to frame a charge for an offence which was prima facie established by the evidence for the prosecution and also to order that the accused be committed to the Court of Sessions. It is wrong to contend that the High Court had no jurisdiction in the matter because the trial before the Honorary Magistrate (in so far as it went) was with jurisdiction. If it were so there would be no remedy whenever a Magistrate dropped serious charges ousting him of his jurisdiction and tried only those within his jurisdiction.

However, hesitant the High Court may be, to set aside an order of acquittal and to order retrial, it has jurisdiction under the Code to do so, if the justice of the case clearly demands it and a case of omission from the charge of a serious offence prima facie disclosed by evidence, is one of those circumstances in which the power can properly be exercised particularly when the charge for the offence, if framed, would have ousted the Court of trial of its own jurisdiction. *Matukdhari Singh* v. *Janardan Prasad*, AIR 1966 SC 356: (1966) 1 SCR 255: 1966 Cri LJ 307.

Bench Strength **3**. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 20-7-1965]

(2) The charge and Ss. 415-420

[10323] — S. 420 — Charge vague in a cheating case — *Particulars of cheating and details known to the accused — Held, irregularity did not cause any real prejudice to accused and did not vitiate the trial. K. Damodaran* v. *State of Travancore-Cochin*, AIR 1953 SC 462: 1953 Ker LJ 295: 1953 Cri LJ 1928.

Bench Strength **2**. Coram: *M.C. Mahajan* and **S.R. Das**, JJ. [Date of decision: 20-3-1953]

[10324] — Ss. 420, 120-B and 71 — Charge — *Accused B and C supplying wood to the Railway and receiving payment on submitting a number of bills — Recurring payment against each bill is not a separate offence under S. 420 IPC — The transaction of the receipt of the entire amount against all the bills is one offence — Framing of one charge about all the transactions is legal and was not in contravention of S. 233 CrPC, 1898. Banwarilal Jhunjhunwala* v. *Union of India*, AIR 1963 SC 1620: 1963 Supp (2) SCR 338: (1963) 2 Cri LJ 529.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 21-11-1962]

[10325] — Ss. 420, 468 and 471 r/w S. 120-B — Framing of charge — Doctrine of parity — Necessify of consideration of — *Many accused including government servants involved in offence of fraud and misappropriation of huge amount of Govt. money — An accused similarly situated not proceeded against only because departmental proceedings ended in his favour — Held (**Per Sinha, J.**), in a case of present nature the trial Judge should have considered the question having regard to the "doctrine of parity" — Relevant considerations which should have been taken into account in this regard, indicated — Constitution of India, Art. 14 — CrPC, 1973 — S. 228*

In a case of this nature the trial Judge should have considered the question having regard to the "doctrine of parity" in mind. An accused similarly situated has not been proceeded against only because the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completely exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the departmental proceeding also faced same charges including the charge of being a party to the larger conspiracy. (Para 23). *Soma Chakravarty* v. *State*, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149.

Bench Strength **2**. Coram: **S.B. Sinha**[2] and **Markandey Katju**[1], JJ. [Date of decision: 10-5-2007]

L. Chandraiah v. State of A.P., (2003) 12 SCC 670: 2005 SCC (Cri) 825, relied on

(3) Ingredients of cheating

Synopsis

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(i) Broadly

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[10326] — S. 415 — Cheating — Ingredients — *Having regard to allegations made in the complaint, held, on facts, elements of deception and inducement with fraudulent intention prima facie made out*

The essential ingredients of the offence of "cheating" are: (*i*) deception of a person either by making a false or misleading representation or by other action or omission, (*ii*) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. (Para 32)

In this case, the complaints clearly allege that the accused with fraudulent intention to cheat and defraud IOC, had induced IOC to resume supply of aircraft fuel on cash-and-carry basis, by entering into a further agreement and undertaking to clear the outstanding amount of Rs 18 crores approximately within the time stipulated in the hypothecation agreements. The sum and substance of the said allegation read with other averments is that NEPC India, having committed default in paying the sum of Rs 18 crores, entered into a fresh agreement agreeing to clear the outstanding amount

(3)(i) **Broadly** *(contd.)*

as per a fresh schedule, with the dishonest and fraudulent intention of pre-empting and avoiding any action by IOC in terms of the hypothecation deeds to take possession of the aircrafts. Though the supplies after the fresh agreement were on cash-and-carry basis, the fraudulent intention is alleged to emanate from the promise under the said agreement to make payment, thereby preventing immediate seizure (taking possession) of the aircrafts by IOC. This allegation made in addition to the allegation relating to removal of engines, has been lost sight of by the High Court. All that is to be seen is whether the necessary allegations exist in the complaint to bring the case within Section 415. Thus the allegations in the complaint constitute such an offence. The Court is not concerned with the proof of such allegations or ultimate outcome of trial at this stage. (Para 36). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[10327] — S. 415 — Cheating — Ingredients of — Distinguished from mere breach of contract — *Definition contemplates two separate classes of acts viz. deception by fraudulent or dishonest inducement and deception by intentional, but not fraudulent or dishonest, inducement — In the second case intentional deception must be shown to exist right from the beginning of the transaction*

The appellants agreed to sell their land to a cooperative housing society for a consideration of Rs 16,00,000. Respondent 2 was Secretary of the Society. The respondent paid a sum of Rs 11,00,000 to the appellants by way of drafts drawn in their favour. The appellants executed a registered sale deed in respect of the land in favour of the Society. It is the case of the appellants that on the insistence of Respondent 2 two other brothers of the appellants signed the sale deed as witnesses. By way of a further safeguard the appellants executed a separate indemnity deed on the same day in which they undertook to indemnify any loss caused to the Society on account of any objection which may be raised by any co-sharer against transfer of the land in future. The appellants assert that they delivered possession of the land to the Society on the same day. On registration of the sale deed Respondent 2 handed over three cheques to the appellants for the sum of Rs 5,50,000. When the appellants presented the said cheques in the bank the same were dishonoured on account of insufficiency of amount in the account of the drawer. Appellants after serving notice on Respondent 2 lodged an FIR alleging offences under Sections 406, 420 and 120-B IPC. The police after investigating into the allegations made in the FIR filed a charge-sheet against Respondent 2 and the Vice-President of the Society. The appellants also filed three suits for realisation of the amount due to them. Shortly thereafter, Respondent 2 filed a complaint in the Court of CJM against the appellants alleging commission of offences under Sections 420, 423, 469, 504 and 120-B IPC. In the complaint Respondent 2 alleged inter alia that by conspiring together all the accused have defaulted and cheated the Society and the complainant by giving false, concocted and wrongful information and assurances and thus they induced the complainant to enter into negotiations and also to advance them a heavy amount with their ulterior design to acquire wrongful gain to themselves and for wrongful loss to the Society and the complainant — both monetary and reputational. (See para 7 for details of some of the averments made in the complaint.) It is the case of the appellants that the FIR was filed as a counterblast to the criminal case and the civil suits filed by them against Respondent 2. The appellants therefore filed a petition for quashing the complaint and the criminal proceedings initiated on the basis of the complaint. But the High Court declined to quash the same. Allowing the appeals,

Held :

Section 415 IPC which defines cheating requires

(*1*) deception of any person;

(*2*)(*a*) fraudulently or dishonestly inducing that person

(*i*) to deliver any property to any person, or

(*ii*) to consent that any person shall retain any property; or

(*b*) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. (Para 13)

In the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. (Para 14)

In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. (Para 15)

Reading the averments in the complaint in their entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint. All that Respondent 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make Respondent 2 part with the property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-Respondent 2 is not made out even accepting all the averments in the complaint on their face value. Thus the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 has not been made out. So far as the offences under Sections 469, 504 and 120-B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. In such a situation continuing the criminal proceeding against the accused will be, an abuse of the process of the court. (Para 16)

The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same. That being the position the case comes within the first category of cases enumerated in *State of Haryana* v. *Bhajan Lal* and as such warrants interference by this Court. (Para 16). *Hridaya Ranjan Prasad Verma* v. *State of Bihar*, (2000) 4 SCC 168: 2000 SCC (Cri) 786: AIR 2000 SC 2341: 2000 Cri LJ 2983.

Bench Strength **2**. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 31-3-2000]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; P.S. Rajya v. State of Bihar, (1996) 9 SCC 1: 1996 SCC (Cri) 897; State of Orissa v. Bansidhar Singh, (1996) 2 SCC 194: 1996 SCC (Cri) 259, relied on

[10328] — S. 415 — Cheating — Ingredients of — While first part of S. 415 pertains to property, its second part need not necessarily relate to property — But, for the second part mens rea is essential

Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; the second part need not necessarily relate to property. In the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. A guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "*mens rea*" on the part of that person, must be established. This part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property. (Paras 5, 7, 6 and 11). *G.V. Rao* v. *L.H.V. Prasad*, (2000) 3 SCC 693: 2000 SCC (Cri) 733: AIR 2000 SC 2474: 2000 Cri LJ 3487.

Bench Strength **2**. Coram: **S. Saghir Ahmad** and *D.P. Wadhwa*, JJ. [Date of decision: 6-3-2000]

Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575: 1956 Cri LJ 1116: 1956 SCR 483; Mahadeo Prasad v. State of W.B., AIR 1954 SC 724: 1954 Cri LJ 1806, relied on

Empress v. Sheoram, (1882) 2 AWN 237; Queen-Empress v. Rakma Kom Sadhu, ILR (1887) 11 Bom 59; R. v. Dabee Sing, (1867) 7 WR (Cri) 55; R. v. Puddomonie Boistobee, (1866) 5 WR (Cri) 98, approved

(3)(i) Broadly *(contd.)*

[10329] — S. 415 — Cheating — Requirements of, restated — *Deception of any person, held, is common to second and third requirements — Use of disjunctive conjunction "or" indicates that the said requirements are alternative to each other*

Section 415 IPC requires: (*i*) deception of any person, (*ii*) whereby fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property, or (*iii*) intentionally inducing that person to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. Deception of any person is common to the second and third requirements of the provision. The said requirements are alternative to each other and this is made significantly clear by use of disjunctive conjunction "or". (Para 7). *Devender Kumar Singla* v. *Baldev Krishan Singla*, (2005) 9 SCC 15: 2005 SCC (Cri) 1185: AIR 2004 SC 3084: 2004 Cri LJ 1778.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-2-2004]

[10330] — Ss. 415 and 24 — Cheating — Instances of — Person who may make complaint against cheating — Sale of property by a person knowing that property did not belong to him — *Held, seller defrauds purchaser — Purchaser is entitled to prosecute seller under S. 415 but a third party cannot do so*

When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is also not the case of the complainant that any of the accused tried to deceive him. Nor did the complainant allege that first appellant pretended to be complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 IPC. (Paras 20 to 23). *Mohd. Ibrahim* v. *State of Bihar*, (2009) 8 SCC 751: (2009) 3 SCC (Cri) 929.

Bench Strength **2**. Coram: **R.V. Raveendran** and *R.M. Lodha*, JJ. [Date of decision: 4-9-2009]

[10331] — Ss. 415, 24, 23 and 25 — Cheating — Deception as a necessary ingredient under both parts of S. 415 — When culpable — *Such deception, held, must necessarily produce inducement to part with or deliver property which the complainant would not have parted with or delivered, but for inducement resulting from the deception*

Section 415 can be divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to either: (*a*) deliver property to any person; or (*b*) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The Explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception. (Para 68)

The Explanation appended to Section 415 gives a statutory recognition to the legal principles established through various judicial pronouncements that misleading statements which withhold the vital facts for intentionally inducing a person to do or to omit to do something would amount to deception. Further, in case it is found that misleading statement has wrongfully caused damage to the person deceived it would amount to cheating. (Para 72)

The appellants were entitled to an opportunity to prove the averments made in the complaint. They were entitled to establish that they have been deliberately induced into making huge investments on the basis of representations made by Respondent 1 and its representatives, which representations subsequently turned out to be completely false and fraudulent. The appellants were entitled to an opportunity to establish that Respondent 1 and its representatives were aware of the falsity of the representations at the time when they were made. The appellants have given elaborate details of the positive assertions made by Respondent 1 which were allegedly false to its knowledge. It is also claimed by the appellants that Respondent 1 and its representatives wilfully concealed facts which were material and ought to have been disclosed, but were intentionally withheld so as to deceive the appellant into advancing and expending a sum of Rs 500 crores. (Para 75). *Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 20-10-2010]

Central Railway Co. of Venezuela v. Kisch, 1867 LR 2 HL 99; New Brunswick and Canada Railway Co. v. Muggeridge, (1860) 1 Dr. & Sm 363 at pp. 381-82: 62 ER 418, relied on

[10332] — Ss. 415, 24, 25 and 23 — Offences requiring mens rea or a particular state of mind (like dishonesty) — Whether a corporate body can be prosecuted when offence is committed in relation to business of a company — Doctrine of attribution and imputation — Degree of control exercised by persons in charge of affairs of company — Principle of alter ego — *Held, if degree of control is so intense that a corporation may be said to think and act through a person or body of persons, mens rea of person or persons in control is attributable to the corporation — A corporate body cannot also escape criminal liability merely on the ground that punishment prescribed is imprisonment and fine — On facts held, prosecution could be launched against respondent Company for offence of cheating under S. 415 IPC — Companies Act, 1956, Ss. 34 and 291*

The respondent Company had effective control over another company which was engaged in a project known as Iridium project, for developing world's first commercial system designed to provide global digital hand-held telephone data, facsimile, paging, geolocation services but the project ultimately did not succeed, with the result that huge investment made by appellant Company in the project resulted in loss. It was the case of appellant Company that Respondent 1 had knowledge of unviability of the project yet they made misleading statements to attract investment. The appellant further alleged that the entire exercise of Respondent 1, besides generating money for itself, was to experiment with others' money and at others' risk. The appellant therefore filed a detailed criminal complaint dated 3-10-2001 of thirty-five pages giving all the necessary facts which constituted the offence of cheating under Section 415 IPC. The trial court vide its order dated 6-11-2001 issued process against the accused persons including Respondent 1 Company. The High Court initially stayed the proceedings before the trial court and finally quashed the criminal complaint dated 3-10-2001 vide its judgment dated 8-8-2003, inter alia on the ground that Respondent 1 being a juristic person, could not be proceeded against, for an offence like cheating.

Allowing the appeal,

Held :

There is much substance in the submission that virtually in all jurisdictions across the world governed by the rule of law, companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The legal position in England and the United States has now crystallised to leave no manner of doubt that a corporation would be liable for crimes of intent. The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. The criminal intent of the "alter ego" of the company/body corporate i.e. the persons or group of persons that guide the business of the company, would be imputed to the corporation. (Paras 55 and 59)

A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of "alter ego" of the company. (Para 63)

A company/corporation cannot escape liability for a criminal offence merely because the punishment prescribed is that of imprisonment and fine. The conclusion reached by the High Court that the respondent could not have the necessary mens rea is clearly erroneous. (Para 66). *Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 20-10-2010]

(3)(i) Broadly *(contd.)*

New York Central & Hudson River Railroad Co. v. United States, 53 L Ed 613: 212 US 481 (1908); Director of Public Prosecutions v. Kent and Sussex Contractors Ltd., 1944 KB 146: (1944) 1 All ER 119 (DC); Bolton (H.L.) (Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd., (1957) 1 QB 159: (1956) 3 WLR 804: (1956) 3 All ER 624 (CA); Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd., 1915 AC 705: (1914-15) All ER Rep 280 (HL); Tesco Supermarkets Ltd. v. Nattrass, 1972 AC 153: (1971) 2 WLR 1166: (1971) 2 All ER 127 (HL); Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530: 2005 SCC (Cri) 961, relied on

19 American Jurisprudence 2d, Para 1434; 19 Corpus Juris Secundum, Para 1363, quoted

[10333] — Ss. 415, 417 and 420 — Cheating — *Embraces both types of cases where it occasions transfer of property and where it does not* (Para 7). *Devender Kumar Singla* v. *Baldev Krishan Singla*, (2005) 9 SCC 15: 2005 SCC (Cri) 1185: AIR 2004 SC 3084: 2004 Cri LJ 1778.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-2-2004]

[**Ed.:** *See also* Ratanlal: *Law of Crimes*, 22nd Edn., p. 1110.]

[10334] — Ss. 415 & 420 — Cheating — Ingredients of — Two parts of S. 415 explained — Deception need not be by express words but may be implied

Section 420 deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients: deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself. (Para 366)

Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. (Para 281). *Ram Narayan Popli* v. *CBI*, (2003) 3 SCC 641: 2003 SCC (Cri) 869: AIR 2003 SC 2748.

Bench Strength 3. Coram: **M.B. Shah**[1], *B.N. Agrawal*[2] and **Arijit Pasayat**[2], JJ. [Date of decision: 14-1-2003]

[10335] — Ss. 415 and 420 — Ingredients of cheating — Held on facts, prima facie offence under S. 420 made out

Per Ranganath Misra, J. (Bhagwati, C.J. concurring)

(*i*) there should be fraudulent or dishonest inducement of a person by deceiving him;

(*ii*) (*a*) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(*b*) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

(*iii*) in cases covered by the second part of (*ii*), the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In the present case the prosecution's allegations were twofold: (*i*) though the Indira Gandhi Pratibha Pratishthan was not a State Government Trust, publicity was given by the respondent himself and through his agents as also through news media owned by the State Government and the public press to the fact that IGPP was a government trust; and (*ii*) though Mrs Gandhi had never agreed to the trust being named after her, the respondent associated her name for the purpose of creating an impression in the mind of the people at large that the then Prime Minister, Mrs Indira Gandhi had associated herself with the respondent's trust. The evidence, oral and documentary, taken together justified the framing of a charge for offence under S. 420 on the basis of these allegations. However, the position is a presumptive one open to rebuttal by the respondent. *R.S. Nayak* v. *A.R. Antulay*, (1986) 2 SCC 716: 1986 SCC (Cri) 256: AIR 1986 SC 2045: 1986 Cri LJ 1922.

Bench Strength 2. Coram: **P.N. Bhagwati**, **C.J.**[1] and **Ranganath Misra**[2], J. [Date of decision: 17-4-1986]

[10336] — Ss. 415 and 420 — Ingredients of, reiterated (Paras 18 and 19). *Mohd. Ibrahim* v. *State of Bihar*, (2009) 8 SCC 751: (2009) 3 SCC (Cri) 929.

Bench Strength 2. Coram: **R.V. Raveendran** and *R.M. Lodha*, JJ. [Date of decision: 4-9-2009]

Vimla (Dr.) v. Delhi Admn., AIR 1963 SC 1572; State of U.P. v. Ranjit Singh, (1999) 2 SCC 617: 1999 SCC (Cri) 293, relied on

(ii) Property — What is

See also '(6)(ii) Cheating and dishonestly inducing delivery of property (S. 420) — Property — What is', below

See also under 'Ss. 405-409 — CRIMINAL BREACH OF TRUST', above

[10337] — Ss. 415 and 420 — "Property" — Admission card enabling a candidate to sit in examination is "property" for the purposes of S. 415 — *Offence of cheating would be committed by a candidate if he would have fraudulently obtained such an admission card*

An admission card which would have enabled a candidate to appear in examination as such has no pecuniary value, but it has immense value to the candidate for the examination. Without it he cannot secure admission to the examination hall and consequently cannot appear at the Examination. Therefore such a card is "property" for the purposes of S. 415 IPC. *Abhayanand Mishra* v. *State of Bihar*, AIR 1961 SC 1698: (1962) 2 SCR 241: (1961) 2 Cri LJ 822, 824.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 24-4-1961]

Queen v. Appasami, ILR 12 Mad 151; Queen v. Soshi Bhushan, ILR 15 All 210: 1893 All WN 96, approved

Followed in (1977) 3 SCC 7: (1977) SCC (Cri) 417

[10338] — Ss. 415 and 420 — Property — Whether Assessment Order is "property" and/or "valuable property" — Charge can be framed if Income Tax Officer induced to deliver an assessment order for less income tax than due

One income tax consultant, two income tax clerks, and two partners of premier Industries were charged for "dishonestly or fraudulently inducing the Income Tax Authorities and obtaining assessment order for less income tax than due "from the two partners. Question was whether an assessment order is "property" and/or "valuable security" within the meaning of S. 420, IPC.

Held :

The word "property", occurring in S. 420 of the Indian Penal Code, does not necessarily mean that the thing, of which a delivery is dishonestly desired by the person who cheats, must have a money value or a market value in the hand of the person cheated. Even if the thing has no money value in the hand of the person cheated, but becomes a thing of value in the hand of the person who may get possession of it as a result of the cheating practised by him, it would still fall within the connotation of the term "property" in S. 420 of the Indian Penal Code. The communicated order of assessment received by an assessee is, "property", since it is of great importance to an assessee, as containing a computation of his total assessable income and as a determination of his tax liability.

The assessment order is certainly a "document" under S. 29 of the Indian Penal Code. The order of assessment does create a right in the assessee, in the sense that he has a right to pay tax only on the total amount assessed therein and his liability to pay tax is also restricted to that extent. Therefore, an order of assessment is a "valuable security" under S. 420 of the Indian Penal Code. Therefore, if the cheating employed by the accused resulted in inducing the Income Tax Officer to make a wrong assessment order, it would amount to inducing the Income Tax Officer to make a "valuable security". *Ishwarlal Girdharilal Parekh* v. *State of Maharashtra*, AIR 1969 SC 40: (1969) 1 SCR 193: (1968) 70 ITR 95, 98, 99: 1969 Cri LJ 271.

Bench Strength **2**. Coram: *V. Ramaswami* and **C.A. Vaidialingam**, JJ. [Date of decision: 1-5-1968]

Followed in Nrisingha Murari Chakraborty v. State of W.B., (1977) 3 SCC 7: 1977 SCC (Cri) 417

(iii) Deceiving any person — Deception — What is

See also '(iv) Dishonest concealment of facts (S. 415 Expln.)', below

[10339] — S. 415 — 'Deceiving a person' — Held, an essential ingredient of cheating

Cheating can be committed in either of the two ways described in S. 415, IPC. 'Deceiving a person' is common in both the ways of cheating. A person deceived may be fraudulently or dishonestly induced to deliver any property or to consent to the retention of any property by any person. The person deceived may also be intentionally induced to do or to omit to do anything which he would not have done if not deceived and which act of his caused or was likely to cause damage or harm in body, mind, reputation or property. *Kanumukkala Krishnamurthy* v. *State of A.P.*, AIR 1965 SC 333: (1964) 7 SCR 410: (1965) 1 Cri LJ 355, 357.

Bench Strength **3**. Coram: *K. Subba Rao, K.C. Das Gupta* and **Raghubar Dayal**, JJ. [Date of decision: 23-3-1964]

[10340] — S. 415 — Deceiving agent or servant of an authority will amount to deceiving the authority itself

There have been cases in which servants or agents of an authority have been deceived while the loss has been suffered by the authority concerned. In such cases, the person deceiving the servants or agents has been held to have deceived the authority concerned, though no direct question was raised about the deception being made not to the authority but to its servant. *Kanumukkala Krishnamurthy* v. *State of A.P.*, AIR 1965 SC 333: (1964) 7 SCR 410: (1965) 1 Cri LJ 355.

Bench Strength **3**. Coram: *K. Subba Rao*, *K.C. Das Gupta* and **Raghubar Dayal**, JJ. [Date of decision: 23-3-1964]

AIR 1924 Call 18: 27 Cal WN 821: Cri LJ 1313; AIR 1924 Cal 495; 26 Cri LJ 330: AIR 1936 Cal 403: 37 Cri LJ 1156; 6 Pun Rec 1868 (Cri); 4 Cri LJ 355; 12 Mad 151, approved

(iv) Dishonest concealment of facts (S. 415 Expln.)

See also '(iii) Deceiving any person — Deception — What is', above

[10341] — S. 415 — Misrepresentation by College about its affiliation with a university and grant of recognition to it — *Dental College neither affiliated with university concerned nor recognised by Dental Council of India (DCI), stating in its advertisement for admission to BDS course that it was under the above university and DCI — Held, this was a case of total misrepresentation on behalf of the College concerned — It tantamounted to an unfair trade practice — Penal Code, 1860, S. 415* (Para 36). *Buddhist Mission Dental College and Hospital (2)* v. *Bhupesh Khurana*, (2009) 4 SCC 473: (2009) 2 SCC (Cri) 510: (2009) 1 CPJ 25 (SC): (2009) 3 All LJ 664.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 13-2-2009]

[10342] — Ss. 415, 24, 23 and 25 — Cheating — Deception as a necessary ingredient under both parts of S. 415 — When culpable — *Such deception, held, must necessarily produce inducement to part with or deliver property which the complainant would not have parted with or delivered, but for inducement resulting from the deception*

Section 415 can be divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to either: (*a*) deliver property to any person; or (*b*) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The Explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception. (Para 68). *Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 20-10-2010]

Central Railway Co. of Venezuela v. Kisch, 1867 LR 2 HL 99; New Brunswick and Canada Railway Co. v. Muggeridge, (1860) 1 Dr. & Sm 363 at pp. 381-82: 62 ER 418, relied on

[10343] — S. 415 Expln. and Ss. 24 and 23 — Deception — Scope of — Non-disclosure of relevant information — Held, to be treated as misrepresentation leading to deception — *Further held, S. 415 Expln. gives statutory recognition to the judicially evolved principle that misleading statements which withhold vital facts for intentionally inducing a person to do or omit to do something, would amount to deception — Misleading statement causing damage wrongfully to the person deceived, amounts to cheating — A corporate body seeking investment by means of misleading statement may therefore be subjected to prosecution for cheating — Companies Act, 1956, Ss. 56, 58-A, 60-A, 60-B and 61 to 68 — CrPC, 1973, S. 482*

Section 415 can be divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to either: (*a*) deliver property to any person; or (*b*) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The Explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception. (Para 68)

The Explanation appended to Section 415 gives a statutory recognition to the legal principles established through various judicial pronouncements that misleading statements which withhold the vital facts for intentionally inducing a person to do or to omit to do something would amount to deception. Further, in case it is found that misleading statement has wrongfully caused damage to the person deceived it would amount to cheating. (Para 72)

The appellants were entitled to an opportunity to prove the averments made in the complaint. They were entitled to establish that they have been deliberately induced into making huge investments on the basis of representations made by Respondent 1 and its representatives, which representations subsequently turned out to be completely false and fraudulent. The appellants were entitled to an opportunity to establish that Respondent 1 and its representatives were aware of the falsity of the representations at the time when they were made. The appellants have given elaborate details of the positive assertions made by Respondent 1 which were allegedly false to its knowledge. It is also claimed by the appellants that Respondent 1 and its representatives wilfully concealed facts which were material and ought to have been disclosed, but were intentionally withheld so as to deceive the appellant into advancing and expending a sum of Rs 500 crores. (Para 75). *Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 20-10-2010]

Central Railway Co. of Venezuela v. Kisch, 1867 LR 2 HL 99; New Brunswick and Canada Railway Co. v. Muggeridge, (1860) 1 Dr. & Sm 363 at pp. 381-82: 62 ER 418, relied on

(v) Mens rea — If civil offence(s) only — Dishonest intention when must exist

See also '(6)(vi) Cheating and dishonestly inducing delivery of property (S. 420) — Mens rea — If civil offence(s) only — Dishonest intention when must exist', and

'(10)(xi) Quashment', below

[10344] — **Ss. 415, 418 and 420 — Cheating — Pre-requisite for — Fraudulent and dishonest intention, from when to subsist — Distinction from breach of contract** — *Contract for supply of goods — Fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction — From mere failure to keep the promise at a subsequent stage, offence of cheating cannot be made out — Distinction between offence of cheating and mere breach of contract should be kept in mind — Mere use of words cheating in the complaint would not be sufficient — Substance of the complaint has to be seen — Having regard to the substance of the complaint in the instant case, held, it pertains to a civil case of breach of contract and not a criminal case of offence of cheating — Hence Magistrate erred in issuing process — CrPC, 1973, S. 482 — Contract Act, 1872, Ss. 73, 74 and 75*

The respondent Company filed a complaint against the appellant alleging that a memorandum of understanding (MoU) was executed between the accused-appellant and the complainant for supply of steel grip tapes inter alia stipulating that 50% of the payments against monthly quantity would be given in advance and balance 50% on receipt of the goods. The complainant delivered 56,94,120 reels of steel grip tapes valued at Rs 3,38,62,860 to the accused and out of this amount, the accused made only part-payment of Rs 3,05,39,086 leaving balance amount of Rs 33,23,774. It was alleged that after making this payment, the accused did not make further payment despite repeated demands and started giving reasons besides raising disputes in respect of the material purchased six years back being defective. After making the aforesaid averments in the complaint, it was concluded that "that MoU was signed by the accused with mala fide and criminal intention of grabbing money and goods from the complainant's Company and to deceive, cheat and cause wrongful loss to the complainant's Company, but the complainant was not aware of the criminal intention of the accused while execution of above MoU". The complainant had also sent a notice to the accused wherein there was no mention about any deceit or cheating. In a complaint filed by the complainant with the police also except for a vague allegation about cheating, nothing of substance was stated. According to the complainant, on the advice of the police the complaint in question was filed before the Magistrate. The Magistrate issued process against the accused. But the Sessions Court set aside the order of the Magistrate issuing process and the High Court reversed the judgment of the Sessions Court.

Allowing the appeal,

Held :

From mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in

(3)(v) Mens rea — If civil offence(s) only — Dishonest intention when must exist *(contd.)*

mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. (Paras 6 and 8)

In the present case except for mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MoU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. It is clear from the substance of the complaint that present is a simple case of civil disputes between the parties. Requisite averments so as to make out a case of cheating are absolutely absent. The Sessions Court had rightly set aside the order of the Magistrate issuing process to the appellant. (Paras 8 and 10). *Anil Mahajan* v. *Bhor Industries Ltd.*, (2005) 10 SCC 228.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *D.M. Dharmadhikari* and *Tarun Chatterjee*, JJ. [Date of decision: 6-10-2004]

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565, relied on

[10345] — Ss. 415, 418 and 420 — Nature of offence under — Mens rea essential ingredient of offences under Ss. 418 and 420

The respondents approached the appellant for the purpose of securing ethambutol hydrochloride drug in bulk for sale and use in various pharmaceutical drugs and products being manufactured by the respondent Company. The appellant has come out with a definite case that by reason of a promise of maintaining a continuous supply of raw materials to the appellant for the purpose of manufacturing ethambutol hydrochloride and in such a way so as not to cause any interruption or hindrance to the manufacturing activity of the appellant-complainant's factory, the complainant entered into an agreement. On failure to comply with that agreement the appellant filed a complaint alleging to have lost a substantial amount of money to the extent of about rupees one crore and the sufferance of loss has been by reason of specific assurance and representation which turned out to be false. Misrepresentation on the part of the accused-respondent persons to the complainant, had been the major grievance and a definite and specific case had been made out that such a misrepresentation was intentionally effected since the accused persons were in the know of things that in the event the supplies were not effected, as per the agreement, the complainant was likely to suffer a wrongful loss which in the interest of the transaction between the parties, the accused persons were bound to protect. Proceedings were initiated against the respondents under Sections 120-B, 418, 415 and 420 read with Section 34 IPC. Against the said proceedings the respondents moved the High Court under Section 482 CrPC for quashing the complaint. A Single Judge of the High Court taking the view that the complaint did not disclose any offence allowed the petition for quashing the complaint. Allowing the appeal of the complainant,

Held :

While Section 415 is an offence of cheating, Section 418 deals with cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect and Section 420 is cheating and dishonestly inducing delivery of property. In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 418 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact Illustration (*g*) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract and it is this concept which obviously has weighed with the Single Judge. But considering the factual aspect of the matter it must be held that the issue involved in this case is not one in which the criminal trial should have been short-circuited. (Paras 11 and 19). *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*, (2000) 3 SCC 269: 2000 SCC (Cri) 615: AIR 2000 SC 1869: 2000 Cri LJ 1487.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **U.C. Banerjee**, JJ. [Date of decision: 25-2-2000]

Ram Jas v. State of U.P., (1970) 2 SCC 740: 1970 SCC (Cri) 516, relied on

Dr. Sharma's Nursing Home v. Delhi Admn., (1998) 8 SCC 745: 1999 SCC (Cri) 91, distinguished

[10346] — Ss. 415, 418, 420 and 120-B — Quashing of complaint or charge-sheet — Scope of High Court's jurisdiction — *Mere fact that the offence was committed during the course of a commercial transaction by itself not sufficient to quash the complaint — For quashing the complaint Court has to see whether on the fact situation 'civic profile' outweighs the 'criminal outfit' — Commission of offence under Ss. 120-B, 418, 415 and 420 r/w 34 IPC by respondent in the course of a contractual transaction alleged — Held, on facts, in the factual matrix quashing of complaint not warranted — Complaint has to be examined as a whole without going into merits of the allegations made therein — If a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, Court should not quash the complaint — But if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint — Court's approach should, however, be very circumspect, cautious and careful — CrPC, 1973 — S. 482*

The respondents approached the appellant for the purpose of securing ethambutol hydrochloride drug in bulk for sale and use in various pharmaceutical drugs and products being manufactured by the respondent Company. The appellant has come out with a definite case that by reason of a promise of maintaining a continuous supply of raw materials to the appellant for the purpose of manufacturing ethambutol hydrochloride and in such a way so as not to cause any interruption or hindrance to the manufacturing activity of the appellant-complainant's factory, the complainant entered into an agreement. On failure to comply with that agreement the appellant filed a complaint alleging to have lost a substantial amount of money to the extent of about rupees one crore and the sufferance of loss has been by reason of specific assurance and representation which turned out to be false. Misrepresentation on the part of the accused-respondent persons to the complainant, had been the major grievance and a definite and specific case had been made out that such a misrepresentation was intentionally effected since the accused persons were in the know of things that in the event the supplies were not effected, as per the agreement, the complainant was likely to suffer a wrongful loss which in the interest of the transaction between the parties, the accused persons were bound to protect. Proceedings were initiated against the respondents under Sections 120-B, 418, 415 and 420 read with Section 34 IPC. Against the said proceedings the respondents moved the High Court under Section 482 CrPC for quashing the complaint. A Single Judge of the High Court taking the view that the complaint did not disclose any offence allowed the petition for quashing the complaint. Allowing the appeal of the complainant,

Held :

Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial. So the question is: Can it be said that the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused? (Paras 2, 14 and 15)

The factual matrix would be relevant in the matter of assessment of the situation as to whether "civic profile" would outweigh the "criminal outfit". (Para 3)

(3)(v) Mens rea — If civil offence(s) only — Dishonest intention when must exist *(contd.)*

In the matter of exercise of the High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and very great care and caution to quash the complaint in exercise of its inherent jurisdiction. (Para 16)

While Section 415 is an offence of cheating, Section 418 deals with cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect and Section 420 is cheating and dishonestly inducing delivery of property. In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 418 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact Illustration (*g*) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract and it is this concept which obviously has weighed with the Single Judge. But considering the factual aspect of the matter it must be held that the issue involved in this case is not one in which the criminal trial should have been short-circuited. (Paras 11 and 19). *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*, (2000) 3 SCC 269: 2000 SCC (Cri) 615: AIR 2000 SC 1869: 2000 Cri LJ 1487.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **U.C. Banerjee**, JJ. [Date of decision: 25-2-2000]

Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; L.V. Jadhav v. Shankarrao Abasaheb Pawar, (1983) 4 SCC 231: 1983 SCC (Cri) 813; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Nagpur Steel & Alloys (P) Ltd. v. P. Radhakrishna, 1997 SCC (Cri) 1073; Ram Jas v. State of U.P., (1970) 2 SCC 740: 1970 SCC (Cri) 516, relied on

Dr. Sharma's Nursing Home v. Delhi Admn., (1998) 8 SCC 745: 1999 SCC (Cri) 91, distinguished

[10347] — Ss. 415 and 420 — Cheating — Ingredients — Fraudulent or dishonest inducement must be at the inception and not at a later stage

Ingredients of cheating are:

(*i*) deception of a person either by making a false or misleading representation or by other action or omission; and

(*ii*) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. (Para 25)

Sections 415 read with Section 420 IPC indicates that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage. In this case blank cheques were handed over to the accused during the period 2000-2004 for use thereof for business purposes but the dispute between the parties admittedly arose much thereafter i.e. in 2005. Thus no case for proceeding against the respondent under Section 420 of the Penal Code is, therefore, made out. (Paras 26 to 28)

Filling up of the blanks in a cheque by itself would not amount to forgery. Whereas in the complaint petition, allegations have been made that it was Respondents 2 and 3 who had entered into a conspiracy to commit the said offence as indicated hereinbefore, in the counter-affidavit, it has been alleged that the employees of the respondent Company did so. (Para 29)

Although, Section 120-B IPC has been added, there does not exist any averment that Respondents 2 and 3 had entered into any conspiracy with their employees. No case for proceeding with the offence of forgery against the respondents has, thus, also been made out. (Para 30)

However, a case for proceeding against the respondents under Section 406 IPC has been made out. A cheque being a property, the same was entrusted to the respondents. If the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 IPC may be found to have been made out. It may be true that even in a proceeding under Section 138 of the Negotiable Instruments Act, the appellant could raise a defence that the cheques were not meant to be used towards discharge of a lawful liability or a debt, but the same by itself would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed. (Para 31)

The respondents were keeping watch over the matter. As soon as a first information report was lodged, a notice was immediately sent. A quashing application was filed within a few days of the lodging of the first information report. The investigation was not allowed to take place at all. Whereas it would have been the duty of the court to uphold and/or to protect the personal liberty of an accused in a case, but where the first information report prima facie discloses commission of a cognizable offence, the High Court, ordinarily, should not have interfered with investigation thereof by the statutory authority. (Para 32)

Investigation by IO may now be confined to the charge under Section 406 IPC. (Para 33). *Suryalakshmi Cotton Mills Ltd.* v. *Rajvir Industries Ltd.*, (2008) 13 SCC 678: AIR 2008 SC 1683: (2008) 63 AIC 146 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 9-1-2008]

B. Suresh Yadav v. Sharifa Bee, (2007) 13 SCC 107, relied on

[10348] — Ss. 415 and 420 — Cheating — Ingredients of — Intention, held, is the gist of the said offence — *Therefore, to hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise — From mere fact that the promisor could not keep his promise it cannot be presumed that he all along had a culpable intention to break the promise from the beginning* (Paras 41 and 42). *Inder Mohan Goswami* v. *State of Uttaranchal*, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259: AIR 2008 SC 251: (2007) 144 DLT 257: (2007) 59 AIC 30 (SC): (2008) 1 All LJ 40.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 9-10-2007]

[10349] — Ss. 415 and 420 — Ingredients of — If applicable on facts — There cannot be any doubt or dispute whatsoever that an offence of cheating or fraud can be committed even if the parties had entered into a commercial transaction — *But it is equally well settled that the allegations contained in the complaint petition must, prima facie, show inducement of the victim to deliver any property by the accused — The facts do not show that the appellant had the requisite intention — It is not a case where the appellants can be said to have induced the respondent to enter into a transaction so as to deceive them with a view to cause unlawful losses to them and to make unlawful gain for themselves — There was a statutory remedy available against the appellants — Complaint therefore deserves to be quashed* (Paras 10 to 13). *Anil Ritolla* v. *State of Bihar*, (2007) 10 SCC 110: (2007) 59 AIC 211 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, distinguished

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

(2007) 1 Pat LJR 255, reversed

[10350] — S. 415 Ill. (g) — Nature of offence — *Held, if at very initiation of negotiations it was evident that there was no intention to cheat, dispute would be of a civil nature — However, such a conclusion would depend on evidence to be led at time of trial* (Para 17). *S.P. Gupta* v. *Ashutosh Gupta*, (2010) 6 SCC 562.

Bench Strength **2**. Coram: **Altamas Kabir** and *Anil R. Dave*, JJ. [Date of decision: 13-5-2010]

[10351] — Ss. 415 Ill. (g) and 420 — Cheating or civil dispute — Agreement for sale of land — *Earnest money paid to the appellant as part-consideration — Possession of land transferred to the complainants — Complaint laid on the basis that the appellant cheated them of the earnest money as he was not willing to complete the bargain — Held, in the circumstances of the case, liability of the appellant, if any, is of civil nature and not criminal — Entire proceedings quashed and the complainant directed to pay Rs 10,000 to the appellant as compensatory costs — CrPC, 1973, S. 357. Nageshwar Prasad Singh* v. *Narayan Singh*, (1998) 5 SCC 694: 1998 SCC (Cri) 1378: AIR 1999 SC 1480.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and *K.T. Thomas* and *S. Rajendra Babu*, JJ. [Date of decision: 2-4-1998]

[10352] — Ss. 415/420 — Cheating — Whether ingredients of criminal offence made out — *Held, on facts the dispute between the parties was a civil dispute — Criminal prosecution for the alleged offence under Ss. 415/420 amounted to abuse of process of law and hence the proceedings are liable to be quashed*

The parties hereto entered into an agreement for sale in respect of a house, a sale deed was also executed on 30-9-2005 by the appellant herein. Indisputably on or about 29-9-2005, two rooms, allegedly, constructed on the said lands were demolished. A suit was filed in relation thereto. Respondent 1 who was also defendant in the said suit did not allege that she has been cheated by the appellant herein but later on filed a complaint in the court alleging commission of an offence by the appellant purported to be under Section 420 IPC.

(3)(vi) Fraudulently or dishonestly inducing delivery or retention of property by or with consent of deceived person

A petition under Section 482 CrPC for quashing the complaint had been dismissed by the High Court.

The short question which arose for consideration was as to whether a case of cheating within the meaning of Section 415 of the Penal Code had been made out or not.

Answering in negative and allowing the appeal,

Held :

While executing the sale deed, the appellant did not make any false or misleading representation. There had also not been any dishonest act of inducement on his part to do or omit to do anything which he could not have done or omitted to have done if he were not so deceived. Admittedly, the matter is pending before a competent civil court. A decision of a competent court of law is required to be taken in this behalf. Essentially, the dispute between the parties is a civil dispute. (Para 12)

For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. This does not mean that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, it assumes significance. Had the fact as purported to have been represented before the Supreme Court that the appellant got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter might have been different. As the deed of sale was executed on 30-9-2005 and the purported demolition took place on 29-9-2005, it was expected that the complainant/first respondent would come out with her real grievance in the written statement filed by her in the aforementioned suit. She, for reasons best known to her, did not choose to do so. In this view of the matter, in the facts and circumstances obtaining herein, no case has been made out for proceeding with the criminal case. (Paras 13 and 14). *B. Suresh Yadav* v. *Sharifa Bee*, (2007) 13 SCC 107: AIR 2008 SC 210: 2008 Cri LJ 431.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228: (2006) 1 SCC (Cri) 746; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121, relied on

(vi) Fraudulently or dishonestly inducing delivery or retention of property by or with consent of deceived person

See also '(3)(vii) Intentionally inducing deceived person to commit act or omission likely to cause harm or damage to him', and

'(6)(iv) Inducing delivery of property — S. 420 vis-à-vis mere cheating', below

[10353] — Ss. 415 and 24 — Cheating — Instances of — Person who may make complaint against cheating — Sale of property by a person knowing that property did not belong to him — *Held, seller defrauds purchaser — Purchaser is entitled to prosecute seller under S. 415 but a third party cannot do so*

When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is also not the case of the complainant that any of the accused tried to deceive him. Nor did the complainant allege that first appellant pretended to be complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 IPC. (Paras 20 to 23). *Mohd. Ibrahim* v. *State of Bihar*, (2009) 8 SCC 751: (2009) 3 SCC (Cri) 929.

Bench Strength 2. Coram: **R.V. Raveendran** and *R.M. Lodha*, JJ. [Date of decision: 4-9-2009]

[10354] — Ss. 415 and 420 — Cheating — Fraudulent representation — Accused making the complainant believe that he has divine healing powers — Complainant giving him money but not getting the desired result — It is a case of inducement — *Held, it can be presumed that the accused has committed offence of cheating — Such presumption is rebuttable*

The accused claimed to possess occult faculties and attracted a number of devotees. He represented to have divine healing powers through his touches, particularly of chronic diseases. The complainant approached him for healing his 15-year-old daughter who is congenitally a dumb child. The appellant assured the complainant that the little girl would be cured of her impairment through his divine powers. He demanded a sum of Rs 1 lakh as consideration to be paid in instalments. The complainant paid the amount and waited eagerly for improvement of the child but could not get the desired result. The complainant lodged a complaint with the police for cheating. The appellant moved the High Court for quashing the proceedings but failed. Dismissing the appeal by special leave,

Held :

If somebody offers his prayers to God for healing the sick, there cannot normally be any element of fraud. But if he represents to another that he has divine powers and either directly or indirectly makes that other person believe that he has such divine powers, it is inducement referred to in Section 415 IPC. Anybody who responds to such inducement pursuant to it and gives the inducer money or any other article and does not get the desired result is a victim of the fraudulent representation. The court can in such a situation presume that the offence of cheating falling within the ambit of Section 420 IPC has been committed. It is for the accused, in such a situation, to rebut the presumption. (Para 8). *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj* v. *State of A.P.*, (1999) 5 SCC 740: 1999 SCC (Cri) 1047: AIR 1999 SC 2332: 1999 Cri LJ 3661.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 15-7-1999]

[10355] — Ss. 415, 420 and 24 — Cheating — Ingredients of — *Dishonest inducement in required over and above deception — Complainant getting his brother admitted in a nursing home on assurance given by the authorities that air-conditioned rooms were available in the said nursing home — However, room provided to the complainant found to be not air-conditioned though he was charged for such a room — Held, offence of cheating not made out*

In the present case the courts below have rested their findings on deception only and did not go into the question whether the complaint and its accompaniments disclosed the other essential ingredient of the offence under Section 420 IPC, namely, dishonest inducement. "Dishonesty" has been defined in Section 24 IPC to mean deliberate intention to cause wrongful gain or wrongful loss; and when with such intention, deception is practised and delivery of property is induced then the offence under Section 420 IPC can be said to have been committed. Judged in that context, in the instant case there are no materials from which it can be said even prima facie that the appellant "dishonestly induced" the complainant to part with his money. *Dr. Sharma's Nursing Home* v. *Delhi Admn.*, (1998) 8 SCC 745.

Bench Strength 2. Coram: *M.K. Mukherjee* and *G.B. Pattanaik*, JJ. [Date of decision: 14-3-1996]

[10356] — Ss. 415, 420/34, 24 and 25 — Cheating — Ingredients of — A mere representation, which is neither claimed nor alleged to be dishonest or fraudulent would not attract the charge of cheating only because the complainant parts with his money on the basis thereof — *On facts, no dishonest representation made by the appellant — Therefore, his conviction set aside*

According to the complainant A-2, A-3 and the appellant requested him to advance money against the stock-in-trade by business of Calcutta Cafe of which A-3 was represented to be the proprietor. The three accused represented to the complainant that Calcutta Cafe was free from all encumbrances and the money could be advanced against hypothecation. The deed of hypothecation was signed by A-3 and the amount was advanced to him. Subsequently it transpired that the representation made by the accused persons was false because the property in question was an encumbered property and in a suit filed in the Calcutta High Court, joint receiver had been appointed regarding Calcutta Cafe. No charge was framed against A-2 while A-3 died during pendency of the trial. The trial court convicted the appellants for an offence under Sections 420/34 IPC. His appeal before the High Court failed.

Allowing the appeal by special leave

Held :

Although there is some evidence to show that the money was advanced by the complainant to A-3 on a representation made by all the accused, including the appellant, but taking the complainant's case at its best, even if it be assumed that the appellant had made a representation in the manner deposed to by the complainant, there is nothing on the record to show that the appellant had any knowledge about the Calcutta Cafe being an encumbered property or about the appointment of the Joint Receivers by the Calcutta High Court in a suit in respect of that property. There is no evidence to show that the appellant knowingly made any false representation much less dishonestly or fraudulently. The basic ingredients of the offence of cheating are, therefore, missing in the case. The evidence on the record does not connect the appellant with the crime alleged against him at all. The courts below did not properly examine the legal position as adverted to by us. A mere representation, which is neither claimed or alleged to be dishonest or fraudulent would not attract the charge of cheating only because the complainant parts with his money on the basis thereof. In the present case the dishonest representation, both orally and in the deed of hypothecation, was made by A-3, proprietor of the Calcutta Cafe. The conviction and sentence against the appellant as recorded by the trial court and confirmed by the High Court, under the circumstances is unsustainable. *Abdul Fazal Siddiqui* v. *Fatehchand Hirawat*, (1996) 6 SCC 32: 1996 SCC (Cri) 1112.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *K.T. Thomas*, JJ. [Date of decision: 20-8-1996]

(vii) Intentionally inducing deceived person to commit act or omission likely to cause harm or damage to him

See also '(3)(vi) Fraudulently or dishonestly inducing delivery or retention of property by or with consent of deceived person', above, and

'(6)(iv) Inducing delivery of property — S. 420 vis-à-vis mere cheating', below

[10357] — Ss. 415 and 419 — Offence of cheating — Ingredients of — Wrong identification before Oath Commissioner — *Deception practised by accused in wrongly identifying some person — No damage or harm to Oath Commissioner in body, mind, reputation or property — Absence of charge relating to any cheating or attempting to cheat Oath Commissioner*

The ingredients required to constitute offence of cheating are: (1) there should be fraudulent or dishonest inducement of a person by deceiving him; (2)(*a*) the person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property; or (*b*) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (3) in cases covered by (2)(*b*) the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property. The conviction for an offence under S. 419, substantively or with the aid of S. 109, IPC, could only have been justified if the facts proved constituted all the ingredients of the offence of cheating. *Ram Jas* v. *State of U.P.*, (1970) 2 SCC 740: 1970 SCC (Cri) 516: AIR 1974 SC 1811: (1971) 2 SCR 178: 1974 Cri LJ 1261.

Bench Strength **2**. Coram: **V. Bhargava** and *I.D. Dua*, JJ. [Date of decision: 11-9-1970]

[10358] — Ss. 415 and 420 — Cheating — Elements of — Obtaining railway receipt by false representation but no additional liability by Railway incurred — *Charge not established — Railways Act, 1890, S. 73*

The appellants produced a forwarding note to the Stationmaster, got a wagon allotted to despatch 251 bags of chillies and later themselves had them loaded into the wagon and put the rivets on the wagon. A railway Khalasi examined the rivets and sealed the wagon. The wagon was attached on the same day to a goods train and was carried forward outside the station on its way to Calcutta. Later on the seal was found tampered and it was discovered that in the wagon, there were only 197 bags of chaff (Bhusa) and not chillies. The evidence was that the appellants had obtained Rs 5500 from one Murarilal by handing over to him the railway receipt representing that they had booked 251 bags of chillies.

The elements necessary for an offence of cheating under S. 415, IPC were absent inasmuch as it was not made out that the making of the railway receipt was likely to cause damage or harm to the Railway or the Stationmaster.

The false representation made by the appellants in obtaining the railway receipts in the form in which it was issued did not cast any additional liability on the Railway and the issue of the railway receipt, therefore, was not likely to cause any damage or harm to the Railway. No case of cheating is made out. *Hari Sao* v. *State of Bihar*, (1969) 3 SCC 107: 1970 SCC (Cri) 10: AIR 1970 SC 843: 1970 Cri LJ 849.

Bench Strength **3**. Coram: *S.M. Sikri*, **G.K. Mitter** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 15-10-1969]

[10359] — Ss. 417 and 471/465 — Ingredients of offence under — *Letters inviting some artistes at a cultural show allegedly forged on the letterhead of a Minister — Co-accused who allegedly forged the letters acquitted and his acquittal becoming final — Allegation against the appellant that he delivered those letters to the recipients — Held, the act of the appellant cannot be said to have been done "dishonestly" or "fraudulently" — Hence offence under Ss. 471/465 not made out — There being absence of harm to any person in body, mind or reputation, charge under Section 417 also misplaced*

By the delivery of forged letters, there is neither any wrongful gain to anyone nor any wrongful loss to another. The act of the appellant could not thus be termed to have been done dishonestly. Likewise the appellant cannot be said to have any intention to defraud because his action resulted in no disadvantage to anyone which but for the deception the person defrauded would have acted otherwise. The basic ingredients of the act done "dishonestly" or "fraudulently" being missing, the charge under Section 471 read with Section 465 IPC was totally misplaced.

The High Court perhaps thought that the act or omission of the appellant was not covered in the first part of offence of "cheating" as defined in Section 415 IPC. If so, the act or omission of the accused could not in any event fall in the later part because it cannot be said that the act or omission of the appellant caused or was likely to cause harm to any person in body, mind or reputation. Thus the conviction of the appellant for offence under Section 417 was also totally out of place and the verdict on that score deserves reversal. *Jibrial Diwan* v. *State of Maharashtra*, (1997) 6 SCC 499: 1997 SCC (Cri) 944: AIR 1997 SC 3424: 1997 Cri LJ 4070.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Venkataswami*, JJ. [Date of decision: 24-7-1997]

(4) Cheating by personation (Ss. 416 & 419)

[10360] — Ss. 419, 120-A & 120-B — Charge clearly that of conspiracy to cheat by impersonation, though only conspiracy to cheat mentioned — *Accused could not have been misled about charge. Yash Pal Mittal* v. *State of Punjab*, (1977) 4 SCC 540: 1978 SCC (Cri) 5: AIR 1977 SC 2433: 1978 Cri LJ 189.

Bench Strength **3**. Coram: **P.K. Goswami**, *N.L. Untwalia* and *D.A. Desai*, JJ. [Date of decision: 3-11-1977]

[10361] — Ss. 419 and 415 — Cheating by personation — *Accused applying for appointment to posts notified by Madras Public Service Commission — Making false representations in his application as to his name, place of birth and father's name — He also falsely representing that he held degree of M.B.B.S. — Accused appointed by Government on recommendations of Public Service Commission and drew his salary for many years — Held, accused committed offence of cheating by personation — Offence of cheating as defined in latter part of S. 415 not made out*

The appellant who was at the time serving as a Civil Assistant Surgeon in the Madras Medical Service on a temporary basis, applied for the permanent appointment to the posts notified by the Public Service Commission. In his application he made false representation as to his name, place of birth and father's name. He also falsely represented that he held the degree of M.B.B.S. The appellant was tried and convicted for the offence of cheating by personation punishable under S. 419, IPC.

Held, there is nothing on the record to show that the Service Commission could have ordinarily detected the deception or that the appointment of the applicant to the post in the Medical Service was the appointment of a person who proved to be inefficient. On the contrary, the evidence on the record shows that for about 10 years between his appointment and the institution of this case, he served efficiently and obtained good reports from the Departmental Superiors. The appellant has not committed the offence of "cheating" as defined in the latter part of S. 415, IPC even though he had deceived the Service Commission by representing himself to be a duly qualified candidate, and thus induced it to select him for the post.

The appellant's misrepresentation to the Service Commission continued and persisted till the final stage of the Government passing an order of appointment and that therefore the Government itself was deceived by the misrepresentation he had made in his application presented to the Service Commission.

The fact that the Service Commission is an independent statutory authority has no relevant bearing on this question. It is a statutory adviser to Government in the matter of appointment to the Services. Deception of such an adviser is deception of the Government which is expected to pay heed to its advice and act accordingly.

The Government appointed the appellant to a post in its Medical Service on being induced by deception that he was fully qualified for the appointment. In consequence of the appointment, Government had to pay him the salaries which fell due. It is clear therefore that the appellant, by deceiving the Government dishonestly induced it to deliver property to him and thus committed the offence of cheating under S. 415 IPC. The offence really committed by him was "cheating" by personation, punishable under S. 419, IPC. The conviction of the appellant for this offence is therefore correct. *Kanumukkala Krishnamurthy* v. *State of A.P.*, AIR 1965 SC 333: (1964) 7 SCR 410: (1965) 1 Cri LJ 355.

Bench Strength **3**. Coram: *K. Subba Rao*, *K.C. Das Gupta* and **Raghubar Dayal**, JJ. [Date of decision: 23-3-1964]

[10362] — Ss. 419 and 420 — Cheating by false impersonation — Accused obtaining loan of Rs 25,000 from the complainant and depositing registration certificates of a motor-cycle and a

lorry as security — *Agreement providing that if the accused failed to repay the loan the complainant could take forceful possession of the vehicles and as an alternative arrangement land also mentioned — Lorry belonging to the brother of the accused — Agreement not showing that the accused in any manner asserted that the lorry belonged to him — Held, dispute is of a civil nature — Ingredients of Ss. 419 and 420 not made out. George Zacharia* v. *T.K. Varghese*, 1995 Supp (1) SCC 267: 1995 SCC (Cri) 374.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 25-10-1994]

[10363] — Ss. 419 and 420 — Release of offender on probation of good conduct — Considerations for — Nature of the offence and character of the offender — Character — Meaning of — *Accused managing to get entry into legal profession by representing that he was a qualified legal practitioner having enrolled himself with the State Bar Council — Accused practising law for a period of eight years and also holding post of Secretary of Bar Association — Held, in the circumstances of the case, the accused must be dealt with deterrently and the courts below not justified in giving him benefit of S. 4 — Fact that the accused expressed repentance over his conduct or that later he obtained a law degree and got himself enrolled as an advocate is of no consequence — Accused awarded six months' RI under each count (Ss. 419 and 420 IPC) and a fine of Rs 5000 each (total Rs 10,000) to be added to fund of the Legal Service Board — CrPC, 1973, Ss. 360 and 361 — Probation of Offenders Act, 1958 — S. 4*

The respondent approached the Nilgiris Bar Association in the year 1978 for admitting him as a member therein by representing that he was a qualified legal practitioner having enrolled himself with the State Bar Council. Without suspecting the bona fides of the application he was admitted to the membership of the Bar Association. He started his practice at the new station and built up a good clientele and involved himself in all the activities of the Association. He contested for the post of Secretary and won it. In this way, he continued till 1985. But by then some members of the Bar who developed suspicion of his credentials made secret inquiries and discovered that he was imposturing as an advocate and his credentials were bogus. A complaint was lodged with the police who, after investigation, charge-sheeted the accused for offences under Sections 419 and 420 IPC. He pleaded guilty and prayed for mercy. The trial court released him under Section 4 of the Probation of Offenders Act. The High Court declined to interfere but made an endeavour to console the Bar by directing the delinquent person to donate a sum of Rs 15,000 to the Association for buying books to their library. Allowing the appeal by special leave filed by the Bar Council

Held :

Before the relief envisaged in Section 4(1) of the Probation of Offenders Act is granted court must take into account the circumstances of the case, among which "the nature of the offence and the character of the offender" must have overriding considerations. After bestowing judicial consideration on those factors, the court must form an opinion as to whether it would be appropriate in that case to release the particular accused therein as envisaged in the sub-section. The benefits mentioned in Sections 3 and 4 are subject to the limitations laid down in those provisions and the word 'may' in Section 4 of the Act is not to be understood as 'must.'

When considering the nature of the offence the court must have a realistic view of the gravity of the offence, the impact which the offence could have had on the victims and whether considerations of deterrence can be overlooked etc. No fixed yardstick can be laid down to measure the nature of the offence for affording or denying the reliefs envisaged in Section 4 of the Act. However, as the court is enjoined to take into consideration the character of the offender it is well to remember that character is not the abstract opinion in which the offender is held by others. The word "character" is not defined in the Act. Hence, it must be given the ordinary meaning.

Character of the offender in this case reflects in the modality in which he was inveigling in a noble profession duping everybody concerned. In such a view of the matter the two courts could not have formed an opinion in favour of the character of the respondent. It is apposite to observe here that the learned Single Judge did not mention anything about the character of the respondent qua the accusations found against him.

While adverting to the nature of offence the court must bear in mind the necessity to weed out impostors in the professions which require special learning and training, particularly at a time when such impostors are proliferating in the society. Any leniency shown to such wiles would certainly tend to sprout up weeds at menacing scales. The case of the respondent is not one of single lapse or even multiple delinquencies confined to a few days. The long period of 8 years during which the mountebank had successfully indulged in interloping as a qualified and learned counsel would have considerably eroded public confidence in the probity of the legal profession particularly in that area and besmirched the reputation of that Bar as the public might be looking upon every other member of the profession with suspectful eyes. The trial Magistrate and the learned Single Judge, who found a repenting mind in the respondent, have failed to notice that repentance had dawned on him, even if that also was not a pretension, only when he reached a cul-de-sac. When he was masquerading himself everyday in sartorial costumes prescribed only for accredited members of the legal profession it did not occur to him even once during the long period of eight years to think of repentance. On the contrary, he was flourishing at large and had even become the Secretary of the Bar Association. If the vigilant Bar had not discovered the trickery, perhaps he would still have persisted in his art of cheating. Therefore, the crimes committed by him should have been dealt with deterrently and the ameliorative reliefs envisaged in Section 4 of the Act should have been kept at bay. *Nilgiris Bar Assn.* v. *T.K. Mahalingam*, (1998) 1 SCC 550: 1998 SCC (Cri) 450: AIR 1998 SC 398: 1998 Cri LJ 398.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 8-12-1997]

Ramji Missar v. State of Bihar, AIR 1963 SC 1088: (1963) 2 Cri LJ 173; Rattan Lal v. State of Punjab, AIR 1965 SC 444: (1964) 7 SCR 676; Ishar Das v. State of Punjab, (1973) 2 SCC 65: 1973 SCC (Cri) 708; Ram Parkash v. State of H.P., (1972) 4 SCC 46: 1973 SCC (Cri) 119, relied on

[10364] — Ss. 419, 420 and 120-B — A-3 alleged to have obtained fake passport by submitting false documents with help of A-4 to A-9 — Involvement of A-3 at both stages i.e. pre-passport application stage and post-passport application stage established — *Held, it was for her benefit that entire conspiracy was hatched involving more than one individual — Hence, her conviction sustained — However, considering that she had undergone more than 2½ years of imprisonment, sentence reduced to period already undergone — Passports Act, 1967, Ss. 12 and 3* (Paras 51 and 54)

A-3 was alleged to have obtained a fake passport by submitting false documents with the help of A-4 to A-9, which was used by her to travel to Lisbon, Portugal. She had to face the prosecution and suffer conviction and sentence in Portugal.

The trial court found her guilty of the offences punishable under Sections 120-B, 419 and 420 IPC, A-5 was found guilty of the offences under Section 120-B, Section 419 read with Section 109, Section 420 read with Section 109, Section 468 IPC and Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act, A-7 guilty of the offence under Section 468 IPC, while A-8 was held guilty of the offences under Sections 120-B, 420, Section 419 read with Section 109 IPC, Section 420 read with Section 109 IPC and under Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act. In appeal filed thereagainst, the High Court while confirming conviction of A-3, reduced the sentence of RI on all counts while maintaining the fine imposed. The conviction of A-5 and A-8 was also upheld but sentence imposed was reduced. As far as A-7 is concerned his conviction was altered from Section 468 IPC to Section 465 IPC and sentence of RI for 6 months and fine of Rs 500 with default stipulation was imposed. Hence, instant appeals by the appellant-accused. *Monica Bedi* v. *State of A.P.*, (2011) 1 SCC 284.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-11-2010]

[10365] — Ss. 419, 420, 465, 467 and 473 — Impersonation as a CA, etc. — Expression "without prejudice to any other proceedings" used in sub-section (2) of Ss. 24-A, 25 and 26 CA Act — Significance — Prosecution under IPC — Maintainability — *Where a person is alleged to have committed offences under Ss. 24, 24-A and 26 CA Act as also under IPC but in absence of complaint under S. 28 CA Act before Magistrate's Court, no cognizance of offences punishable under Ss. 24, 24-A and 26 CA Act could be taken, held, prosecution under IPC can still be commenced against him — Prosecution under IPC cannot be disallowed on ground that 1949 Act is a special statute vis-à-vis IPC — Chartered Accountants Act, 1949, Ss. 24, 24-A, 25, 26 and 28*

The respondent, who passed the examination of Chartered Accountant but is not a member of the appellant Institute, is alleged to have represented himself before the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act on the basis of power of attorney or as legal representative and submitted documents such as audit reports and certificates required to be issued by the Chartered Accountants by preparing forged seals. He is also said to have impersonated himself as Chartered Accountant and prepared audit reports for monetary consideration. Person authorised by the appellant Institute submitted a complaint in this regard in police station alleging commission of offences punishable under Section 24 of the Chartered Accountants Act and Sections 419, 420, 468, 472 and 473 IPC. After conducting investigation the police filed challan in the Court of CJM who passed an order for framing charges against the respondent under Sections 419, 468, 471 and 472 IPC. The respondent challenged the order by filing revision under Section 397 CrPC. The Additional Sessions Judge remitted the case to the trial court with the direction to decide whether there were sufficient grounds for framing charges under Sections 419, 420, 465, 467 and 473 IPC read with Sections 24 and 26 of the Chartered Accountants Act. After remand, the trial court held that there was no basis for framing any charge against the respondent under IPC and that cognizance of offence under Sections 24 and 26 of the Act cannot be taken because no complaint had been filed by or under the order of the Council before the Magistrate. The appellant questioned the orders of the Additional Sessions Judge and the trial court by filing revisions. The High Court dismissed both the revisions. It held that even though prima facie case was made out against the respondent under Sections 24, 24-A and 26 of the Act, the Magistrate could not have taken cognizance because no complaint was filed under Section 28 and the report submitted by the police could not be made basis for punishing him on the allegation of contravention of any of those provisions. The court also referred to Sections 2(*d*), 4, 5 and Section 195(1)(*b*)(*ii*) CrPC and held that in the absence of a complaint filed by the court concerned, the Magistrate was not competent to frame charges against the respondent and that in view of the special mechanism contained in the Act for prosecution of a person violating Sections 24, 24-A and 26 of the Act, he cannot be prosecuted under IPC.

The question which arises for consideration in the present appeals is whether Sections 24, 24-A and 26 of the Chartered Accountants Act operate as a bar against prosecution of a person who is charged with allegations which constitute an offence or offences under other laws including the Penal Code.

Allowing the appeals,

Held :

The prohibition contained in Section 28 against prosecution of a person except on a complaint made by or under the order of the Council or of the Central Government is attracted only when such person is sought to be prosecuted for contravention of the provisions contained in Section 24 or sub-section (1) of Sections 24-A, 25 or 26 and not for any act or omission which constitutes an offence under IPC. The object underlying the prohibition contained in Section 28 is to protect the persons engaged in profession of Chartered Accountants against false and untenable complaints from dissatisfied litigants and others. However, there is nothing in the language of the provisions contained in Chapter VII from which it can be inferred that Parliament wanted to confer immunity upon the members and non-members from prosecution and punishment if the action of such member or non-member amounts to an offence under IPC or any other law. (Paras 18 and 21)

The use of expression "without prejudice to any other proceedings which may be taken against him" in sub-section (2) of Sections 24-A and 26 and somewhat similar expression in sub-section (2) of Section 25 show that contravention of the provisions contained in sub-section (1) of those sections can lead to filing of complaint under Section 28 of the Act and if the particular act also amounts to an offence under IPC or any other law, then a complaint can also be filed under Section 200 CrPC or a first information report lodged with the police under Section 156 CrPC. The said expression cannot be given a restricted meaning in the context of professional and other misconducts which may be committed by a member of the Institute and for which he may be punished under Section 21-B(3) because the violation of Sections 24 to 26 can be committed by a person who may or may not be a Chartered Accountant as defined in Section 2(*b*). (Para 19)

In other words, if the particular act of a member of the Institute or a non-member or a company results in contravention of the provisions contained in Section 24 or sub-section (1) of Sections 24-A, 25 or 26 and such act also amounts to criminal misconduct which is defined as an offence under IPC, then a complaint can be filed by or under the order of the Council or of the Central Government under Section 28, which may ultimately result in imposition of the punishment prescribed under Section 24 or sub-section (2) of Sections 24-A, 25 or 26 and such member or non-member or company can also be prosecuted for any identified offence under IPC. (Para 20)

Held :

The provisions contained in Chapter VII of the Act neither define cheating by personation or forgery or counterfeiting of seal, etc. nor provide for punishment for such offences. If it is held that a person acting in violation of Section 24 or contravening sub-section (1) of Sections 24-A and 26 of the Act can be punished only under the Act even though his act also amounts to one or more offence(s) defined under IPC and that too on a complaint made in accordance with Section 28, then the provisions of Chapter VII will become discriminatory and may have to be struck down on the ground of violation of Article 14. (Para 23)

Such an unintended consequence can be and deserves to be avoided in interpreting Sections 24-A, 25 and 26 keeping in view the settled law that if there are two possible constructions of a statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to the attack of unconstitutionality should be avoided in preference to the other which makes it rational and immune from the charge of unconstitutionality. That apart, the court cannot interpret the provisions of the Act in a manner which will deprive the victim of his right to prosecute the wrongdoer for the offences defined in Sections 416, 463, 464, 468 and 471 by filing the first information report or complaint under the relevant provisions of CrPC. (Para 24)

The respondent could have been simultaneously prosecuted for contravention of Sections 24, 24-A and 26 of the Act and for the offences defined under IPC but in view of the bar contained in Article 20(2) of the Constitution read with Section 26 of the General Clauses Act, 1897 and Section 300 CrPC, he could not have been punished twice for the same offence. (Para 25)

The argument that the Act is a special legislation vis-à-vis IPC and a person who is said to have contravened the provisions of sub-section (1) of Sections 24, 24-A, 25 and 26 cannot be prosecuted for an offence defined under IPC, which found favour with the High Court does not commend acceptance. (Para 36)

The impugned order is set aside and the matter is remitted to the trial court for considering whether the allegations contained in the complaint constitute any offence under IPC. If the trial court comes to the conclusion that the allegations do constitute one or more offence(s), then it shall proceed against the respondent in accordance with law. However, it is made clear that in the absence of a complaint having been filed under Section 28, no charges be framed against the respondent for the alleged contravention of Sections 24, 24-A or 26 of the 1949 Act. (Para 46). *Institute of Chartered Accountants of India* v. *Vimal Kumar Surana*, (2011) 1 SCC 534.

Bench Strength **2**. Coram: **G.S. Singhvi** and *A.K. Ganguly*, JJ. [Date of decision: 1-12-2010]

Maqbool Hussain v. State of Bombay, AIR 1953 SC 325: 1953 SCR 730: 1953 Cri LJ 1432; T.S. Baliah v. ITO, AIR 1969 SC 701: (1969) 3 SCR 65; State of Bombay v. S.L. Apte, AIR 1961 SC 578: (1961) 3 SCR 107: (1961) 1 Cri LJ 725; Collector of Customs v. Vasantraj Bhagwanji Bhatia, (1988) 3 SCC 467: 1988 SCC (Cri) 679; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27; State of Rajasthan v. Hat Singh, (2003) 2 SCC 152: 2003 SCC (Cri) 451, relied on

Halsbury's Laws of England, Hailsham Edn., Vol. 9, pp. 152-53, para 212, cited

Jeewan Kumar Raut v. CBI, (2009) 7 SCC 526: (2009) 3 SCC (Cri) 475; Jamiruddin Ansari v. CBI, (2009) 6 SCC 316: (2009) 2 SCC (Cri) 1033, distinguished

[10366] — Ss. 419, 420, 465, 468, 469, 471, 472, 474 r/w S. 34 — Quashing of criminal proceedings — Compromise in dispute of purely personal nature arising out commercial transactions not involving any public consequences — *FIR registered alleging offences under Ss. 419, 420, 465, 468, 469, 471, 472, 474 r/w S. 34 IPC — During pendency of proceedings in Supreme Court, compromise entered into between the parties — In terms of the compromise, dispute purely of personal nature arising out of commercial transactions, settled with the stipulation that proceedings pending in court may be withdrawn or compromised or quashed — Dispute being purely personal and no public policy being involved in the transactions, held, to continue with the proceedings would be a futile exercise — Hence FIR quashed — CrPC, 1973, Ss. 482 and 320. Jagdish Chanana* v. *State of Haryana*, (2008) 15 SCC 704: (2009) 3 SCC (Cri) 1157: AIR 2008 SC 1968: (2008) 65 AIC 111 (SC): 2008 Cri LJ 2237.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *H.S. Bedi*, JJ. [Date of decision: 3-4-2008]

[10367] — Ss. 419, 420, 467 and 468 — Scope and applicability of S. 28, Societies Registration Act — *High Court quashing the charge-sheet submitted under various provisions of IPC by applying S. 28 of the Act, observing that some other allegations prima facie made out an offence under S. 4 of the Act and hence, since provisions of S. 28 were breached, the proceedings were unsustainable — Held, S. 28 provides procedure for trial of offences punishable under the 1860 Act itself and not for offences punishable under the Penal Code — Hence, impugned order set aside and matter remanded to trial court for decision afresh — CrPC, 1973, S. 482 — Societies Registration Act, 1860 — Ss. 28, 4 and 27* (Paras 3, 5 and 6). *Sarvesh Kumar Singh* v. *Jai Govind Mishra*, (2006) 9 SCC 206: (2006) 2 SCC (Cri) 618.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 21-11-2005]

[10368] — Ss. 419 & 420 r/w Ss. 109, 120-B & 468 and S. 13(1)(d) r/w S. 13(2), PC Act, 1988 — Conviction — Sustainability — *A-8, Postman, Head Post-Office alleged to have collected two speed post articles containing fake passports, which were actually entrusted to PW 11 for delivery, falsely* *representing that he knew the addressees and would personally deliver the same — Evidence establishing that A-8 was aware of contents of the articles — Thus, his participation in conspiracy in securing fake passports clearly proved — Hence, his conviction sustained — Passports Act, 1967, Ss. 12 and 3 — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2) — Conviction confirmed* (Para 48). *Monica Bedi* v. *State of A.P.*, (2011) 1 SCC 284.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-11-2010]

[10369] — Ss. 419 & 420 r/w Ss. 109, 120-B & 468 and S. 13(1)(d) r/w S. 13(2), PC Act, 1988 — Conviction — Sustainability — *Evidence establishing that A-5, Head Constable submitted false inquiry report, knowing it to be false, certifying passport application particulars of A-3 — Hence, his conviction for charged offences upheld — Passports Act, 1967, Ss. 12 and 3 — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2) — Conviction confirmed* (Paras 49 and 50). *Monica Bedi* v. *State of A.P.*, (2011) 1 SCC 284.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-11-2010]

(5) Cheating person whose interest offender is bound by law or legal contract to protect (S. 418)

[10370] — S. 418 — Offence under — Bar of limitation — Three-year limitation period — Filing of complaint after expiry of — *Alleged action taking place in 1995 — Filing of complaint on 9-8-2002 — No explanation given by complainant regarding his long silence/inaction — Magistrate taking cognizance without even making any reference to either S. 468 or S. 473 which provides for extension of period of limitation if the Magistrate is satisfied that the delay has been properly explained or that it is necessary to do so in the interest of justice — Held, High Court erred in holding that the complaint was not hit by limitation — CrPC, 1973 — Ss. 468(2)(c) and 473* (Para 14). *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*, (2005) 1 SCC 122: 2005 SCC (Cri) 283: AIR 2005 SC 9: 2005 Cri LJ 92.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 1-11-2004]

[10371] — Ss. 418, 409, 166 r/w S. 114 — Quashment — When warranted — Compromise arrived at between parties — *Complainant Respondent 1 filing complaint in his capacity of Chief Managing Trustee alleging that the accused had committed a breach of contractual obligation to construct a multi-purpose community hall at their own cost on a part of land owned and possessed by the Trust, in consideration of which they were to get all rights of development of the remaining land; that instead they sold the construction, earned crores of rupees and ultimately constructed in place and instead of the community hall, 10 rooms which did not fulfil the requirements of the agreement and specifications of the community hall; that from the very beginning their intention was to cheat the Trust and ultimately they succeeded in doing so — Magistrate ordering enquiry and also issuing process against accused — Said order challenged by accused before Addl. Sessions Judge, which was rejected — Specific stand before Sessions Judge and the High Court by the petitioners was that a compromise had been effected and, therefore, the proceedings were not to be continued — High Court by impugned judgment dismissing their petition — However, a connected civil suit* Ravi Constructions Co., *(2006) 10 SCC 669 was held to be not maintainable in view of the compromise arrived at by the Trust and the accused — In view of the same, held, continuance of instant proceedings would amount to sheer abuse of process of law, and hence quashed — CrPC, 1973 — Ss. 482 and 202* (Paras 2, 3, 6 and 7). *Nalini Shankaran* v. *Neelkanth Mahadeo Kamble*, (2007) 12 SCC 90: (2008) 2 SCC (Cri) 228.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 27-2-2007]

Ravi Constructions Co. v. Somvanshi Arya Kshatriya Samaj, (2006) 10 SCC 669, considered

[10372] — Ss. 418, 420, 468, 471 & 120-B — Prevention of Corruption Act, 1947 — S. 5(1)(d) — *Mere disregard of relevant provisions of General Financial Rules as well as ordinary norms of procedural behaviour of Government officials and contractors, in absence of a showing beyond reasonable doubt about the guilt, may raise strong suspicion against the accused but would not constitute offences under — General Financial Rules, Rr. 133 & 141. Abdulla Mohd. Pagarkar* v. *State*, (1980) 3 SCC 110: 1980 SCC (Cri) 546: AIR 1980 SC 499: 1980 Cri LJ 220: (1980) 1 SCR 604.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **A.D. Koshal**, JJ. [Date of decision: 11-9-1979]

[10373] — Ss. 418, 471 and 477-A — Applicability of S. 195(1)(c) CrPC, 1898 — Offence to be committed by party to a proceeding after he becomes such party — *Material document neither* *produced nor given in evidence in the proceeding — S. 195(1)(c) CrPC inapplicable — On facts, trial under Ss. 418, 471 and 477-A, IPC could be proceeded with before the High Court under its original criminal jurisdiction — Companies Act, 1956, Ss. 397 and 398 — CrPC, 1898 — S. 195(1)(c). Legal Remembrancer of Govt. of W.B.* v. *Haridas Mundra*, (1976) 1 SCC 555: 1976 SCC (Cri) 67: AIR 1976 SC 2225: (1976) 2 SCR 933: 1976 Cri LJ 1732.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *P.K. Goswami* and *N.L. Untwalia*, JJ. [Date of decision: 9-12-1975]

(6) Cheating and dishonestly inducing delivery of property (S. 420)

Synopsis

(i) Broadly **973**
(ii) Property — What is **976**
(iii) Cheating and dishonestly inducing — Proof of dishonest intention **976**
(iv) Inducing delivery of property — S. 420 vis-à-vis mere cheating **978**
(v) Inducing making of, alteration or destruction of valuable security or signed or sealed thing convertible into valuable security **980**
(vi) Mens rea — If civil offence(s) only — Dishonest intention when must exist **980**

(i) Broadly

See also '(3)(i) Ingredients of cheating — Broadly', above

[10374] — Ss. 415 and 420 — Ingredients of cheating — Held on facts, prima facie offence under S. 420 made out

Per Ranganath Misra, J. (Bhagwati, C.J. concurring)

(*i*) there should be fraudulent or dishonest inducement of a person by deceiving him;

(*ii*) (*a*) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(*b*) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

(*iii*) in cases covered by the second part of (*ii*), the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In the present case the prosecution's allegations were twofold: (*i*) though the Indira Gandhi Pratibha Pratishthan was not a State Government Trust, publicity was given by the respondent himself and through his agents as also through news media owned by the State Government and the public press to the fact that IGPP was a government trust; and (*ii*) though Mrs Gandhi had never agreed to the trust being named after her, the respondent associated her name for the purpose of creating an impression in the mind of the people at large that the then Prime Minister, Mrs Indira Gandhi had associated herself with the respondent's trust. The evidence, oral and documentary, taken together justified the framing of a charge for offence under S. 420 on the basis of these allegations. However, the position is a presumptive one open to rebuttal by the respondent. *R.S. Nayak* v. *A.R. Antulay*, (1986) 2 SCC 716: 1986 SCC (Cri) 256: AIR 1986 SC 2045: 1986 Cri LJ 1922.

Bench Strength **2**. Coram: **P.N. Bhagwati, C.J.**[1] and *Ranganath Misra*[2], J. [Date of decision: 17-4-1986]

[10375] — S. 420 — Cheating — Ingredients — Stated — *In the instant case, held, those ingredients were absent* (Paras 16 and 17). *V.R. Dalal* v. *Yougendra Naranji Thakkar*, (2008) 15 SCC 625: (2009) 3 SCC (Cri) 1141: AIR 2008 SC 2793: (2008) 66 AIC 113 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 16-5-2008]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., (2008) 13 SCC 678, relied on

[10376] — S. 420 — Cheating and dishonestly inducing delivery of property — Essential ingredients for, restated — *Making of a false representation, held, is one of the ingredients — Not necessary that a false pretence should be made in express words — It may be inferred from all the circumstances including the conduct of the accused in obtaining the property*

The essential ingredients to attract Section 420 are: (*i*) cheating; (*ii*) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and (*iii*) the mens rea of the accused at the time of making the inducement. The making of a false representation is one of the ingredients for the offence of cheating under Section 420. It is not

(6)(i) Broadly *(contd.)*

necessary that a false pretence should be made in express words by the accused. It may be inferred from all the circumstances including the conduct of the accused in obtaining the property. (Para 8). *Devender Kumar Singla* v. *Baldev Krishan Singla*, (2005) 9 SCC 15: 2005 SCC (Cri) 1185: AIR 2004 SC 3084: 2004 Cri LJ 1778.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-2-2004]

Bashirbhai Mohamedbhai v. State of Bombay, AIR 1960 SC 979: 1960 Cri LJ 1383; Shivanarayan Kabra v. State of Madras, AIR 1967 SC 986: 1967 Cri LJ 946, relied on

[10377] — S. 420 — Ingredients of

When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by wilful misrepresentation. It has been informed that the respondents, though committed default in paying some instalments, have paid substantial amount towards the consideration. Having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellant had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial proceedings. Therefore, the Single Judge of the High Court was perfectly justified in quashing the proceedings. (Paras 11 and 12). *Alpic Finance Ltd.* v. *P. Sadasivan*, (2001) 3 SCC 513: 2001 SCC (Cri) 565: AIR 2001 SC 1226: 2001 Cri LJ 1247.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **K.G. Balakrishnan**, JJ. [Date of decision: 16-2-2001]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180, relied on

[10378] — S. 420 — Penalty greater than existing — What is — Provision for unlimited fine under S. 420 and limited fine fixed under Ordinance of 29 of 1943 — *Constitution of India, Art. 20(1)*

Under Art. 20 of the Constitution all that has to be considered is whether the ex-post facto law imposes penalty greater than that which might be inflicted under the law in force at the time of the commission of the offence.

The fine which could have been imposed upon him under S. 420 was unlimited. A law which provides for a minimum sentence of fine on conviction cannot be read as one which imposes a greater penalty than that which might have been inflicted under the law at the time of the commission of the offence where for such an offence there was no limit as to the extent of fine which might be imposed.

Hence it cannot be said that S. 10 of the Ordinance imposed any such penalty and therefore was in contravention of the provisions of Art. 20. *K. Satwant Singh* v. *State of Punjab*, AIR 1960 SC 266, 276, 27: (1960) 2 SCR 89, 113: 1960 Cri LJ 410.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.*[1] and **Syed Jafer Imam**[1], **J.L. Kapur**[1], *K.N. Wanchoo*[1] and *K.C. Das Gupta*[1], JJ. [Date of decision: 28-10-1959]

[10379] — Ss. 420 and 415 — Cheating — Consigner of goods drawing a hundi for the price of consignment supporting it with forged or

inflated railway receipt — Discounting is unlawful and fraudulent — *Offence under S. 420 is proved where act is fraudulent and intention to cause injury is proved even though wrongful loss to the person cheated or wrongful gain to the accused is not proved*

Where a consigner of goods draws a hundi for the price of the consignment on some firm and supports that hundi with the railway receipt obtained by him in respect of the consignment, the party in fact pledges the consignment to the bank discounting the hundi and, therefore, in such a transaction the railway receipt cannot be regarded as anything else than a security for that transaction. If that security turns out to be worthless or practically worthless because the value of the consignment is only a fraction of what it was represented to be, the discounting of the hundi by the party drawing it must necessarily be regarded as unlawful. It would thus follow that the firm in question made a gain by obtaining credits and that these credits were obtained by them by resorting to unlawful means.

Where no pecuniary question arises the element of dishonesty need not be established and it would be sufficient to establish that the act was fraudulent and, therefore, it may be, as the learned Judge has held, that where an act is fraudulent the intention to cause injury to the person defrauded must be established. But where the allegation is that a person has dishonestly induced another to part with property something different has to be considered and that is whether he has thereby caused a wrongful loss to the person who parted with property or has made a wrongful gain to himself. There are the two facets of the definition of dishonesty and it is enough to establish the existence of one of them. The law does not require that both should be established.

Accused booked small consignment by railway, executed forwarding notes and obtained railway receipt in respect of the consignment. These consignments foils were tampered with by altering and thereby inflating quantity and freight charges. These forged railway receipts were then endorsed in favour of various firms and large amounts commensurate with large quantities of goods specified in forged receipts were drawn from various bankers and on the security of these railway receipts drew demand drafts or hundies in favour of the various bankers as payee on a firm at Calcutta which belonged to the family of the accused as drawee. The debts of all the bankers were paid in due course. *Held,* charge under S. 420, IPC was proved against the accused. *Tulsi Ram* v. *State of U.P.*, AIR 1963 SC 666: 1963 Supp (1) SCR 382: (1963) 1 Cri LJ 623: ILR (1963) 1 All 840.

Bench Strength **4**. Coram: *Syed Jafer Imam, K. Subba Rao, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 27-9-1962]

AIR 1932 Bom 545: 34 Cri LJ 357 and 28 Mad 90, distinguished

This may be compared with offence under Ss. 467 & 468. See 1963 (2) Cri LJ 434: AIR 1963 SC 1572

[10380] — Ss. 420 and 415 — Cheating — Ingredients of

For a person to be convicted under S. 420, IPC it has to be established not only that he has cheated someone but also that by doing so he has dishonestly induced the person who was cheated to deliver any property etc. A person can be said to have done a thing dishonestly if he does so with the intention of causing wrongful gain to one person or wrongful loss to another person. Wrongful loss is the loss by unlawful means of property to which a person is entitled while wrongful gain to a person means a gain to him by unlawful means of property to which the person gaining is not legally entitled. *Tulsi Ram* v. *State of U.P.*, AIR 1963 SC 666: 1963 Supp (1) SCR 382: (1963) 1 Cri LJ 623: ILR (1963) 1 All 840.

Bench Strength **4**. Coram: *Syed Jafer Imam, K. Subba Rao, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 27-9-1962]

[10381] — Ss. 420, 463, 468 and 471 r/w S. 120-B — Misappropriation of public funds by appellant (an MLA) — State trying to protect appellant from being prosecuted under Ss. 420, 463, 468 and 471 r/w S. 120-B IPC, by issuing consecutive G.Os. and tampering with course of justice by getting filed consecutive petitions to withdraw prosecution under S. 321 CrPC — Impropriety — *Respondents 3 and 4 herein levelling charges of misappropriation of public funds against appellant on premise that he obtained huge amount on basis of false and fabricated medical bills — Appellant, being an MLA, matter referred to Ethics Committee of State Legislature, which accepted apology tendered by him and having regard to the fact that amount was refunded by him to Government, recommended for withdrawal of the criminal case — State issuing G.O. for directions to Public Prosecutor to withdraw case — Application filed under S. 321 CrPC by Public Prosecutor for withdrawal of case, rejected — Revisions filed thereagainst by State and appellant, dismissed, while writ of Respondents 3 and 4* *allowed by High Court — Sustainability — Held, Ethics Committee was empowered to deal with disciplinary action — So criminal case against an MLA, ordinarily, should be allowed to be continued on its own merit — Action of State on basis of recommendations of Ethics Committee, vitiated in law — Recommendations being unauthorised, action of State would attract doctrine of malice in law — Even otherwise, action of State suffers from malice on fact as well — State being protector of law, when it deals with a public fund, it must act in terms of procedure established by law — In respect of public fund, doctrine of public trust would also be applicable so far as State and its officers are concerned — Herein, State was not acting in public interest — It showed unusual interest in appellant, which is not expected of an executive which believes in good governance — Therefore, impugned judgment, held, unassailable — However, clarified that High Court committed error in entering into merit of the matter — In the circumstances, Magistrate directed to proceed with the matter independently — Also, in the peculiar facts and circumstances of instant case, State directed to pay Rs 1,00,000 to State Legal Services Authority — Prevention of Corruption Act, 1988, S. 13 — CrPC, 1973, S. 321* (Paras 15 to 22). *Yerneni Raja Ramchandar* v. *State of A.P.*, (2009) 15 SCC 604: (2009) 81 AIC 107 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 4-8-2009]

(ii) Property — What is

See also '(3)(ii) Ingredients of cheating — Property —What is', above

See also under 'Ss. 405-409 — CRIMINAL BREACH OF TRUST', above

[10382] — S. 420 — Held, property includes money — *Constitution of India, Art. 300-A* (Para 8). *N. Devindrappa* v. *State of Karnataka*, (2007) 5 SCC 228: (2007) 2 SCC (Cri) 496: AIR 2007 SC 1741: (2007) 55 AIC 74 (SC): 2007 Cri LJ 2949.

Bench Strength 2. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 7-5-2007]

[10383] — S. 420 — 'Passport' is property within the meaning of the section. *Nrisingha Murari Chakraborty* v. *State of W.B.*, (1977) 3 SCC 7: 1977 SCC (Cri) 417: AIR 1977 SC 1174: 1977 Cri LJ 961: (1977) 14 ACC 309: (1977) 3 SCR 521.

Bench Strength 3. Coram: *P.K. Goswami*, **P.N. Shinghal** and *Y.V. Chandrachud*, JJ. [Date of decision: 12-4-1977]

[10384] — S. 420 — "Property" — Meaning of — Does not necessarily mean a thing which must have money value or a market value — *Order of assessment determining total income of assessee and tax payable by him is "property" within the meaning of the section*

The word 'property' occurring in S. 420, IPC does not necessarily mean that the thing, of which a delivery is dishonestly desired by the person who cheats, must have a money value or a market value in the hand of the person cheated. Even if the thing has no money value, in the hand of the person cheated, but becomes a thing of value, in the hand of the person, who may get possession of it, as a result of the cheating practised by him, it would still fall within the connotation of the term 'property' in S. 420, IPC

Under the scheme of the Income Tax Act, it is clear that the assessment order determines the total income of the assessee, and the tax payable, on the basis of such assessment. The assessment order has to be served, on the assessee. The tax is demanded by the issue of a notice, under S. 29; but the tax demanded is on the basis of the assessment order communicated to an assessee. The communicated order of assessment, received by an assessee is 'property', since it is of great importance, to an assessee, as containing a computation, of his total assessable income and as a determination of his tax liability. *Ishwarlal Girdharilal Parekh* v. *State of Maharashtra*, AIR 1969 SC 40: (1969) 1 SCR 193: (1968) 70 ITR 95: 1969 Cri LJ 271, 273.

Bench Strength 2. Coram: *V. Ramaswami* and **C.A. Vaidialingam**, JJ. [Date of decision: 1-5-1968]

Followed in (1977) 3 SCC 7: 1977 SCC (Cri) 417

(iii) Cheating and dishonestly inducing — Proof of dishonest intention

See also '(3)(vi) Fraudulently or dishonestly inducing delivery or retention of property by or with consent of deceived person', above, and

'(6)(iv) Inducing delivery of property — S. 420 vis-à-vis mere cheating', below

[10385] — S. 420 — Dishonest intention — Proof of — *Direct evidence, held, not always possible in respect thereof — Reasonable inference can be drawn from a number of circumstances*

In the true nature of things, it is not always possible to prove dishonest Intention by any direct evidence. It can be proved by a number of circumstances from which a reasonable inference can be drawn. (Para 8). *Devender Kumar Singla* v. *Baldev Krishan Singla*, (2005) 9 SCC 15: 2005 SCC (Cri) 1185: AIR 2004 SC 3084: 2004 Cri LJ 1778.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-2-2004]

Bashirbhai Mohamedbhai v. State of Bombay, AIR 1960 SC 979: 1960 Cri LJ 1383; Shivanarayan Kabra v. State of Madras, AIR 1967 SC 986: 1967 Cri LJ 946, relied on

[10386] — S. 420 — Dishonestly — Accused required to deposit certain amount by way of security under rules — *Accused delivering a cheque which was not supported by credit in bank — Cheque returned to accused as prescribed procedure required the accused to make deposit in cash or postal securities — Accused's brother promising to cash the cheque — Cheque sent for encashment but dishonoured — Held, conviction not sustainable*

There was no dishonest intention in delivering the cheque. There is nothing to support any charge of cheating. Even the cheque, the delivery of which is the foundation for this charge, had been returned unaccepted by the Department and therefore there was no question of cheating. There is no ground for holding the appellant responsible for the representations made by his brother. General authority had been given by the appellant to his brother to act for him. *Laxmi Narain Kalra* v. *State of U.P.*, AIR 1956 SC 544: 1956 Cri LJ 948, 949.

Bench Strength **2**. Coram: **T.L. Venkatarama Aiyar** and *Syed Jafer Imam*, JJ. [Date of decision: 25-11-1955]

[10387] — S. 420 — Dishonestly inducing delivery of property — *Complainant induced by accused to part with his goods by latter's promise to pay cash against delivery — Goods delivered to accused — Non-payment when amounts to cheating*

If the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established.

Held, on evidence that the accused had no intention of making payment to the complainant and, therefore, was guilty of the said offence.

That the bill sent with the goods provided for payment of interest would not militate against an initial agreement that the price of the goods would be paid in cash against delivery. That would give rise to only a civil liability for payment of interest but would not eschew the criminal liability arising here.

A subsequent attempt at settlement can only be to escape the criminal liability. If the appellant had at the time of taking delivery of the goods no intention whatsoever to pay (as revealed by his circumstances, the evidence and his conduct) but merely promised to pay cash against delivery in order to induce the complainant to part with the goods, an offence under S. 420 was made out. *Mahadeo Prasad* v. *State of W.B.*, AIR 1954 SC 724: 1954 Cri LJ 1806.

Bench Strength **3**. Coram: **N.H. Bhagwati**, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 13-1-1954]

[10388] — S. 420 — False pretence need not be in express words for constituting offence of cheating — *It can be inferred from all the circumstances including the conduct of the accused*

Accused sent a letter along with a copy of business terms stating that the terms were those on which he undertook business of his clients. In the document containing the terms it was represented that the accused could do business in forward contracts in cotton, grains, seeds, bullion, black peppers etc. in accordance with the usual practice and usage of the various associations concerned. Later the accused sent a telegram that buying is advisable for quick profits. The accused knew that he had no right to do forward business and that he was not a member of any recognized association and that he could not advertise to the complainant for investment in forward contracts. It was contended that no case of cheating was made out.

Held, it is not necessary that a false pretence should be made in express words by the appellant. It may be inferred from all the circumstances including the conduct of the appellant in obtaining the property. The appellant stated something which was not true and concealed from the appellant the fact that he was not a member of any recognised association and that he was not entitled to carry on the forward contract business. The complainant would not have parted with the sum of Rs 12, 000 but for the inducement and the representation of the appellant that he could lawfully carry on forward contract business. *Shivanarayan Kabra* v. *State of Madras*, AIR 1967 SC 986: (1967) 1 SCR 138: (1967) 1 MLJ (SC) 159: 1967 Cri LJ 946, 948-49.

Bench Strength **3**. Coram: **V. Ramaswami**, *V. Bhargava* and *Raghubar Dayal*, JJ. [Date of decision: 23-8-1966]

[10389] — S. 420 — Market purchase by government servant at higher prices — *Purchases made by military officer for military purposes in local market — That the prescribed procedure was not strictly followed does not lead to an inference of fraud — Even gross negligence does not prove*

(6)(iii) Cheating and dishonestly inducing — Proof of dishonest intention *(contd.)*

criminal intent — Fact of paying prices higher than the quoted ones by itself would not lead to inference of fraudulent intent or conspiracy. Union of India v. *Major J.S. Khanna*, (1972) 3 SCC 873: 1973 SCC (Cri) 94: 1972 Cri LJ 849.

Bench Strength 3. Coram: **J.M. Shelat,** *I.D. Dua* and *S.C. Roy*, JJ. [Date of decision: 21-10-1971]

[10390] — Ss. 420, 468 and 471 r/w S. 120-B — Fraud and misappropriation of Government money — Responsibility for signing a document *— Accused alleged to have dishonestly processed and verified fake bills — Plea of accused that she signed the said bills in normal course of her duty and it was account section which was negligent in not verifying those bills — Sustainability of — Held, the said plea was not tenable as when a person signs on a document he or she is expected to make some enquiry before signing it — CrPC, 1973, S. 228* (Para 14). *Soma Chakravarty* v. *State*, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149.

Bench Strength 2. Coram: **S.B. Sinha**[2] and **Markandey Katju**[1], JJ. [Date of decision: 10-5-2007]

[10391] — Ss. 420/34 — Dishonest intention *— Delivery of consignment of goods obtained by accused-respondents by misrepresentation and deceit from carriers by making only a part payment instead of adopting the agreed procedure of retiring documents from the negotiating bank by making full payment — Substantial part of the price had to be paid by the carries and never paid by the accused either to the carriers or to the consignors — Held on facts, conviction under Ss. 420/34 proper. Ram Avtar Gupta* v. *Gopal Das Taliwal*, (1983) 2 SCC 431: 1983 SCC (Cri) 531: AIR 1983 SC 1149: 1983 ALJ 522.

Bench Strength 2. Coram: *V.D. Tulzapurkar* and *V. Balakrishna Eradi*, JJ. [Date of decision: 24-1-1983]

[10392] — Ss. 420/448/34 — Land sold by bhumidhars/landholders to appellants after its acquisition by Government under Land Acquisition Act *— Complaint filed by appellant under Ss. 420/448/34 IPC — Cognizance taken and charges framed under those sections by trial court — But revision preferred by the landholders allowed by Addl. Sessions Judge and his decision upheld by High Court without giving any reasons — Held, it was not a fit case for exercising the revisional jurisdiction to quash the charges which had been framed — Prima facie a case was made out for filing the complaint since what was material was that at the time when the land was sold the landholders had no right, title or interest to sell the land in view of the acquisition and whether the sellers were bhumidhars or not was not material — Hence judgments of Addl. Sessions Judge and High Court set aside and the order of trial court restored — CrPC, 1973 — S. 400. Mohan Singh* v. *State of Delhi*, (2000) 10 SCC 239.

Bench Strength 2. Coram: *B.N. Kirpal* and *S. Rajendra Babu*, JJ. [Date of decision: 29-10-1999]

[10393] — Ss. 420/465/467/468/471 — Appellants alleged to have transferred a portion of the property without having complete ownership over it *— Appellants, however, in possession of the same and a decree restraining the respondents from interfering with their possession, and construction carried by them, passed in their favour — Order of mutation passed in their favour was, however, cancelled — Held, unless there exists a statutory interdict, a person in possession may transfer his right, title and interest in favour of a third party — Further held, only because the appellants are said to have transferred a portion of the property without having complete ownership over it by itself does not satisfy the ingredients of Ss. 467, 468 and 469 IPC — Furthermore, it is one thing to say that the appellants had committed acts of criminal misconduct while trying to obtain orders of mutation but it is another thing to say that only because they filed such an application, the same by itself would tantamount to commission of a criminal offence — Hence, institution of a criminal case must be held to be an act of mala fide on the part of the respondents — CrPC, 1973, S. 482 — Alleged commission of the offences punishable under Ss. 420/465/467/468/471 and 120-B IPC* (Paras 14, 15, 16 and 19). *Ramesh Dutt* v. *State of Punjab*, (2009) 15 SCC 429: (2009) 81 AIC 183 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 21-7-2009]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

(iv) Inducing delivery of property — S. 420 vis-à-vis mere cheating

See also '(3)(vi) Fraudulently or dishonestly inducing delivery or retention of property by or with consent of deceived person', and

'(6)(iii) Cheating and dishonestly inducing — Proof of dishonest intention', above

[10394] — S. 420 — Accused purchasing an article for another person *— That the accused induced that person to pay higher price than the worth of the article, not proved by prosecution —*

Held, conviction under S. 420 not justified. Jageshwar Singh Rastogi v. *State of M.P.*, 1980 Supp SCC 179: 1980 SCC (Cri) 901: AIR 1980 SC 366: 1980 Cri LJ 323.

Bench Strength **2**. Coram: **P.S. Kailasam** and *O. Chinnappa Reddy*, JJ. [Date of decision: 29-11-1978]

[10395] — S. 420 — Cheating — Offence under, whether made out — Post-dated cheques issued in 1996 (of an operative account of accused) presented at a much later date i.e. on 10-1-2001 dishonoured, allegedly because account was closed — *Appellant-accused allegedly had returned the borrowed money by cash to respondent complainant — On facts, held, offence under S. 420 IPC not made out — Subsequent closure of the account does not necessarily mean an intention to cheat where the post-dated cheques were issued 5 years back — Negotiable Instruments Act, 1881, S. 138*

In the fact situation obtaining in the instant case, it is difficult to hold that the provisions of Section 420 IPC were attracted. The cheques were post-dated ones. Admittedly they were issued in the year 1996. They were presented before the bank on a much later date. They were in fact presented only on 10-1-2001. When the cheques were issued, the accounts were operative. Even assuming that the account was closed subsequently the same would not mean that the appellant had an intention to cheat when the post-dated cheques were issued. Even otherwise the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety do not disclose commission of an offence under Section 420 IPC. They do not satisfy the ingredients of the said provision. (Para 31). *Subodh S. Salaskar* v. *Jayprakash M. Shah*, (2008) 13 SCC 689: AIR 2008 SC 3086: (2008) 3 KLT 616: (2008) 145 Comp Cas 121: (2008) 69 AIC 228 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 1-8-2008]

Punjab Tin Supply Co. v. Central Govt., (1984) 1 SCC 206; Devender Kumar Singla v. Baldev Krishan Singla, (2005) 9 SCC 15: 2005 SCC (Cri) 1185; Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., (2008) 13 SCC 678, relied on

[10396] — S. 420 — Dishonest intention — Issuance of bogus receipts — *Finding of fact by courts below that appellant-accused dishonestly induced complainant to deliver him Rs 2000 as advance in cash, as part-payment allegedly for sale of the plot of land, knowing fully that he was not the owner of the said plot — Evidence of complainant corroborated by bogus receipts issued by the accused bearing signatures of the accused and complainant — Handwriting of the accused testified by handwriting expert — Held, the issuance of bogus receipts by the accused given to complainant amounts to cheating as also inducement to complainant of being provided a plot by the accused — Since property includes money, hence offence under S. 420 IPC made out* (Paras 8 and 10). *N. Devindrappa* v. *State of Karnataka*, (2007) 5 SCC 228: (2007) 2 SCC (Cri) 496: AIR 2007 SC 1741: (2007) 55 AIC 74 (SC): 2007 Cri LJ 2949.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 7-5-2007]

[10397] — S. 420 — Return of delivered property — *Advocate and client — Client's son filing a complaint of cheating against advocate without authority of his father or examining him as witness — Alleged sum already returned by appellant to complainant's father on conclusion of the case — Prosecution, held, not maintainable. Vasudeo Kulkarni* v. *Surya Kant Bhatt*, (1977) 2 SCC 298: 1977 SCC (Cri) 343: AIR 1977 SC 1760: 1977 Cri LJ 1152: (1977) 3 SCR 102.

Bench Strength **2**. Coram: **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 2-3-1977]

[10398] — Ss. 420, 417 and 109 — Liability under — *Appellant submitting false claims before Government of Burma and obtaining payment — Claims verified by officers — Prosecution of appellant for cheating — Contention that offence of cheating was committed by officers verifying the claim and not by appellant not accepted — Appellant, held, liable to be convicted under S. 420 and not under S. 417*

The appellant submitted a number of claims in respect of various works which he claimed had been executed by him as well as for supply of materials. These claims were in the form of bills and were in respect of works which he claimed had been carried out under the instructions of various units of the army. These bills were sent for verification to three different officers, and after their verification, payments were made to the appellant in respect of those bills.

It was contended that after the claims, which had been found bogus were put forward by the appellant, they were sent for verification to various officers and the payments were the result not of any representations made by the appellant, but of the wrong representations contained in the reports of those officers, so that if any offence of cheating at all was committed, it was by those officers and not by the appellant.

(6)(v) Inducing making of, alteration or destruction of valuable security or signed or sealed thing convertible into valuable security

Held, the officers who verified the claims wrongly could certainly be held guilty of abetting the appellant by supporting his false representations. It cannot be said that the payments that were made to the appellant were not connected with or induced by the representations made by the appellant himself in his bills. In fact, primarily, it were those representations by the appellant which ultimately culminated the Government of Burma parting with the money to satisfy those claims put forward by the appellant.

Subsequent payments, after the orders sanctioning the bills, were a part of the same transaction which started with the false representations being made by the appellant in putting forward bogus claims and which transaction only concluded after the payments were made and did not come to an end merely on orders of sanction being passed in those proceedings. In fact, in every case where property is delivered by a person cheated, there must always be a stage when the person makes up his mind to give the property on accepting the false representations made to him. It cannot be said that in such cases the person committing the offence can only be tried for the simple offence of cheating under S. 417, IPC, and cannot be tried under S. 420 because the person cheated parts with his property subsequent to making up his mind to do so. The conviction of the appellant for the offence under S. 420, IPC, in these circumstances is in no way vitiated. *Bakhshish Singh Dhaliwal* v. *State of Punjab*, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656.

Bench Strength **3**. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 31-8-1966]

AIR 1965 SC 706: 1965 (1) Cri LJ 630, distinguished

(v) Inducing making of, alteration or destruction of valuable security or signed or sealed thing convertible into valuable security

[10399] — S. 420 — Whether offence made out in the facts and circumstances of case — *Dates "6-5-2002" and "7-5-2002" alleged to have been changed to "16-5-2002", "17-5-2002" and "27-5-2002" in certified copy of revenue records and tampered document alleged to have used in civil suits relating to property — Held, offence under S. 420 not made out* (Para 29). *Parminder Kaur* v. *State of U.P.*, (2010) 1 SCC 322.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 26-10-2009]

[10400] — Ss. 420, 29 and 30 — "Valuable Security" — Meaning of — Assessment order by Income Tax authorities is a valuable security for purpose of S. 420

The assessment order is certainly a 'document', under S. 29 IPC. The order of assessment does create a right in the assessee, in the sense that he has a right to pay tax only on the total amount assessed therein and his liability to pay tax is also restricted to that extent. Therefore, an 'order of assessment' is a 'valuable security' under S. 420, IPC. Therefore, if the cheating, employed by the accused, resulted in inducing the Income Tax Officer to make a wrong assessment order, it would amount to inducing the Income Tax Officer, to make a 'valuable security'. *Ishwarlal Girdharilal Parekh* v. *State of Maharashtra*, AIR 1969 SC 40: (1969) 1 SCR 193: (1968) 70 ITR 95: 1969 Cri LJ 271, 274.

Bench Strength **2**. Coram: *V. Ramaswami* and **C.A. Vaidialingam**, JJ. [Date of decision: 1-5-1968]

See also (1977) 3 SCC 7: 1977 SCC (Cri) 417

(vi) Mens rea — If civil offence(s) only — Dishonest intention when must exist

See also '(3)(v) Ingredients of cheating — Mens rea — If civil offence(s) only — Dishonest intention when must exist', above, and

'(10)(xi) Quashment', below

[10401] — S. 420 — Applicability — Existence of fraudulent or dishonest intention at the time of making promise or representation, held, necessary — *Where machines were imported availing the benefit of exemption notification on the basis of exemption certificate containing necessary conditions required to be complied with after importation but those conditions could not be complied with and the importer paid the necessary customs duties without taking the advantage of the exemption certificate, held, such conduct of the importer indicated that there was no fraudulent or dishonest intention right at the time of making of application for exemption — Hence, the importer, held, not guilty of offence under S. 420 — More so, when the importer was a non-profit organisation — Customs Act, 1962, S. 25 — Exemption — Availing of the benefit of exemption subject to certain conditions to be complied with later but on failure to comply therewith paying the necessary duties without taking advantage of exemption — Such conduct, held, does not attract S. 420 IPC*

The ingredients of Section 420 IPC are not made out. There is no reason as to why the appellants must be made to undergo the agony of a criminal trial. (Para 33)

It is settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his failure to keep promise subsequently, such a culpable intention right at the beginning cannot be presumed. The records show that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since GCS could not comply with it, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of GCS clearly indicates that there was no fraudulent or dishonest intention of either GCS or the appellants in their capacities as office-bearers *right at the time of making application for exemption*. Therefore, the question of committing an offence under Section 420 IPC does not arise. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. (Para 40). *Hira Lal Hari Lal Bhagwati* v. *CBI*, (2003) 5 SCC 257: 2003 SCC (Cri) 1121: AIR 2003 SC 2545: (2003) 104 DLT 699: 2003 Cri LJ 3041: (2003) 155 ELT 433: (2003) 262 ITR 466.

Bench Strength **2**. Coram: **Brijesh Kumar**[2] and **Dr. AR. Lakshmanan**[1], JJ. [Date of decision: 2-5-2003]

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513, relied on

[10402] — S. 420 — Cheating — Dishonest intention should be present at the time of making the promise — *Firm of the accused having overdraft and discounting facilities with the bank — Bank also agreeing to accept bank drafts first and railway receipts of consignments later — Accused sending 13 demand drafts and later 13 railway receipts in support thereof to the bank but not actually consigning goods against the railway receipt — Accused giving sufficient guarantees to the bank for the credit — According to established practice, bank crediting demand drafts without railway receipts — Held, misrepresentation by the accused to the bank about consignments sent by railway receipt does not amount to the offence of cheating — Mens rea lacking*

The firm *A* carried on the business of selling coconut oil. It had an account with bank *F* and was allowed overdraft facilities to the extent of Rs 50,000 and discounting facilities to the extent of Rs 5,00,000, the firm having furnished sufficient securities to the satisfaction of bank authorities for these facilities. The accused *P* and *K-1* on behalf of the firm entered into a conspiracy with *K-2* and resorted to the device of obtaining railway receipts without actually delivering oil tins for booking. In pursuance of the conspiracy 13 such bogus railway receipts were obtained and 13 demand drafts and later 13 bogus railway receipts in support of the drafts were deposited with the bank. There was a practice in vogue according to which the bank used to accept demand drafts before depositing railway receipts. The bank was able to realise the amount of two demand drafts from the consignee firm. The amounts of remaining demand drafts could not be realised and the credit entries of these were reversed in the bank in the accounts of the firm. It is contended that *P* and *K-1* made false representations in respect of the booking tins of coconut oil and thereby induced the bank to act to their detriment and were thereby guilty under S. 420, IPC.

Held, as there was no cogent evidence to show that the accused did not have the intention to fulfil their promise to supply coconut oil tins at the time of making the representation, the offence of cheating against the accused was not proved. The practice followed by the bank in the case of the firm of the accused-respondent was to give credit to the firm for the amount of demand drafts without production of the railway receipts. Therefore it was not in pursuance of any representation regarding the consignment of oil tins to the railway that the bank gave credit to the firm of the accused for the amounts of the demand drafts. On the contrary, the amounts of demand draft were credited in the account of the firm immediately on the receipt of the demand drafts even though they were not accompanied by railway receipts. It may be that the firm could not keep up the delivery of the oil tins to the railway and no tins were despatched in respect of the 13 railway receipts, but that fact is not sufficient to fasten a criminal liability on them. It has not been shown that the intention of the accused was guilty at the time of making the promise which is an essential ingredient to prove the offence of cheating. Such an intention cannot also be inferred from the fact that the accused could not subsequently fulfil the promise.

(6)(vi) Mens rea — If civil offence(s) only — Dishonest intention when must exist *(contd.)*

The case of two demand drafts the amount whereof was paid by the consignee firm cannot be considered in isolation from the remaining 11 demand drafts.

The offence of cheating is, therefore, not proved. *State of Kerala* v. *A. Pareed Pillai*, (1972) 3 SCC 661: 1972 SCC (Cri) 705: AIR 1973 SC 326: 1972 Cri LJ 1243.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 28-4-1972]

[10403] — S. 420 — Cheating — Ingredients and proof of — Existence of fraudulent intention at the time of making promise or misrepresentation, held, a necessary ingredient — *Mere failure of the accused to keep up the promise, held, not sufficient to prove the existence of such intention right from the beginning*

In the instant case, the charge of conspiracy has not been proved to bring home the charge of conspiracy within the ambit of Section 120-B IPC. It is also settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making the promise or misrepresentation. From his failure to keep up the promise subsequently, such a culpable intention right at the beginning, that is, at the time when the promise was made cannot be presumed. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 IPC does not arise. (Para 29). *K.C. Builders* v. *CIT*, (2004) 2 SCC 731: 2004 SCC (Cri) 1092: (2004) 265 ITR 562: (2004) 1 KLT 596.

Bench Strength **2**. Coram: *B.N. Agrawal* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 28-1-2004]

[10404] — S. 420 — Cheating — Mens rea at the time of inducing the person deceived to deliver any property to any person essential to constitute offence under — *Where A-1 entered into an agreement with complainant authorising the latter to manufacture and sell certain specified beverages under trademark owned by the former for 5 years whereafter either party could terminate the agreement by giving 12 months' notice to the other party, but subsequently, another company having purchased the trademarks from A-1, the agreement with the complainant was assigned to that company under information to the complainant, held, when that company gave 12 months notice to the complainant before expiry of the period of 5 years to terminate the agreement, offence under S. 420 not made out in absence of mens rea*

M/s Cadbury Schweppes Beverages India Private Ltd. entered into three identical bottling agreements with the complainant Sanjiva Bottling Company Private Limited on 1-3-1996 pursuant to a master trademark licence entered into by associate companies of Cadbury Schweppes plc United Kingdom and Cadbury Schweppes Beverages India Private Limited. In terms of these three agreements, M/s Sanjiva Bottling Company was authorised to manufacture and sell certain specified beverages under specified trademarks owned by Cadbury Schweppes plc UK or its associate companies. The agreements provided that they shall continue for an initial term of five years and for further successive period of five years, unless terminated by either party by giving to the other not less than 12 calendar months' notice in writing to terminate the agreement. On 29-7-1999, Atlantic Industries (a wholly owned indirect subsidiary of Coca Cola Export Corporation, USA) purchased about 3500 trademarks in 155 countries from Cadbury Schweppes plc, upon which the bottling agreements between Cadbury Schweppes Beverages India Pvt. Ltd. and Sanjiva Bottling Company were duly assigned to Atlantic Industries and an information regarding the same was given to Sanjiva Bottling Company in writing. On 14-2-2000, Atlantic Industries gave notice in writing to the complainant, Sanjiva Bottling Company that the bottling agreements shall not be renewed after their expiry on 28-2-2001. Sanjiva Bottling Company through its Director filed a criminal complaint against eleven accused including the appellants [Cadbury Schweppes Beverages (A-1), its Chairman, MD and Finance Director, Coca Cola India (A-6) and others] for their prosecution under Section 420 r/w Section 511 IPC. According to allegations made in the complaint, modernisation of the bottling plant was done and a considerable amount of money had to be spent by the complainant for improvement of the plant pursuant to the agreement, but by a letter A-6 informed that they would not renew the agreements after expiry of initial period of five years. The complainant alleged that A-6 was adopting all sorts of unfair trade practices and made wrongful gain of over Rs 100 crores and that A-1 and A-6 had not replied properly to the letters of the complainant and the accused had, therefore, cheated the complainant by making false representation. The Magistrate passed an order under Section 156(3) CrPC on 27-7-2000 directing the police to investigate the offence as the same was cognizable offence. The police thereafter submitted a report, stating that prima facie "a case of business competition and violation of agreements is made out and the complainant is advised to approach the civil court".

However, after consideration of the report which had been submitted on a plain paper, the Magistrate directed the police officer concerned to submit a report in the prescribed pro forma. Accordingly, the police submitted a report that on the basis of the complaint three criminal cases had been registered under Sections 420, 120-B and 34 IPC. While investigation was carried on and a date was fixed by the Magistrate, the appellants filed criminal miscellaneous petitions under Section 482 CrPC before the High Court for quashing of the FIR and the proceedings of the case before the Magistrate. After hearing the parties, the High Court held that the investigation had not yet commenced in connection with the FIRs which had been registered at the police station and, therefore, the petitions were premature and accordingly, all the three petitions were rejected. Hence the appeals by special leave.

Allowing the appeals,

Held :

A guilty intention is an essential ingredient of the offence of cheating. In other words "mens rea" on the part of the accused must be established before he can be convicted of an offence of cheating. In order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered. Unless the complaint showed that the accused had dishonest or fraudulent intention at the time the complainant parted with the money, it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract. (Paras 16 and 17)

In the present case, the appellants came into the picture much later in July 1999, when various trademarks and brands of A-1 were purchased by A-6. Since the appellants were not in the picture at all at the time when the complainant alleges to have spent money in improving the bottling plant, neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant. No offence of cheating can, therefore, be said to have been committed by the appellants on account of the fact that a notice was given to the complainant that the bottling agreements will not be renewed any further after expiry of the initial term. Thus, even if the allegations made in the complaint are accepted to be absolutely true and correct, the appellants cannot be said to have committed any offence of cheating as provided in Section 420 IPC. (Para 18). *Ajay Mitra* v. *State of M.P.*, (2003) 3 SCC 11: 2003 SCC (Cri) 703: AIR 2003 SC 1069: (2003) 3 MPLJ 49: 2003 Cri LJ 1249.

Bench Strength **3**. Coram: *S. Rajendra Babu*, *Brijesh Kumar* and **G.P. Mathur**, JJ. [Date of decision: 28-1-2003]

Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575: 1956 Cri LJ 1116; Mahadeo Prasad v. State of W.B., AIR 1954 SC 724: 1954 Cri LJ 1806; Hari Prasad Chamaria v. Bishun Kumar Surekha, (1973) 2 SCC 823: 1973 SCC (Cri) 1082; G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693: 2000 SCC (Cri) 733, relied on

[10405] — S. 420 — Cheating or dispute of civil nature

The complainant who was a displaced person from East Bengal was trying to do some business in Calcutta. He got a consignment of 850 pieces of Hollowong wood by steamer from Assam under invoice No. 45 and steamer receipt No. 25380 and went to Nimtala Ghat, Calcutta, in order to secure a purchaser for the said consignment. Appellant 1 is said to be the partner of a company dealing in timber at this Ghat and Appellant 2 the Manager thereof. The complainant was persuaded to part with the invoice and steamer receipt and to endorse it over to the appellants on the understanding that after the consignment was taken delivery of and the timber measured, the price thereof would be immediately paid at the rate of Rs 7-8-0 per cubic foot. The appellants took delivery of the consignment and on measurement thereof, the complainant presented to them his bill on April 26, 1951, for the sum of Rs 2262-15-6. It is the complainant's case that the appellants did not pay the bill in spite of repeated demands but were putting it off for a considerable time and that ultimately on or about June 8, 1951, denied having taken the goods and repudiated their liability. It was also alleged that on enquiry the complainant came to know that the appellants had disposed of the timber. The complain accordingly is that the appellants induced the complainant to part with possession of the invoice and the receipt for the consignment by a dishonest promise to pay ready cash immediately on delivery and measurement which from the very outset they had no intention to keep and that accordingly they were guilty of cheating. The defence of the appellants was that on taking delivery of the timber, it was found that the timber was not Hollowong timber which it was represented to be, but soft wood of inferior variety and that they accordingly sent a letter to the complainant bringing this to his notice and calling upon him to present a bill at the rate of Rs 4-8-0, per cubic foot. They also alleged that a sum of Rs 500 had been paid as advance when the transaction was entered into. Both the Courts below held that the appellants put forward a totally false defence. They also found in favour of the complainant's allegation that the timber had been sold away by the appellants without reference to him and without making any payment. On these findings it was held that the appellants having obtained possession of the timber by a false promise of ready

(6)(vi) Mens rea — If civil offence(s) only — Dishonest intention when must exist *(contd.)*

payment, which from the inception they had no intention of keeping, were guilty of the offence under S. 420 of the Indian Penal Code.

Held, on the findings of both the Courts below, the appellants had not only repudiated liability but sold away the timber without reference to the complainant. Even on the defence put forward by the appellants, the sale of timber must have fetched a sum of about Rs 1600 and giving credit for a sum of Rs 500 for advance said to have been paid, a sum of more than Rs1000 must have been in the hands of the appellants. There is nothing on the record to show that they tendered at least this amount to the complainant. The conviction is upheld and no interference is called for. *Ashu Sen* v. *State of Bengal*, Criminal Appeal No. 25 of 1953.

[Date of decision: 24-11-1953]

[10406] — S. 420 — Complaint arising out of breach of contractual obligations — *Proceedings, held, rightly quashed — No offence of cheating made out*

The appellant in good faith gave large sums of money to respondents for starting business. Respondents started business in their own name and refused to render accounts or return the money. Against a charge of cheating

Held :

The complaint does not disclose the commission of any offence on the part of the respondents under S. 420, Indian Penal Code. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December, might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating. *Hari Prasad Chamaria* v. *Bishun Kumar Surekha*, (1973) 2 SCC 823: 1973 SCC (Cri) 1082: AIR 1974 SC 301: 1974 Cri LJ 352.

Bench Strength 2. Coram: **H.R. Khanna** and *A. Alagiriswami*, JJ. [Date of decision: 6-9-1973]

[10407] — S. 420 — Question whether evidence discloses breach of civil liability or criminal offence — Determination of

The question whether the evidence discloses only a breach of civil liability or a criminal offence depend upon whether the complainant in parting with his money acted on the representations of the appellant and in belief of the truth thereof and whether those representations, when made were in fact false to the knowledge of the appellant and in belief of the truth thereof and whether those representations, when made were in fact false to the knowledge of the appellant and whether the appellant had a dishonest intention from the outside. *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 857: 1958 SCR 328: 1957 Cri LJ 1346, 1352.

Bench Strength 3. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 6-9-1957]

[10408] — Ss. 420, 120-B, 193, 24 and 25 — Criminal intent not proved — *Prosecution of General Manager of a transport company under Ss. 420, 193 and 120-B — Allegation that accused obtained petrol coupons by giving false particulars in application to rationing authorities — Plea of accused that he signed the application in routine way depending upon office staff — Held, accused could not be imputed with criminal intent — Conviction set aside*

Prosecution alleged that *A*, the General Manager of a transport company, running a large number of trucks entered into a criminal conspiracy with the Director and Manager of the company for the purpose of cheating the Government by procuring petrol coupons during the years 1947-1948, when petrol rationing was in operation in the State of Bihar. The modus operandi attributed to the accused persons was that in the application for coupons for petrol a number of trucks and buses which were not in a road-worthy condition and for which taxes had not been paid, were included as being in running condition and on that misrepresentation the rationing authorities were induced to part with petrol coupons which they would not have done if they were apprised of the real state of circumstances. *A* pleaded that he being General Manager signed the applications for coupons, which were not in fact filled in by him or on his direction following the usual practice of depending upon the office staff who made the necessary entries and put the documents before him for signature. It was alleged that the company being a fairly big one the General Manager could not be expected to know the accurate details of what had happened but would have to depend upon his office staff for the correctness of the statements contained in the applications. In this way it was contended that *A* did not consciously make any false representation.

Held, had the question of conspiracy been proved the case against *A* might have been stronger but that having been found against the prosecution on the remaining evidence *A* cannot be imputed with any knowledge of the falsity of the allegations made in the applications. The explanation offered by *A*, though he has not been able to prove it conclusively is a reasonable one. Taking into consideration the fact of the ordinary run of official business in the concerns like the one in which *A* was the General Manager it must be held that the prosecution has not been able to prove that *A* appended his signature to the applications knowing or having reason to believe that the contents contained therein were false. It is the duty of the prosecution to prove affirmatively that the appellant knew that the representations made are false and in the absence of circumstances from which it can be gathered that any such knowledge can be imputed to the appellant, the benefit of reasonable doubt should be given to *A*. Therefore *A* cannot be convicted for offences under Ss. 193 and 420 IPC. *Sudhdeo Jha Utpal* v. *State of Bihar*, AIR 1957 SC 466: 1957 Cri LJ 583, 585.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 4-12-1956]

Daud Shaikh v. King Emperor, 40 Cal WN 159, approved

[10409] — Ss. 420 and 406 — Offences under — Averments necessary to make out — *Petitioner failing to honour the agreement to sell in spite of three legal notices being sent to him and the complainant respondent fulfilling his part — Held, in absence of any averments in the complaint so as to infer fraudulent or dishonest inducement having been made by the petitioner, pursuant to which the respondent parted with his money, it cannot be said that the petitioner had cheated the respondent — No case for prosecution under S. 420 or S. 406, even prima facie, made out* (Para 6). *Murari Lal Gupta* v. *Gopi Singh*, (2005) 13 SCC 699: (2006) 2 SCC (Cri) 430.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur* and *P.P. Naolekar*, JJ. [Date of decision: 25-10-2005]

[10410] — Ss. 420 and 415 — Cheating — Essentials to constitute offence of — Intention to cheat — *Held, misrepresentation from the very beginning is a sine qua non for constitution of an offence of cheating, although in some cases, intention to cheat may develop at a later stage of formation of the contract — Respondent co-sharer in joint property, lodging FIR against appellant co-sharers by levelling allegation against them that they executed a deed of sale in favour of a third party stating that they had one-third share in the joint property although they were not entitled therefor — On such facts, considering that appellants had not made any representation to respondent complainant and that no contract and/or transaction had been entered into by and between the complainant and the appellants, held, it could not be said that by reason of the alleged act of the appellants, the complainant had been cheated — Hence, criminal proceedings against appellants quashed — CrPC, 1973, S. 482* (Paras 14 to 16). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78: (2009) 1 SCC (Cri) 996; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; Ravindra Kumar Madhanlal Goenka v. Rugmini Ram Raghav Spinners (P) Ltd., (2009) 11 SCC 529, relied on

[10411] — Ss. 420 and 415 — Cheating — Ingredients — Fraudulent or dishonest intention — Held, must exist at the time of making initial promise or formation of contract — *The complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation — No offence is made out under S. 420 if culpable intention is missing at the time of making initial promise*

An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied, (*i*) deception of a person either by making a false or misleading representation or by other action or omission; (*ii*) fraudulently or dishonestly inducing any person to deliver any property; or (*iii*) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out. One of the ingredients of cheating as defined in Section 415, is existence of a fraudulent or dishonest intention at the time of making initial promise or existence thereof from the very beginning of formation of contract. The element of wrongful intention should ordinarily exist

(6)(vi) Mens rea — If civil offence(s) only — Dishonest intention when must exist *(contd.)*

from the inception of the contract. The FIR in the present case does not satisfy the aforementioned test. (Paras 25 and 30). *Harmanpreet Singh Ahluwalia* v. *State of Punjab*, (2009) 7 SCC 712: (2009) 3 SCC (Cri) 620: 2009 Cri LJ 3462.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

Ajay Mitra v. State of M.P., (2003) 3 SCC 11: 2003 SCC (Cri) 703; Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575; Mahadeo Prasad v. State of W.B., AIR 1954 SC 724; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; Sharon Michael v. State of T.N., (2009) 3 SCC 375: (2009) 2 SCC (Cri) 103, relied on

[10412] — Ss. 420 and 415 — Cheating — Ingredients of — *Mere failure to perform the promise, held, by itself not enough — To hold a person guilty of cheating, reiterated, it is necessary to show that at time of making promise he had fraudulent or dishonest intention to deceive or to induce person so deceived to do something which he would not otherwise do — Such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently — In present case, there were no specific averments that appellant a retired senior employee of FCIL, officer-in-charge of supply of ammonium nitrate by FCIL at the time had dishonestly "induced" respondent IEL to enter into any agreement/arrangement with FCIL — On the contrary, complaint clearly reveals that IEL was fully conscious of precarious financial health of FCIL at the time IEL decided to enter into tripartite agreement — Basis of complaint was that by deliberately suppressing fact that FCIL had already been referred to BIFR after erosion of net worth and thus likely to be declared a "sick company", appellant induced IEL to pay about Rs 4.2 crores as advance payment and in return FCIL did not supply goods as promised — Mere mention of words "defraud" and "cheat" in complaint is not sufficient to infer that appellants had dishonest intention right at the beginning — A tripartite agreement was signed after due deliberations considered to be in the interest of all parties concerned — Held, at best, it was a case of breach of contract, for which FCIL was already defending civil suit filed by IEL — CrPC, 1973, S. 482* (Paras 22 and 25 to 32). *V.P. Shrivastava* v. *Indian Explosives Ltd.*, (2010) 10 SCC 361: (2010) 159 Comp Cas 529.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 24-9-2010]

Ram Jas v. State of U.P., (1970) 2 SCC 740: 1970 SCC (Cri) 516; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129; Kuriachan Chacko v. State of Kerala, (2008) 8 SCC 708: (2008) 3 SCC (Cri) 631; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228: (2006) 1 SCC (Cri) 746, relied on

[10413] — Ss. 420 and 415 — Cheating — Stage at which fraudulent or dishonest intention should exist in order to make out the offence of cheating — *Held, such intention must be shown to exist at the time of making of the inducement — Otherwise, mere failure to keep up promise subsequently, held, cannot be presumed as an act leading to cheating*

It is clear from the allegations made in the complaint and the sworn statements that Appellant 1 Company entered into an agreement with Respondent 2 on certain terms and conditions. It is alleged that Appellant 7 contacted Respondent 2 and induced him to enter into an agreement assuring him of huge profit. At the time of arriving at such an agreement, none of the other appellants either met Respondent 2 or induced him to enter into any agreement with a view to cheat him. It is not the case that there was no supply of goods at all as it has come on record that there was supply of 400 tons of fertilizer, maybe it was far less than the required quantity. From the material that was placed before the Magistrate, even prima facie, it cannot be said that there was conspiracy or connivance between the other appellants and Appellant 7. If the appellants have committed breach of agreement it is open to Respondent 2 to seek redressal in a competent court or forum to recover damages. In order to constitute an offence of cheating the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. (Para 21). *S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693: 2000 SCC (Cri) 733, followed

[10414] — Ss. 420 and 415 — Cheating and dishonest inducement to deliver property — Ingredients of offence — Fraudulent or dishonest intention at the time of making promise or representation — Need for — *Held, in the absence of culpable intention at the time of making initial* *promise, offence under S. 420 is not proved — Further held, mere breach of contract does not necessarily involve cheating — Contract Act, 1872, S. 73*

The complainant, in order to prove offence of cheating, is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 can be said to have been made out. (Para 14)

One of the ingredients of cheating is the existence of (*sic* fraudulent or dishonest) intention of making initial promise or existence thereof, from the very beginning of formation of contract. It is one thing to say that a case has been made out for trial and as such criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all. (Paras 22 and 24)

Offence of cheating consists of two classes of cases: (1) where the complainant has been induced fraudulently or dishonestly, but it is not so in the present case; (2) when by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused. Distinction between mere breach of contract and the offence of cheating should be borne in mind. No case has been made out against the appellant to hold that he should face criminal trial. (Para 29). *V.Y. Jose* v. *State of Gujarat*, (2009) 3 SCC 78: (2009) 1 SCC (Cri) 996: (2009) 77 AIC 151 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 16-12-2008]

Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776, relied on

[10415] — Ss. 420, 415, 405 and 406 — Ingredients of cheating — Fraudulent and dishonest intention must exist from the very inception when the promise or representation was made — *Non-refunding of amount of advance which results in simply a breach of contract, held, does not constitute cheating or criminal breach of trust*

The ingredients of Section 420 of the Penal Code are:

(*i*) Deception of any persons;

(*ii*) Fraudulently or dishonestly inducing any person to deliver any property; or

(*iii*) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (Paras 8 and 10). *Dalip Kaur* v. *Jagnar Singh*, (2009) 14 SCC 696: (2009) 80 AIC 212 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 7-7-2009]

Ajay Mitra v. State of M.P., (2003) 3 SCC 11: 2003 SCC (Cri) 703; Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712: (2009) 3 SCC (Cri) 620, relied on

R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Hira Lal v. State of U.P., (2009) 11 SCC 89, applied

[10416] — Ss. 420, 415, 405, 409 and 120-B — Cheating — Ingredients — Existence of an intention to cheat at the time of making initial promise or formation of contract — Importance of and need to prove — *Held, complainant is required to show that accused had fraudulent or dishonest intention at the time of making promise or representation — In the absence of culpable intention at the time of making initial promise, no offence is made out under S. 420 — In present case, held, allowing of cheque discounting facility by bank officials to customers of Bank, without any criminal intent being proved, did not amount to commission of offence, particularly as facility allowed was not contrary to RBI Guidelines — It could not therefore also be said that there was meeting of minds in a conspiracy to commit an offence, nor could the act of corruption be inferred from transactions between Bank and its customers — Further, held, accused officials might have been prosecuted under S. 409 but they were not charged under this section — Their conviction therefore set aside — Prevention of Corruption Act, 1988, S. 13(1)(d)*

(6)(vi) Mens rea — If civil offence(s) only — Dishonest intention when must exist *(contd.)*

Appellant was a Branch Manager of State Bank of India. He and some of his colleagues were prosecuted under Sections 415 and 420 read with Section 120-B IPC, and Section 13(1)(*d*) of the Prevention of Corruption Act, 1988, for permitting discounting of local cheques to some customers of the Bank. Accused 4 and 5 were bank officials while Accused 1 to 3 were private parties having account with the Bank.

The issues involved were whether the bank officials and the customers had entered into criminal conspiracy to commit the offence of cheating against the Bank under Sections 415 and 420 IPC, and whether the accused persons had obtained any illegitimate advantage, warranting punishment under the Prevention of Corruption Act.

Trial court convicted the accused persons. High Court upheld their conviction. The Supreme Court however took note of the fact that there was no evidence on record to prove that there was an intention to cheat the Bank. On the other hand, there was evidence on record that appellant had stopped cheque discounting facility and he had resumed it only after verbal instructions from a superior officer, PW 20. Moreover, the bank officials appeared to have acted in the overall interest of the Bank for the purpose of promoting its business, though there might have been some irregularity in doing so.

Allowing the appeals,

Held :

One of the ingredients of cheating, as defined in Section 415 IPC, is existence of an intention to cheat at the time of making initial promise or existence thereof from the very beginning of formation of contract. The complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. (Paras 41 and 42)

No evidence has been brought on record to show that Accused 4 or for that matter, Accused 5 i.e. the bank officials entered into any conspiracy with others. Accused 4 had stopped grant of the said facility and only at the instance of PW 20, was the said facility restored. It may be that there had been certain procedural irregularities in the transaction. However, sufficient evidence is available on record to show that the officers had extended the discounting facility for the purpose of promoting the business of the Bank, for which initiative had been taken by PWs 19 and 20. It has not been disputed that after cheque discounting facility was stopped in April 1989 by Accused 4, there had been a meeting at the residence of PW 20. In his deposition, PW 20 categorically admitted that the said meeting was arranged at the instance of Accused 1. This meeting was arranged at PW 20's residence on the day he was on leave. Accused 1 must have developed grievance against Accused 4 on account of stoppage of the cheque discounting facility. If immediately thereafter the said facility had been restored by Accused 4, a stand taken by him that it was done under the oral instructions of the higher authorities appears to be plausible. The prosecution, apart from the fact that it had failed to bring on record any evidence of conspiracy, must also be held to have failed to bring on record any evidence of wrongful gain so as to attract provisions of the Prevention of Corruption Act, 1988 or otherwise. (Paras 38, 46 and 47)

The accused persons have not been charged for commission of the offence under Section 409. Conspiracy by and between the Bank officials and Accused 1 to 3 has been stated to be for commission of the offence of cheating. It was necessary for the prosecution to establish that there had been meeting of minds at the time when the facility had been granted. Such meeting of minds on the part of the accused persons has not been proved. (Para 48)

Furthermore, the prosecution case even if given face value and taken to be correct in its entirety does not lead to a finding that even Accused 1 to 3 had any wrongful intention at the time when the contract was initiated. (Para 49)

The Special Judge as also the High Court proceeded on the basis that cheque discounting facility could under no circumstances be made available to them. This was not a correct approach. RBI Guidelines categorically show that it was not a wrong practice. It is one thing to say that there has been an abuse of a prevalent banking practice for the purpose of causing wrongful loss to the bank and causing wrongful gain to others but it is another thing to say that by reason thereof, ingredients of cheating are attracted. (Para 50)

The offence, if any, was committed under Section 409 IPC but the accused persons have not been charged under Section 409 IPC; even Accused 1 to 3 have not been charged for entering into a conspiracy with Accused 4, 5 and 6 in respect of commission of offences under the Prevention of

Corruption Act. It is in the aforementioned situation, the judgment of conviction and sentence cannot be upheld. (Para 51)

The conclusions can be summarised as follows:

(*a*) The prosecution did not lay down any foundational facts to arrive at a finding of dishonest intention on the part of the appellants, nor has any such finding has been arrived at by the trial court or the High Court.

(*b*) The circumstances which were considered sufficient to bring home the charges against the appellants were: the cheques of Accused 1, 2 and 3 were discounted after purchasing cheques; cheques were deposited after a gap of one to four days; only later were the amounts deposited in the account, which circumstances are not sufficient to hold the appellants guilty for commission of offence under Section 420 IPC as all the actions on the part of the bank officers were in consonance with the long-standing banking practice.

(*c*) Accused 4 had taken care of having adequate security to ensure that the bank does not suffer any loss, the gain if any was caused to the bank.

(*d*) The appellants acted on instructions by the higher authority.

(*e*) The prosecution evidence does not establish any conspiracy on their part vis-à-vis Accused 1, 2 and 3. (Para 55). *S.V.L. Murthy* v. *State*, (2009) 6 SCC 77: (2009) 2 SCC (Cri) 941.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Sharon Michael v. State of T.N., (2009) 3 SCC 375: (2009) 2 SCC (Cri) 103, relied on

[10417] — Ss. 420/34 — Mens rea an essential ingredient of — *Charge of preparing fictitious pay bills and disbursing the same to fictitious persons — Conviction on ground of failure to perform duties or to observe rules of procedure laid down in the Duty Chart in proper manner by concerned employees — Administrative lapses cannot establish the charge of cheating under*

A failure on the part of the concerned employees to perform their duties or to observe the rules of procedure laid down in the Duty Chart in a proper manner may be an administrative lapse on their part and may be at the highest a case of an error of judgment or breach of performance of duty which per se, cannot be equated with dishonest intention. Mens rea is one of the essential ingredients of the offence of cheating under S. 420, IPC. *Anil Kumar Bose* v. *State of Bihar*, (1974) 4 SCC 616: 1974 SCC (Cri) 652: AIR 1974 SC 1560: (1974) 3 SCR 902: 1974 Cri LJ 1026: 1975 (12) ACC 35.

Bench Strength **2**. Coram: *H.R. Khanna* and **P.K. Goswami**, JJ. [Date of decision: 10-4-1974]

[10418] — Ss. 420/34 and 427 & 384 — Applicability — Non-supply of sales tax exemption forms — Whether amounted to cheating or fraud — Quashment of criminal complaint if warranted — *Disputes arising under a commercial transaction due to failure to supply by the authorised dealer to the purchasing dealer sales tax exemption forms under the Bihar Sales Tax Rules — Purchasing dealer filing a complaint alleging commission of criminal offences of cheating and fraud — Availability of remedy under Sales Tax Act and the Rules framed thereunder — Held, the transactions between the parties were for supply of goods — Except for supply of Form IX-C other terms and conditions of the contract had been complied with — Per se, supply or non-supply of Form IX-C of the Bihar Sales Tax Rules had nothing to do with the transactions for which the parties had entered into a contract — Non-issuance of the said form ex facie cannot give rise to commission of any offence — If the appellant or his principal were obligated to act under a statute and failed to perform their duties the statute itself provides for a remedy — In any event, the second respondent could have filed a suit for damages — Held, High Court erred in not quashing the complaint — CrPC, 1973 — S. 482* (Paras 10 to 13). *Anil Ritolla* v. *State of Bihar*, (2007) 10 SCC 110: (2007) 59 AIC 211 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, distinguished

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

(2007) 1 Pat LJR 255, reversed

[10419] — Ss. 420/120-B — Cheating — Requisites to constitute an offence of — Breach of contract, held, would amount to cheating only if intention to cheat was existing at the very inception — *If such intention developed later on, the same would not amount to cheating — Remedy in the latter case lies before the civil court by filing a properly constituted suit — Accused U and his deceased brother (Directors of a finance company) financing the truck purchased by complainant C on hire-purchase agreement — Subsequently, the said truck becoming traceless — C submitting claim* *before insurance company — **U** asking **C** to permit him to handle the insurance claim — **C** acceding to said request on assurances given by **U** that out of the claim of Rs 4,20,000 received, **C** would be paid Rs 2,60,000 — Despite the claim being allowed, **U** however failing to pay to **C** the assured amount — In the absence of any allegation in complaint that at the very inception there was any intention on behalf of the accused to cheat, held, offences under Ss. 420/120-B not made out* (Para 6). *Uma Shankar Gopalika* v. *State of Bihar*, (2005) 10 SCC 336.

Bench Strength **2**. Coram: *B.N. Agrawal* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 24-3-2004]

(7) Fraudulent financial schemes — What are

See also under Ss. 405-409 — CRIMINAL BREACH OF TRUST, '(9) Criminal breach of trust by banker, merchant, factor, broker or agent, etc. (S. 409)', above

[10420] — Ss. 415 and 420 — Ingredients of cheating — Held on facts, prima facie offence under S. 420 made out

Per Ranganath Misra, J. (Bhagwati, C.J. concurring)

(*i*) there should be fraudulent or dishonest inducement of a person by deceiving him;

(*ii*) (*a*) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(*b*) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

(*iii*) in cases covered by the second part of (*ii*), the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In the present case the prosecution's allegations were twofold: (*i*) though the Indira Gandhi Pratibha Pratishthan was not a State Government Trust, publicity was given by the respondent himself and through his agents as also through news media owned by the State Government and the public press to the fact that IGPP was a government trust; and (*ii*) though Mrs Gandhi had never agreed to the trust being named after her, the respondent associated her name for the purpose of creating an impression in the mind of the people at large that the then Prime Minister, Mrs Indira Gandhi had associated herself with the respondent's trust. The evidence, oral and documentary, taken together justified the framing of a charge for offence under S. 420 on the basis of these allegations. However, the position is a presumptive one open to rebuttal by the respondent. *R.S. Nayak* v. *A.R. Antulay*, (1986) 2 SCC 716: 1986 SCC (Cri) 256: AIR 1986 SC 2045: 1986 Cri LJ 1922.

Bench Strength **2**. Coram: **P.N. Bhagwati, C.J.**[1] and *Ranganath Misra*[2], J. [Date of decision: 17-4-1986]

[10421] — Ss. 415, 420 and 34 — Cheating — Ingredients — Appellant-accused promising/ propagating/inducing public through promotions/advertisements to invest money in an impracticable money circulation scheme — *Double the invested amount only to be given to a member when 14 new members enrolled under the member — Scheme, held, is practically impossible — As people would not have parted with their money but for such false/impossible representations made by the accused, held, there was an element of cheating — Conviction of appellant-accused, under Ss. 420/34 IPC, therefore, upheld*

Prima facie, the courts were satisfied that but for the representation and the benefit sought to be given under the Scheme, the victims would not have acted on such representation. It was, therefore, a case of application of Section 415 IPC. The trial court as well as the High Court considered the facts of the case and held that there is an *element of cheating* inasmuch as a representation was made by the accused that every unit-holder will get double the amount invested by him; the representation was false, the maker of the representation was aware that the representation was not true and by such representation, he deceived the victim to believe the representation to be true and actuated him to act on such representation. The promoters induced the common public to part with money on the lure of doubling the amount. The advertisement clearly declared that a member would get double the amount when after his enrolment, two members were enrolled under him and thereafter, 4 other persons were enrolled and after the enrolled 4 persons, 8 persons were enrolled under them. Thus, only after 14 persons under the first enrolled person become members under the Scheme, the first person would get Rs 1250 i.e. double the amount of Rs 625. (Paras 47 and 39)

Prima facie case had been made out in absence of better explanation by the accused. The High Court also upheld the argument of the prosecution that the Scheme was a "mathematical impossibility". The promoters of the Scheme very well knew that it is certain that the Scheme was impracticable and unworkable making tall promises which the makers of the promises knew fully well that it could not work successfully. It could work for some time in that "Paul can be robbed to pay Peter" but ultimately when there is a large mass of Peters, they will be left in the lurch without any remedy as they would by then have been deceived and deprived of their money. If it is so, it could be said to be a case for application of Section 420 read with Section 34 IPC, of course, at this stage. (Paras 47 and 41). *Kuriachan Chacko* v. *State of Kerala*, (2008) 8 SCC 708: (2008) 3 SCC (Cri) 631: (2008) 69 AIC 129 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 10-7-2008]

Ram Jas v. State of U.P., (1970) 2 SCC 740: 1970 SCC (Cri) 516; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; S.W. Palanitkar v. State of Bihar, (2000) 1 SCC 241: 2000 SCC (Cri) 129, relied on

State of M.P. v. Mir Basit Ali Khan, (1971) 2 SCC 96: 1971 SCC (Cri) 417, distinguished

[10422] — S. 415 Expln. and Ss. 24 and 23 — Deception — Scope of — Non-disclosure of relevant information — Held, to be treated as misrepresentation leading to deception — *Further held, S. 415 Expln. gives statutory recognition to the judicially evolved principle that misleading statements which withhold vital facts for intentionally inducing a person to do or omit to do something, would amount to deception — Misleading statement causing damage wrongfully to the person deceived, amounts to cheating — A corporate body seeking investment by means of misleading statement may therefore be subjected to prosecution for cheating — Companies Act, 1956, Ss. 56, 58-A, 60-A, 60-B and 61 to 68 — CrPC, 1973, S. 482*

Section 415 can be divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to either: (*a*) deliver property to any person; or (*b*) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The Explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception. (Para 68)

The Explanation appended to Section 415 gives a statutory recognition to the legal principles established through various judicial pronouncements that misleading statements which withhold the vital facts for intentionally inducing a person to do or to omit to do something would amount to deception. Further, in case it is found that misleading statement has wrongfully caused damage to the person deceived it would amount to cheating. (Para 72)

The appellants were entitled to an opportunity to prove the averments made in the complaint. They were entitled to establish that they have been deliberately induced into making huge investments on the basis of representations made by Respondent 1 and its representatives, which representations subsequently turned out to be completely false and fraudulent. The appellants were entitled to an opportunity to establish that Respondent 1 and its representatives were aware of the falsity of the representations at the time when they were made. The appellants have given elaborate details of the positive assertions made by Respondent 1 which were allegedly false to its knowledge. It is also claimed by the appellants that Respondent 1 and its representatives wilfully concealed facts which were material and ought to have been disclosed, but were intentionally withheld so as to deceive the appellant into advancing and expending a sum of Rs 500 crores. (Para 75). *Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 20-10-2010]

Central Railway Co. of Venezuela v. Kisch, 1867 LR 2 HL 99; New Brunswick and Canada Railway Co. v. Muggeridge, (1860) 1 Dr. & Sm 363 at pp. 381-82: 62 ER 418, relied on

[10423] — S. 420 — Snowball Schemes — Society registered — Use of expression "Government of India registered firm No. 1468" — Working of scheme fully explained — Does not amount to cheating

The Scheme is one of those snowball schemes which are speculative to the highest degree and unworkable but it was not dishonest or fraudulent in the sense that it either represented to the public something which was not true or concealed from them something which should have been disclosed. At worst it was an appeal to the gambling instinct of humanity but this cannot per se amount to cheating. *State of M.P.* v. *Mir Basit Ali Khan*, (1971) 2 SCC 96: 1971 SCC (Cri) 417: AIR 1971 SC 1620: 1971 Cri LJ 1184.

Bench Strength 3. Coram: **S.M. Sikri, C.J.** and *P. Jaganmohan Reddy* and *I.D. Dua*, JJ. [Date of decision: 22-3-1971]

Distinguished in Kuriachan Chacko v. State of Kerala, (2008) 8 SCC 708

[10424] — Ss. 420, 406, 409, 120-B, 467, 468 and 471 — Relief — Transfer of investigations in different cases to one agency — *Finance companies accepting deposits from a large number of persons but not repaying them — FIRs lodged by depositors against Directors of such companies at different places in different States — Prayer of accused persons for transferring the investigation in all such cases to CBI, rejected — CrPC, 1973, S. 156 — Negotiable Instruments Act, 1881, S. 138 — Constitution of India, Art. 32*

The petitioners' prayer that the investigations of all cases should be transferred to CBI has to be rejected. (Para 62). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength 3. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

[10425] — Ss. 420, 406, 409, 407, 120-B, 467, 468 and 471 — In the present case, the writ petitioners charged with offences at different places in different States though were granted bail in one case could not avail of the benefit thereof due to incarceration on account of production warrant in another case — *Such a situation, held, not ipso facto violative of Art. 21 — In absence of material to substantiate the allegation of infraction of Art. 21, relief of release on bail by a blanket order refused — However, in view of the right under Art. 21 to speedy trial, Central Government directed to evolve a formula or procedure for early conclusion of the trial — CrPC, 1973, S. 438 — Natural justice — Held, warrants a fair opportunity — Prevention of Corruption Act, 1947, Ss. 5(2) & (1)(d) — Negotiable Instruments Act, 1881, S. 138 — Constitution of India, Art. 21*

Admittedly, the protection of personal liberty stands expanded to make the right to life under Article 21 more meaningful, the language of the article itself records an exception indicating thereby that a person may be deprived of his liberty in accordance with the procedure established by law and it is in this sphere the courts will scrupulously observe as to whether the alleged violation of Article 21 stands differently and contra as regards the procedure established by law and in the event it is not so done, it would be a plain exercise of judicial power to grant redress to the petitioner. While there is no difficulty in appreciating the grievance and grant of relief in a given case but facts are too insufficient however, to come to a conclusion as regards the infraction of Article 21. Production warrants have been spoken of without any details whatsoever therefor — the reason offered is that the petitioners, in fact, are not in the know of things being behind the prison bars and it starts pouring in from all parts of the country and in the factual backdrop, it is a well-nigh impossible to come to a finding as regards the infraction of Article 21. In any event the liberty of the petitioners cannot be said to have been trifled with in the absence of due process of law. Deprivation, if any, cannot be claimed to be not in accordance with due process of law. (Para 50)

It cannot be held that an accused involved in large number of criminal cases in different parts of the country, if is not able to be released from custody even on getting bail orders in some cases, itself would tantamount to violation of the right of a citizen under Article 21 of the Constitution. The object of Article 21 is to prevent encroachment upon personal liberty by the executive save in accordance with law, and in conformity with the provisions thereof. It is, therefore, imperative that before a person is deprived of his life or personal liberty, the procedure established by law must strictly be followed and must not be departed from, to the disadvantage of the person affected. In each case where a person complains of the deprivation of his life or personal liberty, the Court, in exercise of its constitutional power of judicial review, has to decide whether there is a law authorising such deprivation and whether in the given case, the procedure prescribed by such law is reasonable, fair and just, and not arbitrary, whimsical and fanciful. On account of liberal interpretation of the words "life" and "liberty" in Article 21, the said article has now come to be invoked almost as a residuary right, even to an extent which the founding fathers of the Constitution never dreamt of. Issuance of production warrants by the court and the production of accused in the court, in cases where he is involved is a procedure established by law and consequently, the accused cannot be permitted to complain of infraction of his rights under Article 21. However, in a given case, the court may be justified in directing release of the accused, taking a stock of the entire situation in the case. While, therefore, holding that an accused could maintain a petition under Article 21, it has to be held that the court would not be justified in directing the release of such accused under a blanket order. (Paras 57 and 63)

The right of an accused to have speedy trial is now recognised as a right under Article 21. Even it has been extended to investigation of offences against child offenders. The procedural fairness required by Article 21, including the right to a speedy trial, has, therefore to be observed throughout and to be borne in mind. (Para 58)

Therefore, while no relief is granted herein to the accused persons, the Central Government should evolve certain formula or procedure, so that the accused will not complain of undue harassment on account of protraction of their cases and the persons deceived who have filed complaints, will be satisfied with the early conclusions of the trial. (Para 58). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

Sheela Barse (I) v. Union of India, (1986) 3 SCC 632: 1986 SCC (Cri) 352, relied on

JVG Group of Companies, Re, WP (Crl.) No. 256 of 1999, decided on 28-3-2000 (quoted in Para 1) and Kuber Group of Companies, Re, WPs (Crl) Nos. 72-75 of 2000, decided on 5-5-2000 (quoted in Para 2) overruled on this point

[10426] — Ss. 420, 406, 409, 407, 120-B, 467, 468 and 471 — Relief — Consolidation of cases — *Finance companies accepting deposits from a large number of persons but not repaying the same — Consequently, criminal cases initiated against Directors of such companies in courts in different States — Prayer of accused persons for consolidation of such cases, rejected by Supreme Court — However, liberty granted to approach the High Court, or as the case may be, the Appellate Consumer Forum in that regard — CrPC, 1973, S. 407(1)(c) — Negotiable Instruments Act, 1881, S. 138 — Constitution of India, Art. 32*

In regard to the prayer for consolidation the petitioner would be at liberty to approach the High Court in accordance with law. Similar is the situation as regards the orders of the Consumer Forum and the petitioner in the normal course of events would be at liberty to ventilate the grievance if any, before the Appellate Forum in accordance with law. (Para 63). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

[10427] — Ss. 420, 415, 418 & 25 — Commission of fraud on investors by promoters of company — Liability of promoters who were minors — Unsustainability of — *Held, as the appellants were minors at the relevant time, they could not have entered into the contract in view of S. 11 of the Contract Act, 1872 — Thus, they being not party to fraud, they could not have been subjected to penalty under the SEBI Act — It was promoter S i.e. father of appellant minors who committed fraud in names of appellants — Hence, held, S himself should have been proceeded against not only for commission of act of fraud on his own behalf but also on behalf of minors — Contention that offence was continuing one, rejected — Contract Act, 1872, Ss. 11, 10 & 17 — Minors party to contract later found to be fraudulent — Effect — Minors, held, cannot be prosecuted or held liable in such a case — SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 — Regns. 4 to 6 & 11 — Companies Act, 1956, Ss. 62, 63 and 68 — SEBI Act, 1992, Ss. 11(2)(e), 11-B, 24, 27 & S. 15-HA (inserted post the event). Ritesh Agarwal* v. *SEBI*, (2008) 8 SCC 205: (2008) 144 Comp Cas 12.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-5-2008]

(8) Tax evasion and cheating

[10428] — S. 420 — Applicability — Existence of fraudulent or dishonest intention at the time of making promise or representation, held, necessary — *Where machines were imported availing the benefit of exemption notification on the basis of exemption certificate containing necessary conditions required to be complied with after importation but those conditions could not be complied with and the importer paid the necessary customs duties without taking the advantage of the exemption certificate, held, such conduct of the importer indicated that there was no fraudulent or dishonest intention right at the time of making of application for exemption — Hence, the importer, held, not guilty of offence under S. 420 — More so, when the importer was a non-profit organisation — Customs Act, 1962, S. 25 — Exemption — Availing of the benefit of exemption subject to certain conditions to be complied with later but on failure to comply therewith paying the necessary duties without taking advantage of exemption — Such conduct, held, does not attract S. 420 IPC*

The ingredients of Section 420 IPC are not made out. There is no reason as to why the appellants must be made to undergo the agony of a criminal trial. (Para 33)

It is settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his failure to keep promise subsequently, such a culpable intention right at the beginning cannot be presumed. The records show that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since GCS could not comply with it, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of GCS clearly indicates that there was no fraudulent or dishonest intention of either GCS or the appellants in their capacities as office-bearers *right at the time of making application for exemption*. Therefore, the question of committing an offence under Section 420 IPC does not arise. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. (Para 40). *Hira Lal Hari Lal Bhagwati* v. *CBI*, (2003) 5 SCC 257: 2003 SCC (Cri) 1121: AIR 2003 SC 2545: (2003) 104 DLT 699: 2003 Cri LJ 3041: (2003) 155 ELT 433: (2003) 262 ITR 466.

Bench Strength 2. Coram: **Brijesh Kumar**[2] and **Dr. AR. Lakshmanan**[1], JJ. [Date of decision: 2-5-2003]

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513, relied on

[10429] — S. 420 — Default under S. 271(1)(c) IT Act — Ingredients of, and conditions precedent for imposition of penalty thereunder — Prosecution under S. 420 IPC and S. 276-C IT Act — Maintainability — *AYs 1983-84 to 1986-87 — Word "concealment", held, implies a deliberate act and existence of mens rea — Penalty can be imposed only when it is proved that the assessee has made conscious concealment or furnished inaccurate particulars of his income — Where the assessment or reassessment, on the basis of which penalty is levied held, is finally annulled, held, the order of penalty cannot stand — Assessee, engaged in construction and sale of flats, submitting returns for AYs 1983-84 to 1986-87 — Consequent to search under S. 132, IT Act, it filing revised returns on the basis of approved valuer's report, showing construction cost accordingly — Department treating the difference between the income shown in original return and the income shown in the revised return as concealed income and levying penalty — Assessing authority thereafter filing complaints before Magistrate under, inter alia, Ss. 276-C(2), 277 & 278-B, IT Act and S. 420 IPC — ITAT finding that additions in the income were on the basis of settlement between the assessee and the Revenue and represented the assessee's voluntary offer — ITAT therefore holding that there was no concealment of income and, accordingly, it cancelling the penalty — Assessing authority giving effect to ITAT's order — ITAT's order not challenged and becoming final — In such circumstances, held, no offence survived under IT Act — Hence, prosecution of the assessee under S. 276-C, held, could not be maintained — Further held, in the absence of culpable intention under S. 420 IPC, the matter adjudicated by ITAT, should not have been dragged to criminal court — IT Act, 1961, Ss. 271(1)(c), 276-C, 277, 278-B and 132. K.C. Builders* v. *CIT*, (2004) 2 SCC 731: 2004 SCC (Cri) 1092: (2004) 265 ITR 562: (2004) 1 KLT 596.

Bench Strength 2. Coram: *B.N. Agrawal* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 28-1-2004]

Doubted in Standard Chartered Bank v. Directorate of Enforcement, (2006) 4 SCC 278 in para 24, p. 295

Distinguished in State, CBI v. Sashi Balasubramanian, (2006) 13 SCC 252: (2007) 3 SCC (Cri) 337

[10430] — S. 420 — Property — Whether Assessment Order is "property" and/or "valuable property" — Charge can be framed if Income Tax Officer induced to deliver an assessment order for less income tax than due

One income tax consultant, two income tax clerks, and two partners of premier Industries were charged for "dishonestly or fraudulently inducing the Income Tax Authorities and obtaining assessment order for less income tax than due "from the two partners. Question was whether an assessment order is "property" and/or "valuable security" within the meaning of S. 420, IPC.

Held :

The word "property", occurring in S. 420 of the Indian Penal Code, does not necessarily mean that the thing, of which a delivery is dishonestly desired by the person who cheats, must have a money value or a market value in the hand of the person cheated. Even if the thing has no money value in the hand of the person cheated, but becomes a thing of value in the hand of the person who may get possession of it as a result of the cheating practised by him, it would still fall within the connotation of the term "property" in S. 420 of the Indian Penal Code. The communicated order of assessment received by an assessee is, "property", since it is of great importance to an assessee, as containing a computation of his total assessable income and as a determination of his tax liability.

The assessment order is certainly a "document" under S. 29 of the Indian Penal Code. The order of assessment does create a right in the assessee, in the sense that he has a right to pay tax only on the total amount assessed therein and his liability to pay tax is also restricted to that extent. Therefore, an order of assessment is a "valuable security" under S. 420 of the Indian Penal Code. Therefore, if the cheating employed by the accused resulted in inducing the Income Tax Officer to make a wrong assessment order, it would amount to inducing the Income Tax Officer to make a "valuable security". *Ishwarlal Girdharilal Parekh* v. *State of Maharashtra*, AIR 1969 SC 40: (1969) 1 SCR 193: (1968) 70 ITR 95, 98, 99: 1969 Cri LJ 271.

Bench Strength 2. Coram: *V. Ramaswami* and **C.A. Vaidialingam**, JJ. [Date of decision: 1-5-1968]

[10431] — Ss. 420, 415 and 120-B — Ingredients of offences under, on facts, held, not made out — Immunity from prosecution granted under S. 91 Kar Vivad Scheme — Scope — ***Per Ar. Lakshmanan, J.:*** **Held, protects from proceeding under any and all laws and not only from the proceedings under the taxing statutes** — *In the present case, Gujarat Cancer Society (GCS) importing certain machines availing of duty exemption under Customs Noti. Nos. 279/83-Cus. and 64/88-Cus. on the basis of exemption certificate issued in the name of Gujarat Cancer and Research Institute (GCRI) on the bona fide belief that since GCS funded all the activities of GCRI and all the operations of GCS were carried out through GCRI, the same was permissible — However, Collector of Customs holding otherwise and raising a demand but in view of charitable and philanthropic activities of GCS, not recommending any prosecution and imposing only a token redemption fine of Re 1 — CEGAT affirming Collector's decision and GCS filing appeal before Supreme Court — KVSS, 1998 coming into effect and GCS making a declaration thereunder — Designated authority determining the liability to duty — GCS withdrawing its appeal from Supreme Court — Certificate of full and final settlement issued granting to GCS immunity from prosecution for any offence under Customs Act or from imposition of penalty thereunder — In such circumstances, prosecution of office-bearers of GCS under Ss. 120-B/420 IPC on the ground of cheating the Government by evasion of customs duty and violation of the "actual-user" condition as per import-export policy, held, not maintainable — Further held, continuance of such prosecution would amount to subjecting the accused persons to double jeopardy after honourable acquittal by Collector of Customs — More so, when the accused persons were senior citizens aged 92 and 70 years — Further held, in penal law there is no vicarious liability unless provided in the statute — On facts held, the ingredients of Ss. 120-B, 420 and 415 were not made out — Further held, such offences, if any, stood compounded by virtue of the settlement — Hence, the process issued by the Magistrate was liable to be quashed under S. 482 CrPC and Art. 227 — Per Brijesh Kumar, J.: Concurring in view of S. 95(iii), subsequent to the settlement, the Government cannot turn around and get the declarant convicted — More so, when under S. 90(4) the declarant was obliged to withdraw his appeal from the Supreme Court which might have affected the criminal proceedings too on merits — Hence, the prosecution would amount to abuse of the process of court — Per curiam: Therefore, the proceedings under S. 420 read with S. 120 IPC are quashed — Ingredients of offences under, on facts, held, not made out — CrPC, 1973, S. 482 — Constitution of India, Arts. 227 and 20(2) — Kar Vivad Samadhan Scheme, 1998, Ss. 91, 90(2), (3) & (4), 95(ii) & (iii), 88, 89 and 87(h) & (j)*

The Gujarat Cancer Society (for short "GCS") imported MRI and lithotripsy machines availing of duty exemption under Notifications Nos. 279/83-Cus. and 64/88-Cus. on the basis of exemption certificate issued in the name of Gujarat Cancer and Research Institute (for short "GCRI"). GCS did so on a bona fide premise that since all the activities of GCRI were funded by GCS and all the operations of GCS were carried out through GCRI and that they were akin to holding a subsidiary company, the same was permissible. Later, the Customs Authority raided the premises of GCRI and seized the machines and necessary paperwork on the ground that the exemption certificate was issued in the name of GCRI and not in the name of GCS and thus GCS was not entitled to exemption and was, therefore, liable to pay customs duty. The machines were immediately released on giving the usual undertaking. After issuing a show-cause notice on 11-10-1991 under the proviso to Section 28(1), Customs Act, the Collector of Customs held GCS to be liable to pay the customs duty and not entitled to exemption. Therefore, he raised a demand in a certain sum against GCS. However, considering the charitable and philanthropic activities of GCS, no prosecution was recommended and only a token redemption fine of Re 1 was imposed. Personal penalty under Section 112(*a*), Customs Act was also imposed on certain parties. After unsuccessfully approaching CEGAT, GCS filed an appeal before the Supreme Court. During the pendency of the appeal, the Kar Vivad Samadhan Scheme, 1998 (for short "KVSS") came into effect. The case of GCS was settled under KVSS and the tax liability was determined on 10-2-1999 by the Designated Authority. On 16-3-1999, the appellants withdrew the appeal from the Supreme Court. On 19-7-1999, a certificate for full and final settlement of tax arrears in respect of the KVSS, 1998 was issued to GCS. The said certificate, *inter alia*, certified the receipt of payment from GCS towards full and final settlement of tax arrears determined in the order dated 10-2-1999 and further granted immunity to GCS from any proceedings for prosecution for any offence under the Customs Act, 1962 or from the imposition of penalty under the said enactment, in respect of the matters covered in the declaration made by GCS. However, on 6-1-1999, consequent to an FIR lodged by the Joint Secretary, Ministry of Health, Government of India, the respondent CBI registered a case alleging that the appellants herein, who were office-bearers of GCS, in conspiracy with the Director of GCRI, Secretary of GCS and certain others had cheated the Government of India in terms of evasion of customs duty and had violated the provisions of "actual-user" condition as per the import-export policy during the year 1987-88. A charge-sheet was filed under Sections 120-B and 420 IPC. The trial court took cognizance and issued process. The appellants filed petitions under Section 482 CrPC read with Article 227 before the Delhi High Court seeking quashment of the FIR. The High Court dismissed the said petitions. Therefore, the appellants filed the instant two appeals by way of SLPs. Opposing the appeals and supporting the High Court's order as well as the issue of process by the Magistrate, the respondent CBI contended that the charges of cheating and other offences under IPC against the appellants were supported by documentary evidence. That it was not a civil dispute but a case of commission of criminal offences. That subsequent payment of duty could not be a ground for quashing criminal proceedings or absolving the accused persons of their criminal liability. That the settlement under KVSS, 1998 protected the individual only from prosecution under the taxing statute and not from criminal proceedings under the Penal Code. That the criminal proceedings could not be quashed merely on account of the fact that customs duty payment had been settled. That the machines were liable to confiscation under Section 111(*o*), Customs Act.

Allowing the appeals

Held :

Per Ar. Lakshmanan, J.

The grant of immunity by the Designated Authority (KVSS-98) from instituting any proceeding for prosecution for any offence under the Customs Act, 1962, or from the imposition of penalty under the said enactment, in respect of matters covered in the declaration made by the declarant, the decision of the Collector not to recommend prosecution and to impose only a token fine of Re 1 only show that the Customs Authorities were satisfied that there was no intention to evade the customs duty. GCS is immune from any criminal proceedings pursuant to the certificate issued under KVSS. The appellants are being prosecuted in their capacity as office-bearers of GCS. As the customs duty has already been paid, the Central Government has not suffered any financial loss. Moreover, as per KVSS, 1998, whoever is granted the benefit under the said Scheme is granted immunity from prosecution for any offence under the Customs Act, 1962 including the offence of evasion of duty. In the circumstances, the complaint filed against the appellants is unsustainable. (Paras 23 and 24)

From the case of *Sushila Rani*, (2002) 2 SCC 697, it is clear that if an assessee takes the option under KVSS, he obtains immediate immunity under any proceeding under any and all laws in force. As such the present proceedings initiated under Section 120-B read with Section 420 IPC are bad and ought to have been quashed with immediate effect. (Para 27)

Moreover, in the present case, the alleged criminal liability stands compounded on a settlement with respect to the civil issues and, therefore, the FIR was erroneously issued and was totally unwarranted. From the judgment in *Duncans Agro Industries Ltd. case*, (1996) 5 SCC 591, the proposition that follows is that KVSS, 1998 was a voluntary scheme whereby if the disputed demand was settled by the authority and pending proceedings were withdrawn by the importer, the balance demand against the importer shall be dropped and the importer shall be immune from penal proceedings under any law in force. Therefore, the respondent's argument that KVSS, 1998 did not absolve the appellants of criminal liability under IPC cannot be sustained. The continuance of the proceedings in the instant case would only tantamount to driving the present appellants to double jeopardy when they had been honourably exonerated by the Collector of Customs, and further, GCS of which one of the appellants is the General Secretary in which capacity he is accused in the present case was granted amnesty under KVSS, 1998. The present case does not warrant subjecting a citizen especially senior citizens of the age of 92 and 70 years to fresh investigation and prosecution on an incident or fact situation giving rise to offence under both the Customs Act and IPC when the matter has already been settled. (Para 29)

Under the penal law, there is no concept of vicarious liability unless the statute covers the same within its ambit. In the instant case, under the said law which prevails in the field i.e. the Customs Act, 1962 the appellants have been wholly discharged and GCS granted immunity from prosecution. It is a well-established principle of law that the matter which has been adjudicated and settled need not be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable. The true fact and import of KVSS, 1998 is that once the said Scheme is availed of and all the formalities complied with including the payment of the duty, the immunity granted under the provisions of the Customs Act, 1962 also extends to such offences that may prima facie be made out on identical allegations i.e. of evasion of customs duty and violation of any notification issued under the said Act. (Para 30)

In the present case, there is no prima facie case made out in respect of the alleged offence under Section 120-B read with Section 420 IPC and, therefore, the charge-sheet and the process issued thereunder has to be quashed. To bring home the charge of conspiracy within the ambit of Section 120-B IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is difficult to establish conspiracy by direct evidence. (Paras 31 and 32)

The ingredients of Section 420 IPC are also not made out. There is no reason as to why the appellants must be made to undergo the agony of a criminal trial. (Para 33)

To hold a person guilty of cheating under Section 415 IPC, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. As the customs duty was paid by GCS, there was no fraudulent or dishonest intention on the part of GCS or its office-bearers to retain the property. Moreover, there was no inducing on the part of GCS or its office-bearers intentionally to retain the property since customs duty had been paid by GCS and, therefore the ingredients of the offence of cheating are missing for issuing the process against the appellants and, therefore, the same is liable to be quashed and set aside. (Paras 34 and 35)

Section 111(*o*) of the Customs Act, 1962 is not attracted in the present case. The subsequent proceedings initiated for confiscation of the goods is of no relevance nor does it retrospectively render the import illegal. (Para 37)

It is settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his failure to keep promise subsequently, such a culpable intention right at the beginning cannot be presumed. The records show that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since GCS could not comply with it, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of GCS clearly indicates that there was no fraudulent or dishonest intention of either GCS or the appellants in their capacities as office-bearers *right at the time of making application for exemption*. Therefore, the question of committing an offence under Section 420 IPC does not arise. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The KVSS certificate and the law laid down by the Supreme Court clearly absolve the appellants herein of all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process. (Para 40)

Per Brijesh Kumar, J. (concurring)

On the one hand final settlement was made after determining the tax liability, as postulated in Section 95(*iii*), KVSS, 1998, that the appellants were neither convicted nor criminal proceedings were pending, relating to any offence under Chapter IX or XVII IPC, yet the criminal proceedings are being prosecuted which is apparently against the very spirit of KVSS. In view of the condition precedent under Section 95(*iii*) for settlement, when on that basis a settlement is brought about, it does not mean that later on, one could turn around and get the declarant convicted for a criminal offence too. More so, when in view of Section 90(4) of the Scheme the declarant is obliged to withdraw an appeal or proceedings regarding tax liability pending before the High Court or the Supreme Court, which had also been done in the present case. The declarant could not be dragged and chased in criminal proceedings after closing the other opening, making it a dead end. It is highly unreasonable and arbitrary to do so and initiation and continuance of such proceedings lack bona fides. (Para 44)

Therefore, it has to be inferred that the position as it stood, in regard to the criminal prosecution and conviction on the date the declaration was filed, as conditions precedent to settlement under the Scheme, would also stand finalized on full and final settlement of the matter under the Scheme. Later on, the declarant could not be or continued to be subjected to criminal prosecution to alter the position as it stood on the relevant date of the submission of declaration. The appellants virtually foreclosed their right to further pursue the proceedings before the authorities or courts of law challenging the legality, validity or the tax liability in terms of the Scheme. Undoubtedly, if the appellants' appeal which was pending in the Supreme Court had been allowed it might have affected the criminal proceeding too on merits. In certain circumstances, it could be put up as a defence by the declarant, in the criminal case but in terms of the Scheme he was bound to withdraw his appeal. The criminal prosecution could not be allowed to proceed by putting an end to a possible defence, beforehand. It certainly amounts to abuse of the process of law. (Para 45)

Per curiam

The FIR in question and the proceedings initiated in pursuance thereto against the appellants in the Court of Chief Metropolitan Magistrate under Sections 120-B and 420 IPC are quashed. (Para 46). *Hira Lal Hari Lal Bhagwati* v. *CBI*, (2003) 5 SCC 257: 2003 SCC (Cri) 1121: AIR 2003 SC 2545: (2003) 104 DLT 699: 2003 Cri LJ 3041: (2003) 155 ELT 433: (2003) 262 ITR 466.

Bench Strength **2**. Coram: **Brijesh Kumar**^{2} and **Dr. AR. Lakshmanan**^{1}, JJ. [Date of decision: 2-5-2003]

Sushila Rani v. CIT, (2002) 2 SCC 697; CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045; Union of India v. Sampat Raj Dugar, (1992) 2 SCC 66, followed

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513, relied on

Distinguished on facts in M. Natarajan v. State, (2008) 8 SCC 413

Held limited in M. Natarajan v. State, (2008) 8 SCC 413

[10432] — Ss. 420/34 and 427 & 384 — Applicability — Non-supply of sales tax exemption forms — Whether amounted to cheating or fraud — Quashment of criminal complaint if warranted — *Disputes arising under a commercial transaction due to failure to supply by the authorised dealer to the purchasing dealer sales tax exemption forms under the Bihar Sales Tax Rules — Purchasing dealer filing a complaint alleging commission of criminal offences of cheating and fraud — Availability of remedy under Sales Tax Act and the Rules framed thereunder — Held, the transactions between the parties were for supply of goods — Except for supply of Form IX-C other terms and conditions of the contract had been complied with — Per se, supply or non-supply of Form IX-C of the Bihar Sales Tax Rules had nothing to do with the transactions for which the parties had entered into a contract — Non-issuance of the said form ex facie cannot give rise to commission of any offence — If the appellant or his principal were obligated to act under a statute and failed to perform their duties the statute itself provides for a remedy — In any event, the second respondent could have filed a suit for damages — Held, High Court erred in not quashing the complaint — CrPC, 1973 — S. 482* (Paras 10 to 13). *Anil Ritolla* v. *State of Bihar*, (2007) 10 SCC 110: (2007) 59 AIC 211 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, distinguished

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

(2007) 1 Pat LJR 255, reversed

(9) Attempt to cheat

— Ss. 420/511 r/w S. 120-B *See also* Ss. 408, 409 r/w 109, 420 and 420/511 r/w S. 120-B

See also Ss. 408, 420 and 420/511 r/w S. 120-B

[10433] — S. 420 r/w S. 511 — Attempting to cheat — *'A' applying for admission to M.A. class as a private candidate and filing forged certificates purporting to be from a Headmaster and Inspector of Schools as a proof of the fact that he had passed B.A. examination and was teaching in a school — It being found that the certificates were forged and 'A' had neither passed B.A. examination nor he was a teacher, no admission card issued to A — Held, 'A' was guilty of the offence of attempting to cheat under the sections*

The preparation was complete when he had prepared the application for the purpose of submission to the University. The moment he despatched it, he entered the realm of attempting to commit the offence of "cheating". He did succeed in deceiving the University and inducing it to issue the admission card. He just failed to get it and sit for the examination because something beyond his control took place inasmuch as the University was informed about his being neither a graduate nor a teacher. Therefore, *A* was rightly convicted of the offence under S. 420 read with S. 511, IPC. *Abhayanand Mishra* v. *State of Bihar*, AIR 1961 SC 1698: (1962) 2 SCR 241: (1961) 2 Cri LJ 822, 827.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 24-4-1961]

[10434] — S. 420 r/w S. 511 — Technical offence under — Accused altering his own affidavit for securing customs clearance — *Accused's explanation that he did so under an honest belief found reasonable on facts and as such act complained of may or may not amount to offence under S. 420 r/w S. 511 — Accused neither cheated nor attempted to cheat the Customs Deptt. — Accused already suffered a prosecution under S. 420 — Nearly 20 years elapsed since commission of the alleged act — In the circumstances held, it would not be expedient in the interest of justice to maintain High Court's order passed about ten years ago remanding the case to the Magistrate concerned for trying the accused under S. 420 r/w S. 511. Kapoor Chand Maganlal Chanderia* v. *Delhi State (Admn.)*, 1985 Supp SCC 268: 1985 SCC (Cri) 441.

Bench Strength **2**. Coram: **A.P. Sen** and *E.S. Venkataramiah*, JJ. [Date of decision: 16-4-1985]

[10435] — Ss. 420/511 — Attempt to cheat — Failure irrelevant — *Accused making false representation to complainant that he could duplicate currency notes — Complainant delivering currency notes to accused — Held, offence of attempt to cheat complete — The fact that accused failed in his attempt is irrelevant*

In fact the making of the false representation is one of the ingredients for an offence of cheating under S. 420 of the Indian Penal Code. So also the delivery of property is another of such ingredients. Both these ingredients took place in this case and the accused brought them about. Therefore, it cannot be said that the accused had only made a preparation and not an attempt to commit the offence.

It is true that the complainant had not been taken in. He had never believed that the accused could actually duplicate currency notes. He feigned belief only in order to trap the accused. That however clearly makes no difference so far as an attempt to cheat is concerned. The accused had attempted to cheat the complainant. That they had failed in their attempt is irrelevant in considering whether they had committed the offence of attempting to cheat. *Bashirbhai Mohamedbhai* v. *State of Bombay*, AIR 1960 SC 979: (1960) 3 SCR 554: 1960 Cri LJ 1383, 1384: 62 Bom LR 908.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **A.K. Sarkar**, JJ. [Date of decision: 19-4-1960]

[10436] — Ss. 420/511 — Trap by complainant by feigning belief in false representation and delivering property after informing police — *Offence of attempt to cheat completed. Bashirbhai Mohamedbhai* v. *State of Bombay*, AIR 1960 SC 979: (1960) 3 SCR 554: 1960 Cri LJ 1383, 1384: 62 Bom LR 908.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **A.K. Sarkar**, JJ. [Date of decision: 19-4-1960]

Govt. of W.B. v. Umesh Chandra Mitter, ILR 16 Cal 310, approved

(10) Trial, Proof and Other issues

See in detail CRIMINAL TRIAL in Vols. 18, 19 and 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

Synopsis

(i) Acquittal justified **1000**
(ii) Appeal/Revision **1000**
(iii) Bail **1001**
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(xiv) Vicarious liability — Offence by company **1043**
(xv) Witnesses **1046**

(i) Acquittal justified

[10437] — S. 420 — Cheating — Acquittal upheld — *Responding to a telephone call, to get information about his missing son, complainant putting Rs 50,000 in a dustbin at the instructed place, where he found an envelope containing an address — However, such address found to be non-existent — Evidence of PWs whose telephones accused was alleged to have used, and of police constable deputed to tap conversation on complainant's telephone, not establishing any proximity of accused with the crime — Trial court acquitting appellant-accused, taking the view that there was no connecting link between accused and the money being taken and hence charge of cheating not established — High Court in appeal, however, reversing acquittal, relying heavily on report of handwriting expert who found that handwriting on the envelope tallied with that of appellant — Held, in absence of any kind of material to establish link between accused and the money that was kept in a dustbin being taken by him, it is difficult to rely merely upon handwriting expert's opinion to base such a conclusion — Hence, High Court's order set aside and that of trial court restored — Evidence Act, 1872, S. 45* (Paras 2 to 4). *K. Sadanand* v. *Public Prosecutor*, (2009) 16 SCC 375: (2010) 3 SCC (Cri) 301.

Bench Strength **2**. Coram: *S. Rajendra Babu* and *P. Venkatarama Reddi*, JJ. [Date of decision: 13-8-2002]

(ii) Appeal/Revision

[10438] — Ss. 420 and 477-A — Appeal before High Court against acquittal — Remand to trial court — If proper, on facts — *Charge against appellant under Ss. 420, 477-A IPC and S. 5(2) r/w S. 5(1)(d) of Prevention of Corruption Act for cheating the Bank by falsifying bank account while working as Branch Manager during 1984-86 — While audit reports of 1984 and 1985 showing no lapses, audit report of 1986 referring to the irregularities on the basis of which complaint lodged against appellant — Trial court after considering oral and documentary evidence acquitting the appellant taking the view that prosecution ought to have taken into account the earlier audit reports of 1984 and 1985 before filing charge-sheet against appellant — Evidence of material witnesses considered in a perfunctory manner and various other circumstances relied upon by prosecution overlooked by trial court — High Court observing that trial court should have considered the evidence adduced during the trial to find out the guilt or otherwise of appellant and accordingly remanding the matter back to trial court for disposal in accordance with law as some of the documents should also have been brought on record for effective disposal of the controversy raised in the case and to do justice between the parties — Held on facts, High Court was justified in doing so — Thereby it cannot be said that High Court had afforded opportunity to the prosecution to cure the lacunae in its evidence — High Court had also not faulted in preferring to remand the matter instead of recording additional evidence in terms of S. 391 CrPC — Trial court will strictly adhere to the observations and directions given by the High Court in its judgment — Prevention of Corruption Act, 1947, Ss. 5(2) & 5(1)(d) — CrPC, 1973 — S. 386. V. Srinivasa Reddy* v. *State of A.P.*, (1998) 9 SCC 331: 1998 SCC (Cri) 1023: AIR 1998 SC 2079.

Bench Strength **2**. Coram: **S.P. Kurdukar** and *K.T. Thomas*, JJ. [Date of decision: 5-2-1998]

Ukha Kolhe v. State of Maharashtra, AIR 1963 SC 1531: (1964) 1 SCR 926; Mohd. Iqbal Ahmed v. State of A.P., (1979) 4 SCC 172: 1979 SCC (Cri) 926, distinguished

[10439] — Ss. 420, 477-A, 468, 109 & 409 — Appeal against conviction — Mode of disposal of — *Lower appellate court not applying mind to the factual aspects of the case and merely considering the question of quantum of sentence — Such disposal of appeal, held, resulted in denial of opportunity to the appellants to agitate their case on facts — Denial of statutory right of appeal offends Arts. 21 and 14 of the Constitution — Hence, matter rendered back to the said appellate court to hear and decide the appeals on merits — Constitution of India, Arts. 21 and 14 — CrPC, 1973 — S. 374(3)(a)* (Para 8). *K. Pandurangan* v. *S.S.R. Velusamy*, (2003) 8 SCC 625: AIR 2003 SC 3318.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-9-2003]

A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602: 1988 SCC (Cri) 372, relied on

[10440] — Ss. 420 and 498-A — Delay if bar to appeal against acquittal — Order of acquittal passed by the trial court in a complaint case under Ss. 420 and 498-A IPC — Refusal to grant leave on ground that the complaint was belated by two years — Held, improper — *Case remanded to the High Court with a direction to grant leave and dispose of the appeal on merits — CrPC, 1973 — Ss. 378(4) and 468*

When Section 498-A of the Indian Penal Code is brought to use in the case of cruelty on women, the law of limitation is not that rigid so as to non-suit the aggrieved wife. A fair dose of liberalities is warranted, so that the law as an instrument comes in aid of the aggrieved due to gender inequalities. *Vijaya* v. *Laxmanrao*, (1998) 8 SCC 415: 1998 SCC (Cri) 1543.

Bench Strength 2. Coram: *M.M. Punchhi* and *S.P. Kurdukar*, JJ. [Date of decision: 19-8-1997]

[10441] — Ss. 420/120-B — Revision — Disposal of, by High Court on the basis of observations made earlier by a coordinate bench — Held, not proper — *High Court in revision must go into the merits of the case — When the trial court, having regard to the High Court's order, took the cognizance of the offence under Ss. 420/120-B IPC against the accused-appellant, dismissal of revision petition, which was filed against the trial court's aforesaid action, by another Single Judge merely on the basis of the observations made earlier by the High Court, held, was not proper — Impugned order resulted in avoidance of the function of judicial determination of the question of acceptability or otherwise of the plea raised by the accused persons for setting aside the cognizance order and for quashing the criminal proceedings — Negotiable Instruments Act, 1881, Ss. 138/141 — CrPC, 1973 — Ss. 401, 397 and 398*

On a perusal of the order under challenge it is clear that the learned Single Judge disposed of the revision petition filed by the appellant Company for setting aside the cognizance order and for quashing the criminal proceedings without entering into the merits of the case. The learned Single Judge did not consider the nature of the contract between the parties and the arrangement for payment of dues by the accused persons to the complainant. Further, there is no finding to the effect that the ingredients of the offence of cheating defined under Section 415 IPC were prima facie made out from the averments in the complaint petition and the statement on oath by the complainant before the learned Magistrate. The learned Single Judge felt bound by the observations made in the order passed on 21-3-1997 in which another Single Judge while accepting the position that the Magistrate rightly did not take cognizance of the offence under Sections 138/141 of the Negotiable Instruments Act, had observed that the learned Magistrate should have taken cognizance of the offence punishable under Section 420 IPC. From the order under challenge it is manifest that the learned Single Judge did not pay due attention to the part of the order in which the learned Magistrate was directed to hold further enquiry into the complaint. While judging the question whether the cognizance order passed by the learned Magistrate was sustainable in law it was incumbent for the learned Single Judge to go into the question whether the complainant has been able to make out a prima facie case for the offence of cheating on the averments in the complaint petition and his statement on oath. The matter should have been examined in the light of the contentions raised by the accused applicant in the revision petition and finding recorded. The learned Single Judge also did not try to find out if the learned Magistrate held any further enquiry before passing the cognizance order and whether the dispute raised in the case is of a civil nature and continuing the criminal proceedings will give rise to abuse of process of court. (Para 8)

Thus, the impugned order reveals that there has been an avoidance of the function of judicial determination of the question of acceptability or otherwise of the plea raised by the accused persons for setting aside the cognizance order and for quashing the criminal proceedings. Hence, the order under challenge being unsustainable in law is set aside and the matter is remitted to the High Court for disposal afresh in accordance with law. (Paras 9 and 10). *Indseam Services Ltd.* v. *Bimal Kumar Kejriwal (HUF)*, (2001) 8 SCC 15: 2001 SCC (Cri) 1402: AIR 2001 SC 3512.

Bench Strength 2. Coram: **D.P. Mohapatra** and *K.G. Balakrishnan*, JJ. [Date of decision: 14-9-2001]

(iii) Bail

[10442] — Ss. 415, 463 and 467 — Anticipatory bail — Grant of, after challan has been filed in criminal court — Permissibility — Relevance of defence taken, that dispute purely of civil nature — *Held, S. 438 contains a salutary provision which has been introduced to prevent deprivation of personal liberty — It cannot be jettisoned on technicalities such as challan having been filed, anticipatory bail cannot be granted — Court must exercise its discretion judiciously — Anticipatory bail can be granted at any time so long the applicant has not been arrested — Anticipatory bail cannot also be denied merely because allegations of cheating and forgery have been made — Further held on facts, High Court could not ignore appellant's plea that dispute between him and complainant regarding sale of specific flats, was purely of civil nature and complainant had already filed suit for specific performance — CrPC, 1973, Ss. 438 and 173*

There was dispute between appellant and complainant regarding sale of specific flats. The complainant apart from filing suit for specific performance, also got an FIR registered against appellant for alleged commission of offences under

(10)(iii) Bail *(contd.)*

Sections 420, 467, 468 and 120-B IPC. Appellant's repeated applications for anticipatory bail were rejected. High Court rejected third application on the ground that challan had already been filed in criminal court.

Allowing the appeal,

Held :

Anticipatory bail can be granted at any time so long as the applicant has not been arrested. When application is made to High Court or Court of Session, it must apply its own mind on the question and decide when the case is made out for granting such relief. The High Court ought not to have left the matter to Magistrate only on the ground that challan has now been presented. There is also no reason to deny anticipatory bail merely because allegation in this case pertains to cheating or forgery of a valuable security. Merits of these issues are to be assessed at the time of trial of accused persons and denial of anticipatory bail only on the ground that the challan has been presented would not satisfy the requirements of Sections 437 and 438 CrPC. High Court is required to exercise its discretion upon examination of facts and circumstances, and to grant anticipatory bail "if it thinks fit". Salutary provision contained in Section 438 was introduced to enable the court to prevent deprivation of personal liberty. It cannot be permitted to be jettisoned on technicalities such as the challan having been presented, anticipatory bail cannot be granted. (Paras 7 to 11)

The defence put forward by appellant cannot be obliterated at this stage itself. Appellant's plea cannot be ignored that dispute between parties is purely of a civil nature. Anticipatory bail is therefore granted to appellant. (Para 12). *Ravindra Saxena* v. *State of Rajasthan*, (2010) 1 SCC 684.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **S.S. Nijjar**, JJ. [Date of decision: 15-12-2009]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

[**Ed.**: See however *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679, which was decided on 16-12-2009 i.e. next day the present case was decided. In *HDFC Bank case*, the Supreme Court has adopted strict approach regarding grant of anticipatory bail, holding that anticipatory bail should be granted for a limited period to enable the accused to surrender to court and to obtain regular bail. On expiry of limited period, the court granting anticipatory bail should leave it to regular court to consider granting bail by taking into consideration evidence collected as a result of investigation or charge-sheet filed in court.]

[10443] — Ss. 420 and 120-B — Bail application — Matter/Claim which cannot be adjudicated therein — Cheating and conspiracy — *Allegation that accused obtained money from complainants for sending them abroad — N (one of the accused) depositing in court the amount claimed in complaint to show his bona fides for the purpose of obtaining bail — Amount deposited was to be paid to complainants only on settlement between the parties — No settlement arrived at — Nature of claim, a civil dispute — Held, the High Court erred in allowing complainants' application filed in bail petition of the appellants (accused other than N) whereby they sought disbursement of the said amount to them — In a bail application, it could not have adjudicated upon the rights between the parties in regard to the amount in deposit — Impugned directions might also prejudice the defence of the accused — Amount in question directed to be kept in interest-bearing account till appropriate orders were passed by the competent court in this regard — CrPC, 1973 — Ss. 439 and 438*

While accepting the deposit, the Magistrate had made it clear that the amount in question would be paid to the complainants only if a settlement is arrived at. He had also directed that in the event of no settlement being arrived at within the time stipulated in his order the amount in question should be kept in interest-bearing deposit. The fact that there was no settlement between the parties is not in dispute. Even an attempt to settle the dispute through the Lok Adalat has failed. Therefore, the claim of the complainants for the amount in deposit being in the nature of a civil dispute, the High Court ought not to have directed the payment. The High Court in a bail application could not have adjudicated upon the rights between the parties in regard to the amount in deposit and the impugned directions might also prejudice the defence of the accused. Hence, the impugned orders are set aside. The amount in question be kept in interest-bearing deposit in a nationalised bank till such time as appropriate orders are passed by the competent court in this regard. (Paras 12, 13 and 15). *Jagtar Singh* v. *State of Punjab*, (2004) 13 SCC 289: 2005 SCC (Cri) 208.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 17-9-2004]

[10444] — Ss. 420, 406, 409, 407, 120-B, 467, 468 & 471 — In the present case, the writ petitioners charged with offences at different places in different States though were granted bail in one case could not avail of the benefit thereof due to incarceration on account of production warrant

in another case — *Such a situation, held, not ipso facto violative of Art. 21 — In absence of material to substantiate the allegation of infraction of Art. 21, relief of release on bail by a blanket order refused — However, in view of the right under Art. 21 to speedy trial, Central Government directed to evolve a formula or procedure for early conclusion of the trial — CrPC, 1973, S. 438 — Natural justice — Held, warrants a fair opportunity — Prevention of Corruption Act, 1947, Ss. 5(2) & (1)(d) — Negotiable Instruments Act, 1881, S. 138 — Constitution of India, Art. 21*

Admittedly, the protection of personal liberty stands expanded to make the right to life under Article 21 more meaningful, the language of the article itself records an exception indicating thereby that a person may be deprived of his liberty in accordance with the procedure established by law and it is in this sphere the courts will scrupulously observe as to whether the alleged violation of Article 21 stands differently and contra as regards the procedure established by law and in the event it is not so done, it would be a plain exercise of judicial power to grant redress to the petitioner. While there is no difficulty in appreciating the grievance and grant of relief in a given case but facts are too insufficient however, to come to a conclusion as regards the infraction of Article 21. Production warrants have been spoken of without any details whatsoever therefor — the reason offered is that the petitioners, in fact, are not in the know of things being behind the prison bars and it starts pouring in from all parts of the country and in the factual backdrop, it is a well-nigh impossible to come to a finding as regards the infraction of Article 21. In any event the liberty of the petitioners cannot be said to have been trifled with in the absence of due process of law. Deprivation, if any, cannot be claimed to be not in accordance with due process of law. (Para 50)

It cannot be held that an accused involved in large number of criminal cases in different parts of the country, if is not able to be released from custody even on getting bail orders in some cases, itself would tantamount to violation of the right of a citizen under Article 21 of the Constitution. The object of Article 21 is to prevent encroachment upon personal liberty by the executive save in accordance with law, and in conformity with the provisions thereof. It is, therefore, imperative that before a person is deprived of his life or personal liberty, the procedure established by law must strictly be followed and must not be departed from, to the disadvantage of the person affected. In each case where a person complains of the deprivation of his life or personal liberty, the Court, in exercise of its constitutional power of judicial review, has to decide whether there is a law authorising such deprivation and whether in the given case, the procedure prescribed by such law is reasonable, fair and just, and not arbitrary, whimsical and fanciful. On account of liberal interpretation of the words "life" and "liberty" in Article 21, the said article has now come to be invoked almost as a residuary right, even to an extent which the founding fathers of the Constitution never dreamt of. Issuance of production warrants by the court and the production of accused in the court, in cases where he is involved is a procedure established by law and consequently, the accused cannot be permitted to complain of infraction of his rights under Article 21. However, in a given case, the court may be justified in directing release of the accused, taking a stock of the entire situation in the case. While, therefore, holding that an accused could maintain a petition under Article 21, it has to be held that the court would not be justified in directing the release of such accused under a blanket order. (Paras 57 and 63)

The right of an accused to have speedy trial is now recognised as a right under Article 21. Even it has been extended to investigation of offences against child offenders. The procedural fairness required by Article 21, including the right to a speedy trial, has, therefore to be observed throughout and to be borne in mind. (Para 58)

Therefore, while no relief is granted herein to the accused persons, the Central Government should evolve certain formula or procedure, so that the accused will not complain of undue harassment on account of protraction of their cases and the persons deceived who have filed complaints, will be satisfied with the early conclusions of the trial. (Para 58). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

Sheela Barse (I) v. Union of India, (1986) 3 SCC 632: 1986 SCC (Cri) 352, relied on

JVG Group of Companies, Re, WP (Crl.) No. 256 of 1999, decided on 28-3-2000 (quoted in Para 1) and Kuber Group of Companies, Re, WPs (Crl) Nos. 72-75 of 2000, decided on 5-5-2000 (quoted in Para 2) overruled on this point

[10445] — Ss. 420, 467 and 468 — Exercise of power under Art. 142 — Doing of complete justice to parties — Appellant ready and willing to settle contractual dispute wherein allegations of forgery and fraud had been made — Bail

(10)(iii) Bail *(contd.)*

granted subject to appellant's appearance before Magistrate within four weeks and filing bail petition — *Directions given to consider petition for exemption from personal appearance on merits — CrPC, 1973, S. 438 — Constitution of India, Art. 142* (Paras 17 and 18). *Mahesh Chaudhary* v. *State of Rajasthan*, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332: (2009) 2 ECrN 1051 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 3-3-2009]

[10446] — Ss. 420, 467, 468 and 471 — When bail should be granted — Case registered against appellant under Ss. 420, 467, 468 and 471 IPC for allegedly driving a car by using a forged registration certificate as genuine — *Car owned by appellant's uncle who had handed it over to appellant for getting registration certificate from RTO — Forged documents prepared by the co-accused, an agent of RTO — While the co-accused had been granted bail by High Court in October 2007, appellant still in jail since June 2007 — Counsel for the State failed to state about the progress and stage of trial of the case registered against appellant and the co-accused — Custody of appellant not required by IO for further interrogation — Bail application filed by appellant before High Court rejected — In the facts and circumstances of the case, held, it is a fit case where appellant deserves to be released on bail — CrPC, 1973, S. 439. Anwar Ali* v. *State of Chhattisgarh*, (2008) 16 SCC 501: (2009) 1 ECrN 360 (SC): 2008 Cri LJ 4572.

Bench Strength **2**. Coram: *R.V. Raveendran* and *L.S. Panta*, JJ. [Date of decision: 10-9-2008]

[10447] — Ss. 420, 467, 468, 471 and 120-B — Grant of anticipatory bail — Matters to be considered — Anticipatory bail — Purpose of — Nature and extent of order that may be passed — Matters to be considered — *Held, inter alia is to protect a person against harassment or humiliation sought to be achieved by complainant due to grudge or personal vendetta — However, protective mechanism of S. 438 does not imply passing of a blanket order which would exempt an accused from surrendering to court if charge-sheet is filed against him on completion of investigation — Anticipatory bail should be given for a limited period to enable accused to surrender to court and to obtain regular bail — On expiry of limited period, the court granting anticipatory bail should leave it to regular court to consider granting bail by taking into consideration evidence collected as a result of investigation or charge-sheet filed in court — CrPC, 1973, S. 438*

Respondent 1 in his capacity as Managing Director of a company, had taken loan from appellant Bank for purchase of electronic sensor paver finishers from a specified supplier. The appellant Bank after sanctioning loan, drew cheques in the name of specified supplier and handed over cheques to Respondent 1. It was alleged that Respondent 1 instead of making purchases from specified supplier, deposited cheques in a fictitious account and diverted the amount to himself. A complaint was therefore filed for commission of offences under Sections 420, 467, 468, 471 and 120-B of the Penal Code, 1860.

On 3-7-2006, the Single Judge of the High Court granted anticipatory bail to Respondent 1 under Section 438 CrPC on the ground that investigating agency had already seized all relevant and vital documents and had recorded statements of all important witnesses, custodial interrogation of Respondent 1 was therefore not required. The appellant Bank filed present appeal for cancellation of anticipatory bail. One of the grounds taken by Respondent 1 for opposing the appeal was that anticipatory bail was granted on 3-7-2006 and Respondent 1 has never misused the privilege and had in fact cooperated with the investigating agencies all through.

Partly allowing the appeal and modifying the High Court order,

Held :

Section 438 CrPC contemplates arrest at the stage of investigation and provides a mechanism for an accused to be released on bail, should he be arrested during the period of investigation. Once investigation makes out a case against him and he is included as an accused in the charge-sheet, the accused has to surrender to the custody of court and pray for regular bail. On the strength of an order granting anticipatory bail, an accused against whom charge has been framed, cannot avoid appearing before the trial court. A person should not be harassed or humiliated in order to satisfy grudge or personal vendetta of complainant but at the same time, provisions of Section 438 CrPC cannot also be invoked to exempt accused from surrendering to court after investigation is complete and if charge-sheet is filed against him. Such an interpretation would amount to violence to the provisions of Section 438 CrPC, since even though a charge-sheet may be filed against an accused and charge is framed against him, he may still not appear before court at all, even during trial. No blanket order could be passed under Section 438 CrPC to prevent accused from being arrested at all in connection with the case. Anticipatory bail is given for a limited duration to enable accused to surrender and to obtain regular bail. Anticipatory bail should be of limited duration only and primarily on expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted. (Paras 18 to 20)

Role of Respondent 1 in the entire episode did not entitle him to relief of anticipatory bail, much less a blanket order of bail. However, that is now a closed chapter but what is of relevance is whether High Court should have worded its order in such a way that it could be interpreted to mean that Respondent 1 was not required to even appear and surrender before court during entire investigation stage and trial. Taking advantage of the same, Respondent 1 has successfully avoided court from very initial stage of investigation and even trial. Such kind of an order is not contemplated under Section 438 CrPC. The order of High Court is modified to the extent that Respondent 1 shall surrender before trial court forthwith and pray for regular bail and trial court shall dispose of the same on merits, in accordance with law, before proceeding further with the trial. (Paras 17 and 22). *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679.

Bench Strength **2**. Coram: **Altamas Kabir** and *Deepak Verma*, JJ. [Date of decision: 16-12-2009]

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198, relied on

[**Ed.**: See however *Ravindra Saxena* v. *State of Rajasthan*, (2010) 1 SCC 684, which was decided by the Supreme Court one day before the present case i.e. on 15-12-2009. In *Ravindra Saxena case*, the Supreme Court has adopted somewhat liberal approach in granting anticipatory bail whereas in the present case, the Supreme Court has adopted a strict approach.]

[10448] — Ss. 420 and 477-A — Suspension of sentence and grant of bail by High Court pending appeal, does not obliterate the conviction — *Canara Bank employee convicted under Ss. 420, 477-A, IPC and S. 5(2) read with S. 5(1)(d) of Prevention of Corruption Act — Notwithstanding the suspension of his sentence and grant of bail to him by the appellate court his conviction, held, not obliterated — Hence, provision in R. 11 of Discipline and Appeal Regulations for imposing penalty without following the ordinary procedure, held, attracted — Since the person concerned was not governed by Art. 311(2), the question whether disciplinary action could be taken during the pendency of criminal proceedings, left open — Canara Bank Officer Employees' (Discipline and Appeal) Regulations — Regns. 11, 6, 7 & 8 — Prevention of Corruption Act, 1947, S. 5(1)(d) & (2) — CrPC, 1973, S. 439 — Constitution of India, Art. 311(2). S. Vasundara* v. *Canara Bank*, (1997) 9 SCC 523: 1997 SCC (L&S) 1204: (1997) 1 CLR 181: (1997) 1 LLJ 687.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 28-10-1996]

(iv) Circumstantial evidence

[10449] — Ss. 420 and 120-B — Circumstantial evidence — False claim for compensation against Government — *Held on facts, circumstances do not establish any dishonesty or fraud. Kedar Nath Bajoria* v. *State of W.B.*, AIR 1954 SC 660: 1954 Cri LJ 1679.

Bench Strength **3**. Coram: *S.R. Das*, *N.H. Bhagwati* and **B. Jagannadhadas**, JJ. [Date of decision: 23-4-1954]

(v) Cognizance, Summons, Investigation

See also '(10)(xi) Quashment', below

[10450] — S. 420 — Power of Magistrate under S. 156(3) CrPC — *Magistrate, before taking cognizance of an offence and without examining the complainant on oath, if could direct the police to register an FIR and investigate the matter concerned — Prize Chits and Money Circulation Schemes (Banning) Act, 1978, S. 3 — CrPC, 1973 — Ss. 156(3) and 200*

Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) CrPC. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter. (Para 10). *Suresh Chand Jain* v. *State of M.P.*, (2001) 2 SCC 628: 2001 SCC (Cri) 377: AIR 2001 SC 571.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 10-1-2001]

Ram Narain v. Lokuram, (1986) 37 Raj LW 143, distinguished

Suresh Kumar v. State of Haryana, (1996) 3 Rec Cri R 137, overruled

Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39; Tula Ram v. Kishore Singh, (1977) 4 SCC 459: 1977 SCC (Cri) 621: AIR 1977 SC 2401, followed

(10)(v) Cognizance, Summons, Investigation *(contd.)*

[10451] — Ss. 420, 120-B and 426 — Second complaint, on dismissal of first complaint on merit, which dismissal had attained finality, on identical facts — Maintainability — *Held, though there is no statutory bar to filing second complaint on same facts, but same can be entertained only in exceptional circumstances enumerated in* Pramatha Nath Talukdar case, *AIR 1962 SC 876 — In the instant case, second complaint was on almost identical facts raised in first complaint, which was dismissed on merit — Hence, second complaint not maintainable — CrPC, 1973, Ss. 190 and 202 to 204* (Paras 14 to 21). *Poonam Chand Jain* v. *Fazru*, (2010) 2 SCC 631.

Bench Strength **2**. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 28-1-2010]

Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876: (1962) 1 Cri LJ 770; Jatinder Singh v. Ranjit Kaur, (2001) 2 SCC 570: 2001 SCC (Cri) 354; Mahesh Chand v. B. Janardhan Reddy, (2003) 1 SCC 734: 2003 SCC (Cri) 425; Hira Lal v. State of U.P., (2009) 11 SCC 89: (2009) 3 SCC (Cri) 1247, discussed and applied

[**Ed.**: See also *Poonam Chand Jainv. Fazru*, (2004) 13 SCC 269.]

[10452] — Ss. 420, 406 and 120-B — Person not included as accused in charge-sheet — If could be summoned after the cognizance of offence is taken — *Held, such person can also be summoned by Magistrate after taking cognizance of offence, if some material is found against him having regard to the FIR, his statement recorded by police and other documents — S. 319 CrPC does not operate in such a situation — CrPC, 1973, Ss. 190, 204, 173(2), 154, 162 and 319*

The appellant Company lodged an FIR against another concern MCIP and its partners. During investigation, it was revealed that Respondent 2 was the Managing Director of another sister Company PIC and two letters of credit given by the appellant were transferred by one of the accused *S* to PIC. On this discovery, notice under Section 160 CrPC was issued to Respondent 2 by the police. Because of stay order issued by the High Court, it was not possible for the police to interrogate Respondent 2 and to ascertain whether he was involved in the conspiracy. He was, therefore, not joined as accused in the charge-sheet submitted by the police, but his name was shown in column 2, which is meant for the accused who are not sent for the trial. It was also stated that the accused had cheated, misappropriated and caused wrongful loss to the appellant to the tune of Rs 2,10,60,000. On the basis of the said charge-sheet, the Metropolitan Magistrate issued summons against all the accused shown in the FIR for the offence under Sections 420/406/120-B IPC. On the next date of posting, he also issued the summons to Respondent 2. That part of the order was challenged by Respondent 2 by filing a criminal miscellaneous petition before the High Court. The High Court held that "the court was totally unjustified in summoning the petitioner when the petitioner was not shown in the column of accused persons in the charge-sheet". Relying on Section 319 CrPC, the High Court held that such persons could be summoned by the court under Section 319 only after the evidence has been recorded. Allowing the appeal,

Held :

At the stage of taking cognizance of the offence, provisions of Section 190 CrPC would be applicable. As per this provision, the Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under Section 204 CrPC is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge-sheet. Further, upon receipt of police report under Section 173(2) CrPC, the Magistrate is entitled to take cognizance of an offence under Section 190(1)(*b*) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage, there is no question of application of Section 319 CrPC. That provision would come into operation in the course of any enquiry into or trial of an offence. In the present case, neither the Magistrate was holding enquiry as contemplated under Section 2(*g*) CrPC nor had the trial started. He was exercising his jurisdiction under Section 190 by taking cognizance of an offence and issuing process. There is no bar under Section 190 CrPC that once the process is issued against some accused, on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge-sheet. (Paras 6 and 7). *SWIL Ltd.* v. *State of Delhi*, (2001) 6 SCC 670: 2001 SCC (Cri) 1205: AIR 2001 SC 2747.

Bench Strength **2**. Coram: **M.B. Shah** and *S.N. Phukan*, JJ. [Date of decision: 14-8-2001]

Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167: 1967 Cri LJ 1081: (1967) 2 SCR 423, relied on

[10453] — Ss. 420 and 415 — Private complaint — Order taking cognizance of alleged offence — Sustainability of — Delay/laches in filing complaint — Dispute of civil nature — Absence of ingredients of alleged offence of cheating — *As per the complaint A-1 executed an agreement to sell dated 25-12-1988 in respect of a house in favour of the wife of the complainant* **C** *and a sum of Rs 1,25,000 was paid in advance in respect thereof — Allegation that A-1 instead sold the said property to wife of A-4 — Legal notice dated 11-7-1996 issued by* **C** *calling upon A-1 to execute the sale deed — Replying to that notice on 18-7-1996, A-1 specifically denying the very existence of the said agreement and the receipt of Rs 1,25,000 —* **C**, *after keeping quiet for nearly 3 years from the date of reply of A-1, filing complaint on 17-5-1999 i.e. after a lapse of 10½ years from the date of the alleged agreement — Held, the said complaint was not at all maintainable at this distance of time — It was liable to be dismissed on the question of inordinate laches on the part of the complainant himself — Further, the allegations in complaint were of a civil nature and did not prima facie disclose commission of alleged offence under S. 420 IPC — Police had given clean chit to A-2 to A-4 — Hence, the order of the Magistrate taking cognizance of the alleged offence, as confirmed by High Court in revision, was not sustainable — CrPC, 1973 — Ss. 190(1)(b) & 204, 200, 156(3), 468 and 401* (Paras 10 to 12). *Suresh* v. *Mahadevappa Shivappa Danannava*, (2005) 3 SCC 670: 2005 SCC (Cri) 783: AIR 2005 SC 1047.

Bench Strength **2**. Coram: *Ashok Bhan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 16-2-2005]

Suresh v. Mahadevappa Shivappa Danannavar, 2004 Cri LJ 3580 (Kant), reversed

[10454] — Ss. 420, 467, 468 and 120-B — Scope of applicability — Investigation into corruption charges against State Government Minister and officers — Whether excluded from the jurisdiction of CBI officers — *FIR lodged by the State Vigilance Department against several persons including Appellant 1 (ex-Minister) for alleged commission of offences under Ss. 420, 467, 468, 120-B IPC and Ss. 13(1)(d), (e) and 13(2) of Prevention of Corruption Act in relation to appointment and selection of panchayat secretaries — State Government issued notification under S. 6 of Delhi Special Police Establishment Act, 1946 referring the case to CBI — CBI thereafter registered a second FIR on 26-6-2003 considering the nature and extent of crime — Held, when S. 36 CrPC uses the words "in rank", it should be given a purposive construction — Although S. 36 appears to limit jurisdiction to State police, in the context of the power of the State vis-à-vis the provisions of the Delhi Special Police Establishment Act, 1946, the same deserves a wider application — Hence validity of investigation made by CBI, upheld — As investigations were complete, CBI permitted to file charge-sheet before the appropriate court — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Ss. 5, 6, 6-A and 2 — Prevention of Corruption Act, 1988, Ss. 13(1)(d), (e) and 13(2) — CrPC, 1973, S. 36. Nirmal Singh Kahlon* v. *State of Punjab*, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523: AIR 2009 SC 984: 2009 Cri LJ 958.

Bench Strength **2**. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 22-10-2008]

[10455] — Ss. 420, 467, 468 and 120-B — Public trust doctrine — Duty/Power of State in preserving law and order and proper/specialised investigation of serious crimes in larger public interest — *State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society — When serious allegations are made against a former Minister of the State, save and except the cases of political revenge amounting to malice, the State may consider handing over of investigation to CBI which has acquired specialisation in such cases — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), S. 6 — Grounds for referring investigation to CBI — Prevention of Corruption Act, 1988, Ss. 13(1)(d), (e) and 13(2) — Constitution of India, Arts. 162 and 73*

On 14-6-2002, an FIR was lodged by the State Vigilance Department against several persons including Appellant 1 (ex-Minister, Rural Development and Panchayats), for alleged commission of offences under Sections 420, 467, 468, 120-B IPC and Sections 13(1)(*d*), (*e*) and 13(2) of the Prevention of Corruption Act in terms of recommendations of the Financial Commissioner, Rural Development and Panchayat Department giving an enquiry report to set aside the selection of panchayat secretaries due to involvement of favouritism and corruption in the selection process. In a writ petition filed with regard to the selection process the High Court changed the writ from private interest litigation to public interest litigation. A charge-sheet was filed against Appellant 1. Appellants 2 and 3 were shown as the witnesses in the said report. Despite the same a statement was made before the High Court on behalf of the State on 1-11-2002 that the investigation was proposed to be handed over to CBI. Initially, CBI was reluctant to take up investigation on the ground of lack of manpower and

(10)(v) Cognizance, Summons, Investigation *(contd.)*

infrastructure and the State Government delayed in issuing a notification under Section 6 of the Delhi Special Police Establishment Act, 1946 (the Act). However, with the intervention of the High Court (by order dated 30-4-2003), the State Government, on 2-5-2003, issued the Section 6 notification. In view of the said notification the High Court (by order dated 7-5-2003) directed the Director, CBI to take up the investigation by requesting the Central Government for more funds and manpower as per requirement. CBI, thereafter, informed the High Court on 13-8-2003 that a special team had been sent for a meaningful investigation in respect of the allegations, and the same had proceeded to a considerable length. CBI thereafter registered a second FIR on 26-6-2003. The appellants filed applications for recalling of the orders dated 30-4-2003 and 7-5-2003 of the High Court. By reason of the impugned judgment dated 4-10-2005, the said applications were dismissed.

Dismissing the appeal,

Held:

An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a Central agency which has acquired specialisation in such cases. (Para 28)

As the investigations are complete, CBI is allowed to file charge-sheet before a court having appropriate jurisdiction. (Para 76). *Nirmal Singh Kahlon* v. *State of Punjab*, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523: AIR 2009 SC 984: 2009 Cri LJ 958.

Bench Strength **2**. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 22-10-2008]

[10456] — Ss. 420, 467, 468 and 120-B — Second FIR and further investigation (by CBI) in case of distinct and separate offences on a wider scale — Permissibility of — Power of High Court and State Government regarding — *High Court, as proposed by State Government, directing State Government to refer matter to CBI — CBI during preliminary investigation detecting material for lodging second FIR when charge-sheet had already been filed in the first FIR — No fair investigation by the State police on the first FIR — CBI after preliminary inquiry discovering new factual materials — CBI detecting conspiracy neither detected by State police nor alleged in the first FIR — CBI detecting involvement of large number of persons on a wider canvas — Held, it was open to the State and/or High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged — It is one thing to say that an accused acted in his individual capacity and it is another thing to say that he conspired with a large number of persons to facilitate commission of crime by him as a result whereof all of them had made unlawful gains — Constitution of India, Art. 226 — Prevention of Corruption Act, 1988, Ss. 13(1)(d), (e) and 13(2) — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Ss. 4 and 6 — CrPC, 1973, Ss. 173(8) and 154. Nirmal Singh Kahlon* v. *State of Punjab*, (2009) 1 SCC 441: (2009) 1 SCC (Cri) 523: AIR 2009 SC 984: 2009 Cri LJ 958.

Bench Strength **2**. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 22-10-2008]

[10457] — Ss. 420, 471, 474, 467, 468, 417 and 511 — Exercise of powers and jurisdiction by CBI in a State — Consent of State Government under S. 6, Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) — Manner of giving of — Instance of — *Letter of Deputy Secretary to the State Government, Home (Police) Department addressed to Secretary to GoI, MHA on the subject "consent of the State Government to the functioning of the Special Police Establishment in the State" stating "this State Government have no objection to the members of the Delhi Special Police Establishment exercising powers and jurisdiction within this State" — It also referring to file/reference number — Such a letter, held, set out all the particulars required by S. 6 — Therefore, prosecution, pursuant to such consent, instituted by CBI under Ss. 420, 471, 474, 467, 468 and 417 r/w S. 511 IPC for offences committed in the State concerned, held, not without jurisdiction — After examining case law on the nature of the provisions of Art. 166 of the Constitution, contention of the accused that the said provisions were mandatory and omission to comply therewith had vitiated the said consent, rejected — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Ss. 6, 5 and 3. M. Balakrishna Reddy* v. *CBI*, (2008) 4 SCC 409: (2008) 2 SCC (Cri) 391: AIR 2008 SC 1754: (2008) 66 AIC 165 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Dalveer Bhandari*, JJ. [Date of decision: 14-3-2008]

[10458] — Ss. 420, 471, 474, 467, 468, 417 and 511 — Police agency that has jurisdiction — Territorial jurisdiction of CBI to initiate prosecution — Offences under Ss. 420, 471, 474, 467, 468 and 417 r/w S. 511 IPC allegedly committed by candidate in examination conducted by UPSC in a State — *In such circumstances, the mere fact that the head office of UPSC was located at New Delhi, held, could not confer jurisdiction on CBI to invoke the 1946 Act in a criminal case lodged by Secretary, UPSC against the said candidate — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Preamble and Ss. 1, 3 and 5* (Paras 15 and 10). *M. Balakrishna Reddy* v. *CBI*, (2008) 4 SCC 409: (2008) 2 SCC (Cri) 391: AIR 2008 SC 1754: (2008) 66 AIC 165 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Dalveer Bhandari*, JJ. [Date of decision: 14-3-2008]

[10459] — Ss. 420, 471, 474, 467, 468, 417 and 511 — Territorial jurisdiction of CBI to initiate prosecution — Offences under Ss. 420, 471, 474, 467, 468 and 417 r/w S. 511 IPC allegedly committed in a State in an examination by a candidate who was an employee of the Central Government — *In such circumstances the mere fact that the delinquent candidate was an employee of the Central Government, held, could not confer jurisdiction on CBI to invoke the 1946 Act — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Preamble and Ss. 1, 3 and 5* (Paras 15 and 11). *M. Balakrishna Reddy* v. *CBI*, (2008) 4 SCC 409: (2008) 2 SCC (Cri) 391: AIR 2008 SC 1754: (2008) 66 AIC 165 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Dalveer Bhandari*, JJ. [Date of decision: 14-3-2008]

[10460] — Ss. 420/34 — Filing of second complaint on same cause of action and between same parties, when earlier complaint dismissed for non-filing of process fees, but not on merits — Maintainability — *Held, even if a complaint is dismissed under S. 203, a second complaint would still lie under exceptional circumstances e.g. where previous order was passed on an incomplete record or on misunderstanding of nature of complaint or it was manifestly absurd, unjust, fallacious or false or where new facts, which could not, with reasonable diligence, have been brought on record in a previous proceeding, have been adduced — Although prayer for recalling order of dismissal would not be maintainable before Magistrate in view of S. 362, but such is not the case here — Herein, neither was complaint dismissed on merits nor at stage of S. 203, but was dismissed for failure of complainant to put in process fees for effecting service — In fact, only on being satisfied of prima facie case, Magistrate issued process on complaint — Therefore, held, in absence of any provision in CrPC barring a second complaint being filed on same allegation, there would be no bar to a second complaint being filed on same facts, if first complaint did not result in conviction or acquittal or even discharge of accused, and if dismissal was not on merits but on account of a default by complainant — Prevention of Corruption Act, 1988, Ss. 22 and 19 — CrPC, 1973, Ss. 203, 202, 190, 204(1) and 362* (Paras 23 to 29)

In the instant case, the complainant (Respondent 2) filed a complaint on 1-7-1999 against the petitioner under Sections 420/34 IPC, on allegations of payment having been received by him to perform certain favours for the complainant's son-in-law by making use of his official position, on which process was issued by the trial court, which matter is still pending.

Another complaint was filed by Respondent 2 on 8-4-2002 under the provisions of Prevention of Corruption Act, 1988, against the petitioner, which was entertained by trial court and process was issued. However, this complaint came to be dismissed on 24-7-2003, for non-filing of the process fees. An application filed by the complainant on 18-9-2003, for recall of the order dated 24-7-2003, was dismissed. Thereafter, yet another complaint was filed by Respondent 2 on 29-9-2003, on the same grounds, under the provisions of the Prevention of Corruption Act, 1988, on which process was issued on 8-1-2004.

The petitioner filed two criminal revision cases for quashing the aforesaid complaints dated 1-7-1999 and 29-9-2003, before the High Court, which were dismissed by a common judgment and order. The same is assailed in present special leave petitions.

As far as the first complaint dated 1-7-1999 under Sections 420/34 IPC was concerned, the petitioner did not seriously question the order of the High Court rejecting the petitioner's prayer for quashing the same. He confined his case mainly to the complaint dated 29-9-2003, wherein the trial court took cognizance and issued process under the provisions of Prevention of Corruption Act, 1988, despite an earlier complaint on the same ground and on the same set of facts having been dismissed earlier for non-filing of the process fees.

Dismissing the special leave petitions, the Supreme Court held as above. *Ranvir Singh* v. *State of Haryana*, (2009) 9 SCC 642.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 1-9-2009]

Jatinder Singh v. Ranjit Kaur, (2001) 2 SCC 570: 2001 SCC (Cri) 354; Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876, followed

(vi) Conspiracy/Multiple accused/ Abetment

[10461] — Ss. 419, 420 and 120-B — A-3 alleged to have obtained fake passport by submitting false documents with help of A-4 to A-9 — Involvement of A-3 at both stages i.e. pre-passport application stage and post-passport application stage established — *Held, it was for her benefit that entire conspiracy was hatched involving more than one individual — Hence, her conviction sustained — However, considering that she had undergone more than 2½ years of imprisonment, sentence reduced to period already undergone — Passports Act, 1967, Ss. 12 and 3* (Paras 51 and 54)

A-3 was alleged to have obtained a fake passport by submitting false documents with the help of A-4 to A-9, which was used by her to travel to Lisbon, Portugal. She had to face the prosecution and suffer conviction and sentence in Portugal.

The trial court found her guilty of the offences punishable under Sections 120-B, 419 and 420 IPC, A-5 was found guilty of the offences under Section 120-B, Section 419 read with Section 109, Section 420 read with Section 109, Section 468 IPC and Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act, A-7 guilty of the offence under Section 468 IPC, while A-8 was held guilty of the offences under Sections 120-B, 420, Section 419 read with Section 109 IPC, Section 420 read with Section 109 IPC and under Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act. In appeal filed thereagainst, the High Court while confirming conviction of A-3, reduced the sentence of RI on all counts while maintaining the fine imposed. The conviction of A-5 and A-8 was also upheld but sentence imposed was reduced. As far as A-7 is concerned his conviction was altered from Section 468 IPC to Section 465 IPC and sentence of RI for 6 months and fine of Rs 500 with default stipulation was imposed. Hence, instant appeals by the appellant-accused. *Monica Bedi* v. *State of A.P.*, (2011) 1 SCC 284.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-11-2010]

[10462] — Ss. 419 & 420 r/w Ss. 109, 120-B & 468 and S. 13(1)(d) r/w S. 13(2), PC Act, 1988 — Conviction — Sustainability — *A-8, Postman, Head Post-Office alleged to have collected two speed post articles containing fake passports, which were actually entrusted to PW 11 for delivery, falsely representing that he knew the addressees and would personally deliver the same — Evidence establishing that A-8 was aware of contents of the articles — Thus, his participation in conspiracy in securing fake passports clearly proved — Hence, his conviction sustained — Passports Act, 1967, Ss. 12 and 3 — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2) — Conviction confirmed* (Para 48). *Monica Bedi* v. *State of A.P.*, (2011) 1 SCC 284.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-11-2010]

[10463] — Ss. 419 & 420 r/w Ss. 109, 120-B & 468 and S. 13(1)(d) r/w S. 13(2), PC Act, 1988 — Conviction — Sustainability — *Evidence establishing that A-5, Head Constable submitted false inquiry report, knowing it to be false, certifying passport application particulars of A-3 — Hence, his conviction for charged offences upheld — Passports Act, 1967, Ss. 12 and 3 — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2) — Conviction confirmed* (Paras 49 and 50). *Monica Bedi* v. *State of A.P.*, (2011) 1 SCC 284.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-11-2010]

[10464] — Ss. 420 and 34 — Conviction under — No evidence that the appellant practised fraud, induced the complainant to part with goods or had knowledge of non-payment of money to the complainant — *Mere evidence that the appellant was a partner of an accused and had hired a room where the goods were stored, held, not sufficient to show that the appellant had any knowledge of inducement practised by the accused — Conviction being based on surmises and conjectures, set aside. Bhikalal Ramjibhai Zaveri* v. *State of Maharashtra*, (1980) 1 SCC 491: 1980 SCC (Cri) 253: AIR 1981 SC 476: 1980 Cri LJ 1474.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision: 27-4-1979]

[10465] — Ss. 420 and 109 — Accused tried with an officer of Government — Accused charged under S. 420 and officer charged for abetment of the offence — *Trial of accused not bad if the officer was being tried without sanction under S. 197, CrPC. Bakhshish Singh Dhaliwal* v. *State of Punjab*, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656, 658, 66.

Bench Strength **3**. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 31-8-1966]

[10466] — Ss. 420 and 109 — Permission for prosecution not necessary when an officer of Government prosecuted for abetment of the offence of cheating committed by persons sub-

mitting bogus bills by falsely certifying the correctness of bills

H was not being prosecuted for the act of certification of the correctness of the bills which were sent to him for verification, but was to be prosecuted for abetment of the offence of cheating committed by those persons who had submitted the bills by falsely certifying the correctness of those bills. The act of thus abetting the principal offenders could not possibly be held to have been done in the discharge of official duties as a public servant. *Bakhshish Singh Dhaliwal* v. *State of Punjab*, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656.

Bench Strength **3**. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 31-8-1966]

[10467] — Ss. 420 and 120-B — Charge of criminal conspiracy to fraudulently deprive an illiterate woman of her land — *In spite of coming to know about the alleged fraud, names of the accused not mentioned in the complaint and FIR — No civil suit filed to protect title to the property — On facts, testimony of complainant and approver doubtful — Held, charge not established. Lal Chand* v. *State of Haryana*, (1984) 1 SCC 686: 1984 SCC (Cri) 355: AIR 1984 SC 226: 1984 Cri LJ 164.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **M.P. Thakkar**, JJ. [Date of decision: 25-10-1983]

[10468] — Ss. 420 and 120-B — Corroboration of the offence of conspiracy in a case of cheating — *If a specific instance of cheating was proved beyond doubt against any of the accused that would furnish the best corroboration of the offence of conspiracy because conspiracy was the root and the specific instances were the fruit. S. Swamirathnam* v. *State of Madras*, AIR 1957 SC 340: 1957 Cri LJ 422, 426.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **Syed Jafer Imam** and *P. Govinda Menon*, JJ. [Date of decision: 14-9-1956]

[10469] — Ss. 420 and 120-B — Non-examination of one of the witnesses — Effect — *Appellant, a postal clerk, charged with taking out a bank draft from a registered letter and handing it over to the other two accused for encashment, in pursuance of a conspiracy — Appellant pleading that the said registered letter was handed over to the postman in due course of his duties — Plea not accepted by courts below on the basis of the evidence of PW 8, another clerk, and the entries in the register — Accordingly, appellant convicted under S. 420 read with S. 120-B, IPC — In appeal to SC conviction challenged on the ground of non-examination of the postman as a witness — Held, admittedly the appellant received the registered letter and it was his duty to make the necessary entries as to whether it was delivered but there was no such definite entry — This coupled with the evidence of PW 8 was enough to bring home the guilt of the appellant — Non-examination of the postman did not make any difference. Nand Kumar* v. *State of Punjab*, 1994 SCC (Cri) 158.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 10-2-1993]

[10470] — Ss. 420, 120-B and 34 — Conspirary — Quashment of proceedings — Evaluation of plausibility/credibility of averments in complaint — Permissibility — Doubt as to the same, held, must be based on some material — *High Court cannot quash complaint if allegations prima facie disclose commission of cognizable offence — Complaint alleging sale of cooperative society land illegally for higher price but showing lesser price in records and conspiracy to cheat society and its members — High Court quashing entire criminal proceedings holding that averments in complaint were "imaginary" — Sustainability — In present case, allegations in complaint disclose conspiracy to put cooperative society and its members to loss in view of report of Registrar and hence prima facie disclose commission of cognizable offence — High Court's conclusion that averments in complaint are imaginary is not based on any material — Hence, judgment of High Court is unsustainable — CrPC, 1973, S. 482*

Allowing the appeal,

Held :

It is now a well-settled principle of law that the High Court in exercise of its inherent jurisdiction under Section 482 of the Code may quash a criminal proceeding inter alia in the event the allegations made in the complaint petition even if they are taken at their face value and accepted in their entirety do not disclose commission of a cognizable offence. (Para 14)

The opinion of the High Court that the averments made in the complaint petition are imaginary is not based on any material. Even assuming that the complainant had a score to settle against the accused, the same by itself may not be a ground to quash the entire criminal proceedings particularly in view of the fact that at least a prima facie case has been established in view of the report of the Registrar. (Para 22)

(10)(vi) Conspiracy/Multiple accused/Abetment *(contd.)*

The allegations made in the complaint petition disclose commission of a cognizable offence. A conspiracy is said to have been entered into for putting the Society and consequentially the members to a great loss. A conspiracy is also said to have been hatched for the aforementioned purpose as a result whereof not only an allotment was made in favour of a person who was not entitled thereto but also the allotted plot was assigned in favour of a third party for a huge sum. Whether the allegations made in the complaint petition are correct or not have to be considered during trial. It may be true that the question as to whether the report of the Registrar can be relied upon for the purpose of showing as to how the act of cheating has been committed by the respondents is a matter which must be considered at the time of trial but there cannot be any doubt whatsoever that so long as the report is not set aside, the same could form the basis for forming of an opinion at least for the purpose of proceeding against the respondents that they manipulated the records of the cooperative Society to make unlawful gain for themselves and causing unlawful loss to the Society. (Paras 16, 17 and 19). *K. Ashoka* v. *N.L. Chandrashekar*, (2009) 5 SCC 199: (2009) 2 SCC (Cri) 730: (2009) 77 AIC 58 (SC): 2009 Cri LJ 2952.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, followed

[10471] — Ss. 420, 120-B and 405 — Essential ingredients — Whether complaint petition given its face value and taken to be correct in its entirety constitutes an offence under — *Respondent 1 who was a partner of M/s* ***R Co.*** *alleging that Accused 1 to 6 who were also partners of said firm had conspired with appellant-Accused 8 to 13 who were partners of another firm* ***D&S*** *and deprived him from deriving benefits of M/s* ***R Co.*** *by dissolving it behind his back — A new company M/s* ***GD&S*** *was sought to be constituted on premise that four partners of M/s* ***R Co.*** *would be representing* ***D&S*** *along with an outsider — It was also alleged that he had lion's share in building up the reputation and goodwill of M/s* ***R Co.****; that he had no control over income of the firm and in spite of repeated demands for rendering accounts the accused had failed to do so; appellants were the conspirators in cheating and committing criminal breach of trust which amounted to theft of valuable property of complainant — Partnership cancelled from the very inception as the same was said to have not been acted upon — Held, once the said partnership did not take off and the partnership deed was cancelled as it had never been acted upon, the question of any wrongful act on the part of the appellants did not arise — Respondent 1 thus suffered no loss — Further held, it is one thing to say that there exists a dispute amongst the partners inter se but it is another thing to say that by constituting another firm wherein two firms would be represented by their respective nominees together with an outsider would itself indicate an act of conspiracy — Once it has been accepted as a fact that the said partnership has been cancelled, the question of relying thereupon for any purpose would not arise — Moreover, in the instant case, essential ingredients for constituting the offence of criminal breach of trust and cheating were missing* (Paras 2, 3, 9, 10, 15 to 17). *V.R. Dalal* v. *Yougendra Naranji Thakkar*, (2008) 15 SCC 625: (2009) 3 SCC (Cri) 1141: AIR 2008 SC 2793: (2008) 66 AIC 113 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 16-5-2008]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., (2008) 13 SCC 678, relied on

[10472] — Ss. 420 and 415 — Cheating — ***D*** **purchasing shares from complainant** ***B*** **and giving him a postdated cheque signed by his wife towards payment thereof — Dishonour of cheque due to stop-payment instruction by wife** — *Conviction of* ***D*** *and acquittal of wife by High Court — Propriety — Receipt executed by* ***D*** *indicating that he had received the shares — Inability of* ***B*** *to tell the number of shares and the fact that the cheque was filled in by* ***B*** *held, not fatal — Plea that receipt was given in anticipation of future delivery, not raised before the courts below — Statement of* ***D*** *under S. 313 CrPC that he did not receive the shares or that the transaction did not take place on 7-8-1992 (date stated by* ***B****) but on 27-7-1992, was of no consequence — Wife totally denying any such transaction — She stating to have stopped payment on finding her chequebook (containing some signed blank cheques) missing — Held,* ***D*** *rightly convicted under S. 420 — However, his custodial sentence reduced from one year to three months — Wife's presence at the time of transaction, not proved — Cheque, though signed by her, handed over to* ***B*** *by* ***D*** *— Held, acquittal of wife proper*

It is proved that a cheque was handed over to the complainant and in the receipt it was stated that the shares have been received. The mere fact that the cheque was filled in by the complainant is not sufficient to take away the effect of the statement in the receipt. The plea that it was an advance receipt does not appear to have been even agitated before the courts below. Significantly, there was no suggestion to the complainant that the shares had not been delivered. When there was definite assertion about delivery of shares evidenced by a receipt, the inability of the complainant to tell the number of shares is not sufficient to discard his case. (Paras 9 to 11)

Further, what appears to have weighed with the trial court while acquitting the accused is that the transaction allegedly took place on 27-7-1992. Significantly, there is also no suggestion to the complainant during cross-examination by the accused that the transaction was done on 27-7-1992 and not on 7-8-1992 as claimed by the complainant. Merely because the accused stated that he had not received the shares or that the transaction took place on 27-7-1992 in his examination under Section 313 CrPC, that is really of no consequence. The statement under Section 313 is not evidence. (Para 11)

Prevaricating stands have been taken as to why stoppage of payment was done. Thus, in view of the above position, the High Court's judgment convicting *D* suffers from no infirmity. But, considering the peculiar circumstances of the case, his sentence is reduced from one year to three months. (Paras 13 and 14)

As regards acquittal of wife of *D*, her presence at the time of the transaction has not been established. Though she had signed the cheque, admittedly, the same was handed over to the complainant only by *D*. Therefore, there was no deception established so far as she is concerned. (Para 15). *Devender Kumar Singla* v. *Baldev Krishan Singla*, (2005) 9 SCC 15: 2005 SCC (Cri) 1185: AIR 2004 SC 3084: 2004 Cri LJ 1778.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-2-2004]

[10473] — Ss. 420, 415, 405, 409 and 120-B — Cheating — Ingredients — Existence of an intention to cheat at the time of making initial promise or formation of contract — Importance of and need to prove — *Held, complainant is required to show that accused had fraudulent or dishonest intention at the time of making promise or representation — In the absence of culpable intention at the time of making initial promise, no offence is made out under S. 420 — In present case, held, allowing of cheque discounting facility by bank officials to customers of Bank, without any criminal intent being proved, did not amount to commission of offence, particularly as facility allowed was not contrary to RBI Guidelines — It could not therefore also be said that there was meeting of minds in a conspiracy to commit an offence, nor could the act of corruption be inferred from transactions between Bank and its customers — Further, held, accused officials might have been prosecuted under S. 409 but they were not charged under this section — Their conviction therefore set aside — Prevention of Corruption Act, 1988, S. 13(1)(d)*

Appellant was a Branch Manager of State Bank of India. He and some of his colleagues were prosecuted under Sections 415 and 420 read with Section 120-B IPC, and Section 13(1)(*d*) of the Prevention of Corruption Act, 1988, for permitting discounting of local cheques to some customers of the Bank. Accused 4 and 5 were bank officials while Accused 1 to 3 were private parties having account with the Bank.

The issues involved were whether the bank officials and the customers had entered into criminal conspiracy to commit the offence of cheating against the Bank under Sections 415 and 420 IPC, and whether the accused persons had obtained any illegitimate advantage, warranting punishment under the Prevention of Corruption Act.

Trial court convicted the accused persons. High Court upheld their conviction. The Supreme Court however took note of the fact that there was no evidence on record to prove that there was an intention to cheat the Bank. On the other hand, there was evidence on record that appellant had stopped cheque discounting facility and he had resumed it only after verbal instructions from a superior officer, PW 20. Moreover, the bank officials appeared to have acted in the overall interest of the Bank for the purpose of promoting its business, though there might have been some irregularity in doing so.

Allowing the appeals,

Held :

One of the ingredients of cheating, as defined in Section 415 IPC, is existence of an intention to cheat at the time of making initial promise or existence thereof from the very beginning of formation of contract. The complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. (Paras 41 and 42)

(10)(vi) Conspiracy/Multiple accused/Abetment *(contd.)*

No evidence has been brought on record to show that Accused 4 or for that matter, Accused 5 i.e. the bank officials entered into any conspiracy with others. Accused 4 had stopped grant of the said facility and only at the instance of PW 20, was the said facility restored. It may be that there had been certain procedural irregularities in the transaction. However, sufficient evidence is available on record to show that the officers had extended the discounting facility for the purpose of promoting the business of the Bank, for which initiative had been taken by PWs 19 and 20. It has not been disputed that after cheque discounting facility was stopped in April 1989 by Accused 4, there had been a meeting at the residence of PW 20. In his deposition, PW 20 categorically admitted that the said meeting was arranged at the instance of Accused 1. This meeting was arranged at PW 20's residence on the day he was on leave. Accused 1 must have developed grievance against Accused 4 on account of stoppage of the cheque discounting facility. If immediately thereafter the said facility had been restored by Accused 4, a stand taken by him that it was done under the oral instructions of the higher authorities appears to be plausible. The prosecution, apart from the fact that it had failed to bring on record any evidence of conspiracy, must also be held to have failed to bring on record any evidence of wrongful gain so as to attract provisions of the Prevention of Corruption Act, 1988 or otherwise. (Paras 38, 46 and 47)

The accused persons have not been charged for commission of the offence under Section 409. Conspiracy by and between the Bank officials and Accused 1 to 3 has been stated to be for commission of the offence of cheating. It was necessary for the prosecution to establish that there had been meeting of minds at the time when the facility had been granted. Such meeting of minds on the part of the accused persons has not been proved. (Para 48)

Furthermore, the prosecution case even if given face value and taken to be correct in its entirety does not lead to a finding that even Accused 1 to 3 had any wrongful intention at the time when the contract was initiated. (Para 49)

The Special Judge as also the High Court proceeded on the basis that cheque discounting facility could under no circumstances be made available to them. This was not a correct approach. RBI Guidelines categorically show that it was not a wrong practice. It is one thing to say that there has been an abuse of a prevalent banking practice for the purpose of causing wrongful loss to the bank and causing wrongful gain to others but it is another thing to say that by reason thereof, ingredients of cheating are attracted. (Para 50)

The offence, if any, was committed under Section 409 IPC but the accused persons have not been charged under Section 409 IPC; even Accused 1 to 3 have not been charged for entering into a conspiracy with Accused 4, 5 and 6 in respect of commission of offences under the Prevention of Corruption Act. It is in the aforementioned situation, the judgment of conviction and sentence cannot be upheld. (Para 51)

The conclusions can be summarised as follows:

(*a*) The prosecution did not lay down any foundational facts to arrive at a finding of dishonest intention on the part of the appellants, nor has any such finding has been arrived at by the trial court or the High Court.

(*b*) The circumstances which were considered sufficient to bring home the charges against the appellants were: the cheques of Accused 1, 2 and 3 were discounted after purchasing cheques; cheques were deposited after a gap of one to four days; only later were the amounts deposited in the account, which circumstances are not sufficient to hold the appellants guilty for commission of offence under Section 420 IPC as all the actions on the part of the bank officers were in consonance with the long-standing banking practice.

(*c*) Accused 4 had taken care of having adequate security to ensure that the bank does not suffer any loss, the gain if any was caused to the bank.

(*d*) The appellants acted on instructions by the higher authority.

(*e*) The prosecution evidence does not establish any conspiracy on their part vis-à-vis Accused 1, 2 and 3. (Para 55). *S.V.L. Murthy* v. *State*, (2009) 6 SCC 77: (2009) 2 SCC (Cri) 941.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Sharon Michael v. State of T.N., (2009) 3 SCC 375: (2009) 2 SCC (Cri) 103, relied on

[10474] — Ss. 420/34 and 471/34 — Principal accused printing false receipts and collecting donations for relief fund — *Appellant, accused 2, neither shown to have knowledge that the receipts were forged nor shown to have derived any benefit* *from the funds so collected — That appellant shared the fraudulent intention with accused 1 not proved — Conviction improper — Merely going along with the principal accused not sufficient. Dasrathlal Chandulal Joshi* v. *State of Gujarat*, (1979) 4 SCC 338: 1979 SCC (Cri) 974: AIR 1979 SC 1342: 1979 Cri LJ 1078.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 18-1-1979]

[10475] — Ss. 420/109 — Abetment of cheating/fraud — *One* **L**, *who had been introduced to respondent Bank by appellant, committing fraud on Bank — Responsibility of appellant therefor — Held, appellant had introduced* **L** *to the Bank only for opening an account and that by itself does not spell out any fraud or cheating — On facts, there was no evidence to show that the appellant was in any way related to the fraud committed by* **L** *on the Bank — Moreover, the appellant was in no way responsible for the loss sustained by the Bank due to said fraud — Hence appellant acquitted of all charges*

Allowing the appeal,

Held :

There is nothing on record to show that the appellant was in any way related to the fraud committed by *L* on the Bank. The prosecution did not even produce the form in which the appellant had signed for introducing *L* for starting a current account with the Bank. The evidence of the three witnesses also does not show any complicity by the appellant in committing any act of cheating. The appellant had introduced *L* to the Bank only for opening an account and that by itself does not spell out any fraud or cheating. There is no evidence to show that the present appellant instigated *L* to present bogus drafts before the complainant Bank. It is also not correct to say that the appellant was in any way responsible for the loss sustained by the Bank when the Bank passed the cheque for Rs 27,000 at a time when the account-holder *L* had not sufficient money in his credit. They acted on the bogus drafts given by him for which the appellant who had introduced the account-holder about six months back cannot be made liable for commission of offence or abetting offence of cheating. (Paras 5 and 6). *Manoranjan Das* v. *State of Jharkhand*, (2004) 12 SCC 90: AIR 2004 SC 3623: (2004) 121 Comp Cas 8: 2004 Cri LJ 3042.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 21-4-2004]

(vii) Conviction justified

[10476] — Ss. 420 and 120-B — Cheating — Held, concurrent findings of courts below calls for no interference — Conviction upheld — *However, in the circumstances, sentence reduced — No law point laid down. Gurbachan Singh* v. *State of Rajasthan*, AIR 1994 SC 1589.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 25-8-1993]

[10477] — Ss. 420/511, 420/120-B, 468 and 477-A — Sentence — Accused, a Development Officer in LIC, introducing false and fake insurance proposals to LIC with a view to earn promotion on the basis of inflated business — *Contents of proposals and Moral Hazard Report found to be in the handwriting of the accused — Plea of the accused that he was then imparting training to newly-recruited agents and in that process he had filled in the proposal forms, held, not acceptable — Policies not issued due to dishonour of cheques towards first premium and, therefore, loss to LIC might be negligible but the fact remains that the accused sought to take advantage of his inflated business — Held, in the circumstances of the case, accused rightly convicted by the courts below — However, in view of long lapse of time, loss of job and other retiral benefits, sentence altered to simple imprisonment for six months — Prevention of Corruption Act, 1947 — Ss. 5(1)(d), 5(3-A) and 5(2) — Insurance Act, 1938 — S. 104. Ram Prakash Singh* v. *State of Bihar*, (1998) 1 SCC 173: 1998 SCC (Cri) 300: AIR 1998 SC 296: 1998 Cri LJ 502.

Bench Strength **2**. Coram: *M.M. Punchhi* and **S.P. Kurdukar**, JJ. [Date of decision: 24-10-1997]

(viii) Jurisdiction

[10478] — S. 420 — Place of trial — *Complainant parting with his money on misrepresentation by accused — Misrepresentation made to the complainant residing at Bombay by the accused from Karachi through letters, telegrams, telephone talks and through a person — Held, misrepresentations made to the complainant at Bombay — Entire offences committed at Bombay which is a proper place of trial*

The offence of cheating under S. 420 of the Penal Code as defined in S. 415 of the Code has two essential ingredients, viz. (1) deceit i.e., dishonest or fraudulent misrepresentation to a person, and (2) the inducing of that person thereby to deliver property. In the present case the appellant though at Karachi was making representations to the complainant through letters, telegrams and telephone talks, sometimes directly to the complainant and

(10)(viii) Jurisdiction *(contd.)*

sometimes through Jaswalla, that he had already stock of rice, that he had reserved shipping space and that on receipt of money he would be in a position to ship the rice forthwith. These representations were made to the complainant at Bombay, notwithstanding that the appellant was making the representations from Karachi. The position is quite clear where the representations were made through the trunk phone. The statement of the appellant at the Karachi-end of the telephone becomes a representation to the complainant only when it reaches cognition of the complainant at the Bombay-end. It makes no difference in principle if the representations have in some stages been conveyed by telegrams or by letters to the complainant directly or to some one of the appellant's agents, including Jaswalla in that category. There is also no question that it is as a result of these representations that the complainant parted with his money on three different dates. It has been found that the representations were made without being supported by the requisite facts and that this was so to the knowledge of the appellant and that the representations were so made with an initial dishonest intention. On these facts it is clear that all the ingredients necessary for finding the offence of cheating under S. 420 read with S. 415 have occurred at Bombay. In that sense the entire offence was committed at Bombay and not merely the consequence viz., delivery of money which was one of the ingredients of the offence.

The place of trial was, therefore, Bombay. *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 857: 1958 SCR 328: 1957 Cri LJ 1346, 1356.

Bench Strength 3. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 6-9-1957]

[10479] — S. 420 — Presentation and encashment of a false bill by a clerk of an office as a bill of the office — *Offence held covered by Item 3 of Schedule to West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and exclusively triable by Special Court. Sunil Kumar Paul* v. *State of W.B.*, AIR 1965 SC 706: (1964) 7 SCR 70: (1965) 1 Cri LJ 630.

Bench Strength 3. Coram: *K. Subba Rao*, *K.C. Das Gupta* and **Raghubar Dayal**, JJ. [Date of decision: 6-3-1964]

[10480] — Ss. 420 and 406 — Territorial jurisdiction of a court/Judicial Magistrate to entertain criminal matter — Determination of — Offences of cheating and criminal misappropriation — *Considering S. 178 CrPC, held, commission of even a part of offence within the jurisdiction of the court/Magistrate concerned, is sufficient for exercise of jurisdiction by the said court/Magistrate in relation to the offence committed — Fraudulent representation being one of the essential ingredients of the offence of cheating, the person accused of cheating could be prosecuted at the place where such fraudulent representation was made — As regards the offence of criminal misappropriation, the court within whose jurisdiction the property had been entrusted or was to be accounted for could take the cognizance — Appellant Company, having its place of business at place* ***C*** *(i.e. Calcutta), filing a criminal complaint under S. 156(3) CrPC before Judicial Magistrate at* ***C*** *seeking direction for investigation in several offences of cheating, criminal misappropriation, etc. committed by its agents in another State i.e. State of U.P. — Agents admitting that reconciliation of accounts took place at* ***C*** *— Held, if there was a fraudulent representation by accused at* ***C*** *and a conspiracy was hatched there to commit the offences, a part of cause of action arose within the jurisdiction of Magistrate at* ***C*** *— On facts, the said Magistrate directing the police concerned to investigate the said offences had jurisdiction in relation to those offences in terms of S. 178 r/w S. 181(4) CrPC — High Court (functioning in State of U.P.) erred in interfering with the said order by transferring the investigation to State of U.P. where major part of offences took place — Since order of High Court had been complied with, certain necessary directions issued by Supreme Court in the matter — Constitution of India, Art. 142 — Exercise of power under, to subserve the interest of justice where an improper order of High Court transferring the investigation from one State to another was complied with — CrPC, 1973 — Ss. 178, 181(4) & 156(3)*

The appellant was awarded contracts for exporting wheat, rice, etc. upon purchasing the same from Food Corporation of India and certain other State Corporations. Respondents 1 and 2 allegedly approached him for appointment as its agent to arrange and supply foodgrains of Food Corporation of India on commission basis. Pursuant to the said agreement, Respondent 1 under the direction of Respondent 2 used to make arrangement of railway rakes at different railway stations in various States for export of rice and wheat from Food Corporation of India to Bangladesh for and on behalf of the appellant. Allegedly, in the course of rendition of such services, the respondents committed various acts of breach of trust, cheating, forgery, etc. Hence, a complaint petition was filed under Section 156(3) CrPC by the appellant Company before the Chief

Metropolitan Magistrate, Calcutta. In that complaint it was alleged that the accused entered into a criminal conspiracy with a view to cheat the complainant Company and/or dishonestly misappropriate a huge amount by making forged and false documents. The accused fraudulently prepared the letterheads and seals of the appellant and used the same. They, thus, committed breach of trust and withdrew an amount of about Rs 1.5 crores.

The said purported acts were committed outside the State of West Bengal and principally in the State of U.P. Various other criminal misconducts were also said to have been committed by the accused in the State of U.P.

The Chief Metropolitan Magistrate, Calcutta upon consideration of the said complaint directed the officer in charge of the police station concerned to make an investigation into the allegations contained in the complaint. Pursuant to the said direction, investigation was carried out. As the respondents did not appear before the court, warrants of arrest were issued by the said Magistrate. Thereafter, the respondents filed a criminal writ petition before the High Court of Judicature at Allahabad. The High Court allowed the said writ petition in part. While declining to quash the FIR, the High Court directed that the FIR lodged at the Calcutta police station be transmitted to the appropriate police station of U.P. Further direction was made that the investigating officer concerned would make all efforts to conclude the investigation preferably within a period of three months from the date of receipt of transmitted FIR. That apart, the arrest of the accused was stayed till the submission of charge-sheet/final report, if any. Hence, the present appeal.

Before the Supreme Court, the appellant complainant submitted that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration the effect and purport of Section 181(4) CrPC which categorically provides that a court within whose local jurisdiction the property was to be accounted for by the accused persons will also have jurisdiction to try the case. Further, the respondents having made false representations at Calcutta, a part of the offence must be held to have been committed within the jurisdiction of the Metropolitan Magistrate, Calcutta. It was contended that the Chief Metropolitan Magistrate, Calcutta having exercised its judicial power not only by issuing a direction in terms of Section 156(3) CrPC but also issuing a non-bailable warrant of arrest, the Allahabad High Court had no territorial jurisdiction to interfere therewith, as the said Court was not under its supervisory jurisdiction. It was further argued that only because a part of cause of action had arisen within the State of U.P., the same by itself would not entitle the respondents to pray for transfer of investigation from one State to the other. The High Court had no jurisdiction to transfer the investigation of a criminal case from one statutory authority to another in exercise of its jurisdiction under Article 226 of the Constitution of India or otherwise.

Disposing of the appeal,

Held :

The necessary ingredients for proving a criminal offence must exist in a complaint petition. Such ingredients of offence must be referable to the places where the cause of action in regard to commission of offence has arisen. A cause of action as understood in its ordinary parlance may be relevant for exercise of jurisdiction under clause (2) of Article 226 of the Constitution of India but its definition stricto sensu may not be applicable for the purpose of bringing home a charge of criminal offence. (Para 23)

Section 178 CrPC clearly suggest that even if a part of cause of action has arisen, the police station concerned situate within the jurisdiction of the Magistrate empowered to take cognizance under Section 190(1) CrPC will have the jurisdiction to make investigation. (Paras 20 and 22)

Further, as regards commission of offence of criminal misappropriation and criminal breach of trust, Section 181(4) CrPC provides that such an offence may be inquired into or tried by the court within whose jurisdiction the accused was bound by law or by contract to render accounts or return the entrusted property, but failed to discharge that obligation. (Para 21)

Fraudulent representation being one of the essential ingredients in respect of commission of an offence under Section 420 IPC, a place where such fraudulent misrepresentation has been made would, thus, give rise to a cause of action for prosecuting the accused. Similarly, having regard to the ingredients of an offence under Section 406 IPC where the entrustments were made as also the situs where the offence was completed in the sense that the amount entrusted had not been accounted for by the agent to the principal will also have a nexus so as to enable the court concerned to exercise its jurisdiction of taking cognizance. (Para 29)

(10)(viii) Jurisdiction *(contd.)*

The application filed by the appellant under Section 156(3) CrPC disclosed commission of a large number of offences. The fact that major part of the offences took place outside the jurisdiction of the Chief Metropolitan Magistrate, Calcutta is not in dispute. But, even if a part of the offence committed by the respondents related to the appellant Company was committed within the jurisdiction of the said court, the High Court of Allahabad should not have interfered in the matter. A major part of the cause of action might have arisen in the State of U.P., but the same by itself would not mean that the Calcutta Court had no jurisdiction whatsoever. If there had been a fraudulent misrepresentation by some of the respondents at Calcutta and a conspiracy was hatched to commit offences of cheating or misappropriation, indisputably a part of cause of action arose within the jurisdiction of the Metropolitan Magistrate, Calcutta. (Paras 23, 33 and 25)

Thus, the Chief Metropolitan Magistrate, Calcutta had jurisdiction in the matter in terms of Section 178 read with Section 181(4) CrPC. (Para 29)

However, the order passed by the Allahabad High Court has been complied with. Some offences at various places situated within the State of U.P. had been committed. The High Court had not issued any direction as to which investigating officer attached to which police station of U.P. will have jurisdiction in the matter. The direction of the High Court, in that way is vague and indefinite. Investigating officer attached to one police station may feel handicapped in carrying out the investigation within the entire State. In this case, it may be necessary for the investigating officer to make investigation even in other States for the aforementioned purpose. (Para 36)

Therefore, by exercising extraordinary jurisdiction under Article 142 of the Constitution to subserve the interest of justice, the appeal is disposed of with directions that (*i*) further investigation must be carried out by CB CID of the State of U.P., (*ii*) the accused must surrender before the Chief Judicial Magistrate, Allahabad and their applications for grant of bail, if any, may be considered by the said court on its own merits, (*iii*) investigation must be carried out inter alia on the premise that the jurisdiction to make investigation would be subject to the ultimate decision of the Court of the Chief Metropolitan Magistrate, Calcutta as if investigations are being carried out by CB CID of the State of U.P. in continuation of the investigation made by the police officer of Calcutta, and (*iv*) the report on completion of the investigation must be forwarded to the Chief Metropolitan Magistrate, Calcutta who would determine the question of his own jurisdiction at an appropriate stage. (Para 38). *Asit Bhattacharjee* v. *Hanuman Prasad Ojha*, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31: AIR 2007 SC 1925: 2007 Cri LJ 3181: (2007) 104 Cut LT 488: (2007) 4 All LJ 567: (2007) 54 AIC 38 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *C.K. Thakker*, JJ. [Date of decision: 15-5-2007]

Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd., (2006) 3 SCC 658: (2006) 2 SCC (Cri) 98, relied on

Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640: 2001 SCC (Cri) 215, held distinguished

[10481] — Ss. 420, 471, 474, 467, 468, 417 and 511 — Police agency that has jurisdiction — Territorial jurisdiction of CBI to initiate prosecution — Offences under Ss. 420, 471, 474, 467, 468 and 417 r/w S. 511 IPC allegedly committed by candidate in examination conducted by UPSC in a State — *In such circumstances, the mere fact that the head office of UPSC was located at New Delhi, held, could not confer jurisdiction on CBI to invoke the 1946 Act in a criminal case lodged by Secretary, UPSC against the said candidate — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Preamble and Ss. 1, 3 and 5* (Paras 15 and 10). *M. Balakrishna Reddy* v. *CBI*, (2008) 4 SCC 409: (2008) 2 SCC (Cri) 391: AIR 2008 SC 1754: (2008) 66 AIC 165 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Dalveer Bhandari*, JJ. [Date of decision: 14-3-2008]

[10482] — Ss. 420, 471, 474, 467, 468, 417 and 511 — Territorial jurisdiction of CBI to initiate prosecution — Offences under Ss. 420, 471, 474, 467, 468 and 417 r/w S. 511 IPC allegedly committed in a State in an examination by a candidate who was an employee of the Central Government — *In such circumstances the mere fact that the delinquent candidate was an employee of the Central Government, held, could not confer jurisdiction on CBI to invoke the 1946 Act — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Preamble and Ss. 1, 3 and 5* (Paras 15 and 11). *M. Balakrishna Reddy* v. *CBI*, (2008) 4 SCC 409: (2008) 2 SCC (Cri) 391: AIR 2008 SC 1754: (2008) 66 AIC 165 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Dalveer Bhandari*, JJ. [Date of decision: 14-3-2008]

(ix) Juvenile accused

[10483] — Ss. 420, 415, 418 & 25 — Commission of fraud on investors by promoters of company — Liability of promoters who were minors — Unsustainability of — *Held, as the appellants were minors at the relevant time, they could not have entered into the contract in view of S. 11 of the Contract Act, 1872 — Thus, they being not party to fraud, they could not have been subjected to penalty under the SEBI Act — It was promoter S i.e. father of appellant minors who committed fraud in names of appellants — Hence, held, S himself should have been proceeded against not only for commission of act of fraud on his own behalf but also on behalf of minors — Contention that offence was continuing one, rejected — Contract Act, 1872, Ss. 11, 10 & 17 — SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 — Regns. 4 to 6 & 11 — Companies Act, 1956, Ss. 62, 63 and 68 — SEBI Act, 1992, Ss. 11(2)(e), 11-B, 24, 27 & S. 15-HA (inserted post the event). Ritesh Agarwal* v. *SEBI*, (2008) 8 SCC 205: (2008) 144 Comp Cas 12.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 13-5-2008]

(x) Limitation

[10484] — Ss. 420, 467, 471 and 474 — Offences under — Quashing of complaint by High Court on the ground that it was filed belatedly — Legality — Bar of limitation under S. 468 CrPC — Applicability of — *Most of the offences in question punishable with imprisonment for a term exceeding three years — Hence held, bar of limitation not attracted — Further, if the effect of delay, if any, in instituting the complaint was necessary to be determined for considering the merits of the charge, that could only be done at the stage of trial on the basis of the evidence on record — Accordingly, High Court's order set aside — CrPC, 1973 — Ss. 482 and 468* (Para 6). *Harnam Singh* v. *Everest Construction Co.*, (2004) 6 SCC 754: 2004 SCC (Cri) 1828.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 17-8-2004]

[10485] — Ss. 420, 468 and 127 — Limitation — Commencement of — *Suit against termination of service — Temporary employee charged with cheating and forgery for producing false certificates and placed under suspension — Independent of that action, his services terminated in exercise of statutory power under R. 5 of the Central Government Services (Temporary Service) Rules, 1949 — Criminal proceedings ultimately ending in acquittal — Even in such circumstances, the period of limitation to file a suit for declaring the termination order to be unconstitutional, held, commenced on the date of termination of the service and not on the date of acquittal — Hence, on expiry of three years from that date the said employee lost his right to sue for the said declaration — Central Government Services (Temporary Service) Rules, 1949, R. 5 — Limitation Act, 1963 — S. 3 and Art. 58. Ministry of Works & Housing Govt. of India* v. *Mohinder Singh Jagdev*, (1996) 6 SCC 229.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 16-8-1996]

State of Punjab v. Gurdev Singh, (1991) 4 SCC 1: 1991 SCC (L&S) 1082: (1991) 17 ATC 287, affirmed

Babu Lal v. State of Haryana, (1991) 2 SCC 335: 1991 SCC (L&S) 488: (1991) 16 ATC 481; State of M.P. v. Syed Qamarali, 1967 SLR 228 (SC), distinguished

Impliedly overruled in (2004) 2 SCC 747

(xi) Quashment

See also '(3)(v) Mens rea — If civil offence(s) only — Dishonest intention when must exist', and

'(6)(vi) Mens rea — If civil offence(s) only — Dishonest intention when must exist', above

See also S. 482 CrPC, 1973 '(11)(xviii) Quashment in case of economic offences/commercial transactions, breach of trust, cheating, etc.', and

'(11)(xix) Quashment re offences involving companies'

'(11)(xxii) Quashment re taxation offences', in Vol. 18, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 2 of *SC on CrPC and Criminal Trial*

[10486] — Ss. 415, 418, 420 and 120-B — Quashing of complaint or charge-sheet — Scope of High Court's jurisdiction — *Mere fact that the offence was committed during the course of a commercial transaction by itself not sufficient to quash the complaint — For quashing the complaint Court has to see whether on the fact situation 'civic profile' outweighs the 'criminal outfit' — Commission of offence under Ss. 120-B, 418, 415 and 420 r/w 34 IPC by respondent in the course of a contractual transaction alleged — Held, on facts, in the factual matrix quashing of complaint not warranted — Complaint has to be examined as a whole without going into merits of the allegations made therein — If a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, Court should not quash the complaint — But if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint — Court's approach should, however, be very circumspect, cautious and careful — CrPC, 1973 — S. 482*

(10)(xi) Quashment *(contd.)*

The respondents approached the appellant for the purpose of securing ethambutol hydrochloride drug in bulk for sale and use in various pharmaceutical drugs and products being manufactured by the respondent Company. The appellant has come out with a definite case that by reason of a promise of maintaining a continuous supply of raw materials to the appellant for the purpose of manufacturing ethambutol hydrochloride and in such a way so as not to cause any interruption or hindrance to the manufacturing activity of the appellant-complainant's factory, the complainant entered into an agreement. On failure to comply with that agreement the appellant filed a complaint alleging to have lost a substantial amount of money to the extent of about rupees one crore and the sufferance of loss has been by reason of specific assurance and representation which turned out to be false. Misrepresentation on the part of the accused-respondent persons to the complainant, had been the major grievance and a definite and specific case had been made out that such a misrepresentation was intentionally effected since the accused persons were in the know of things that in the event the supplies were not effected, as per the agreement, the complainant was likely to suffer a wrongful loss which in the interest of the transaction between the parties, the accused persons were bound to protect. Proceedings were initiated against the respondents under Sections 120-B, 418, 415 and 420 read with Section 34 IPC. Against the said proceedings the respondents moved the High Court under Section 482 CrPC for quashing the complaint. A Single Judge of the High Court taking the view that the complaint did not disclose any offence allowed the petition for quashing the complaint. Allowing the appeal of the complainant,

Held :

Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial. So the question is: Can it be said that the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused? (Paras 2, 14 and 15)

The factual matrix would be relevant in the matter of assessment of the situation as to whether "civic profile" would outweigh the "criminal outfit". (Para 3)

In the matter of exercise of the High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and very great care and caution to quash the complaint in exercise of its inherent jurisdiction. (Para 16)

While Section 415 is an offence of cheating, Section 418 deals with cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect and Section 420 is cheating and dishonestly inducing delivery of property. In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 418 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact

Illustration (*g*) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract and it is this concept which obviously has weighed with the Single Judge. But considering the factual aspect of the matter it must be held that the issue involved in this case is not one in which the criminal trial should have been short-circuited. (Paras 11 and 19). *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*, (2000) 3 SCC 269: 2000 SCC (Cri) 615: AIR 2000 SC 1869: 2000 Cri LJ 1487.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **U.C. Banerjee**, JJ. [Date of decision: 25-2-2000]

Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; L.V. Jadhav v. Shankarrao Abasaheb Pawar, (1983) 4 SCC 231: 1983 SCC (Cri) 813; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Nagpur Steel & Alloys (P) Ltd. v. P. Radhakrishna, 1997 SCC (Cri) 1073; Ram Jas v. State of U.P., (1970) 2 SCC 740: 1970 SCC (Cri) 516, relied on

Dr. Sharma's Nursing Home v. Delhi Admn., (1998) 8 SCC 745: 1999 SCC (Cri) 91, distinguished

[10487] — Ss. 415 and 420 — Petition under S. 482 CrPC for quashing of criminal complaint under Ss. 415/420 IPC — *High Court directing the CJM, with whom the matter was pending for disposal on merits, to consider all the objections raised by the petitioner and to pass a reasoned order — Petitioner-appellant then filing objections before CJM and seeking dropping of the proceeding — By a reasoned order CJM rejecting the application taking the view that summons should be issued to the accused — Appellant once again moving the High Court under S. 482 CrPC — High Court disposing of the petition with the observation that the applicant shall have right to raise all the grounds at the time of framing of charge — Held, High Court was not justified in declining to exercise its jurisdiction and adjudicating the matter on merits — Objection regarding maintainability of the complaint need not always be raised only at the time of framing the charge — Matter remitted to High Court for disposal afresh — CrPC, 1973 — S. 482*

On an earlier occasion when the appellant had moved the High Court, the High Court had directed the CJM, to consider the objections raised by the appellant and to pass a reasoned order. Thereafter, the CJM, passed an order overruling the objections and decided to proceed with the case. When the appellant approached the High Court again against the speaking order passed by the CJM, the High Court once again declined to decide the petition on merits, but left it to be raised before the trial court at the time of framing the charge. Now, raising the very same objections at the time of framing the charge would practically be an empty formality as the trial court had already taken a definite view in the matter. The High Court in passing the impugned order has virtually ignored the spirit behind the direction given and observations made in the earlier order. There is no hard-and-fast rule that the objection as to cognizability of offence and maintainability of the complaint should be allowed to be raised only at the time of framing the charge. Such was not the intention of the High Court in passing the earlier order. The determination of the question as regards the propriety of the order of the Magistrate taking cognizance and issuing process need not necessarily wait till the stage of framing the charge. It may be that in a given case it would be more appropriate and proper to raise objections of this nature at the time of the charge-framing, but this is not a case of that nature, especially looking at the observations made in the earlier order of the High Court. Therefore, the subsequent order of the High Court is set aside and the matter is remitted back to the High Court for fresh disposal of the petition for a decision expeditiously. As the High Court declined to express any view on the crucial question whether the alleged offence has been made out, it is not appropriate and proper to undertake the task of deciding the question which the High Court ought to have decided. (Paras 8 and 9). *Kunstocom Electronics (I) (P) Ltd.* v. *Gilt Pack Ltd.*, (2002) 2 SCC 383: 2002 SCC (Cri) 336: AIR 2002 SC 739: 2002 Cri LJ 1012.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **P. Venkatarama Reddi**, JJ. [Date of decision: 24-1-2002]

Ashok Chaturvedi v. Shitul H. Chanchani, (1998) 7 SCC 698: 1998 SCC (Cri) 1704, relied on

[10488] — Ss. 415 and 420 — Powers of High Court under, for quashing criminal proceedings — Pendency of civil suit in respect of same subject-matter — Effect — *Held, jurisdiction under S. 482 CrPC can be exercised in a case where a civil suit is also pending between the parties in respect of the same subject-matter and contrary stand is taken by the complainant in the civil suit — When contrary stands are taken by a party in civil and the criminal courts, it assumes significance — CrPC, 1973 — S. 482*

The parties hereto entered into an agreement for sale in respect of a house, a sale deed was also executed on 30-9-2005 by the appellant herein. Indisputably on or about 29-9-2005, two rooms, allegedly, constructed on the said lands were demolished. A suit was filed in relation thereto. Respondent 1 who was also defendant in the said suit did not allege that she has been cheated by the appellant herein but later on filed a complaint in the

(10)(xi) Quashment *(contd.)*

court alleging commission of an offence by the appellant purported to be under Section 420 IPC. A petition under Section 482 CrPC for quashing the complaint had been dismissed by the High Court.

The short question which arose for consideration was as to whether a case of cheating within the meaning of Section 415 of the Penal Code had been made out or not.

Answering in negative and allowing the appeal,

Held :

While executing the sale deed, the appellant did not make any false or misleading representation. There had also not been any dishonest act of inducement on his part to do or omit to do anything which he could not have done or omitted to have done if he were not so deceived. Admittedly, the matter is pending before a competent civil court. A decision of a competent court of law is required to be taken in this behalf. Essentially, the dispute between the parties is a civil dispute. (Para 12)

For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. This does not mean that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, it assumes significance. Had the fact as purported to have been represented before the Supreme Court that the appellant got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter might have been different. As the deed of sale was executed on 30-9-2005 and the purported demolition took place on 29-9-2005, it was expected that the complainant/first respondent would come out with her real grievance in the written statement filed by her in the aforementioned suit. She, for reasons best known to her, did not choose to do so. In this view of the matter, in the facts and circumstances obtaining herein, no case has been made out for proceeding with the criminal case. (Paras 13 and 14). *B. Suresh Yadav* v. *Sharifa Bee*, (2007) 13 SCC 107: AIR 2008 SC 210: 2008 Cri LJ 431.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228: (2006) 1 SCC (Cri) 746; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121, relied on

[10489] — Ss. 415 and 420 — Quashing of complaint or FIR — Cheating alleged — Criminal prosecution, held, cannot be thwarted merely because a civil proceedings are also maintainable — *Existence of an arbitration clause in the contract for supply of goods between appellant Company and another company, held, not a sufficient ground for quashing the complaint filed by the appellant against the supplier company alleging cheating by supplying inferior goods — CrPC, 1973, S. 482*

The Chairman of the appellant Company filed a complaint before the Judicial Magistrate of the First Class alleging that the directors of another company offered to supply "toasted soyabean extractions" for a price higher than the market price. The appellant had to pay the price in advance as demanded by the accused. So the same was paid through cheques. But the accused sent the commodity which was of the most inferior and sub-standard quality, thereby the complainant suffered a loss of Rs 17 lakhs. According to the appellant he was induced to pay the price on the representation that the best quality commodity would be supplied and the price was paid on such representation. But by supplying the most inferior quality the accused deceived the complainant. The Magistrate forwarded the complaint of the appellant for investigation as per his order passed under Section 156(3) CrPC. The accused Directors thereupon moved the High Court of Gujarat under Section 482 CrPC for quashing the complaint. The respondent's counsel in the High Court put forward mainly two contentions. The first was that the dispute was purely of a civil nature and hence no prosecution should have been permitted, and the second was that the Judicial Magistrate of the First Class had no jurisdiction to entertain the complaint. On the first count the Single Judge pointed out that there was a specific clause in the memorandum of understanding arrived at between the parties that disputes, if any, arising between them in respect of any transaction could be resolved through arbitration. The High Court took the view that the question whether the complainant Company did suffer the loss as alleged by it are matters to be adjudicated by the civil court and cannot be the subject-matter of criminal prosecution. The Single Judge also accepted the alternative contention regarding want of jurisdiction of the Magistrate. Allowing the appeal,

Held :

Quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions. Merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. The provision incorporated in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases. (Paras 7 to 9). *Trisuns Chemical Industry* v. *Rajesh Agarwal*, (1999) 8 SCC 686: AIR 1999 SC 3499: 1999 Cri LJ 4325.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 17-9-1999]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259, relied on

***Followed** in Sri Krishna Agencies v. State of A.P., (2009) 1 SCC 69*

[10490] — Ss. 419, 467, 420 and 120-B — Quashing of criminal proceedings — Power of High Court to interfere with the investigation — Limitations and factors to be considered — *FIR u/Ss. 419, 467, 420 and 120-B IPC filed against respondents (two private persons) and 6 revenue officers for committing forgery of assessment order of compensation payable under Bihar Land Reforms Act and misappropriating govt. money — High Court quashed entire investigation against respondents — Held, the extraordinary power under Article 226 or inherent power under Section 482 CrPC can be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice — Such power should be exercised sparingly and with circumspection and that too in rarest of the rare cases — In view of the settled law, where there were specific allegations in FIR against the accused persons disclosing commission of a cognizable offence, High Court erred in interfering with the investigation against the accused respondents — Constitution of India, Art. 226 — CrPC, 1973 — S. 482*

The respondents, two persons, on being helped in an illegal manner by the revenue officers committed the forgery of the assessment order of compensation payable under the Bihar Land Reforms Act and misappropriated the govt. money. The State impugned herein the judgment of the High Court which quashed the entire investigation against the respondents.

Allowing the appeal,

Held :

Law is well settled regarding interference by the High Court with an investigation of a case. The extraordinary power under Article 226 or inherent power under Section 482 CrPC can be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. The power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of the rare cases. (Paras 4 and 7)

Thus, where specific allegations were made in the FIR and a prima facie case was made out against the accused persons including the respondents disclosing a cognizable offence, the High Court committed a grave error in quashing the entire proceedings against the respondents. (Para 8). *State of Bihar* v. *Mohd. Khalique*, (2002) 1 SCC 652: 2002 SCC (Cri) 228: 2002 Cri LJ 553: (2002) 1 CHN (Supp) 28.

Bench Strength 2. Coram: *K.T. Thomas* and **S.N. Phukan**, JJ. [Date of decision: 28-11-2001]

State of Haryana v. Bhajan Lal, 1992 Supp (1) 335: 1992 SCC (Cri) 426, followed

[10491] — S. 420 — Delay as a ground for quashing the prosecution — *Case registered for cheating on December 30, 1958 and charge-sheet filed in court on November 20, 1959 — But for separate offences single charge framed by Magistrate — High Court accepting revision on July 27, 1977 and remanding for separate charges — Appeal by State to Supreme Court — Held, in view of the inordinate delay in commencing the trial it would be a travesty of justice to permit the prosecution to continue — Hence prosecution quashed — CrPC, 1973, S. 482 — CrPC, 1898 — S. 561-A. State of U.P.* v. *Parshottam*, 1991 Supp (2) SCC 124: 1991 SCC (Cri) 1016: AIR 1991 SC 1015: 1991 Cri LJ 741.

Bench Strength 2. Coram: *Kuldip Singh* and *K. Ramaswamy*, JJ. [Date of decision: 21-11-1990]

[10492] — S. 420 — Prosecution under, held, permissible despite pendency of a civil suit in related matter — *Criminal proceedings initiated against the accused for offence under S. 420 IPC, held, were wrongly quashed by the High Court merely on the ground of pendency of a civil suit for specific performance in the matter concerned — CrPC, 1973 — S. 482. Vitoori Pradeep Kumar* v. *Kaisula Dharmaiah*, (2002) 9 SCC 581: 2001 Cri LJ 4948.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 3-4-2000]

(10)(xi) Quashment *(contd.)*

[10493] — S. 420 — Quashing of criminal proceedings — Ground — Abuse of process of court — Cognizance taken of offence under S. 420 IPC — *Ingredients of offence in question conspicuously lacking in the complaint — On facts, held, allowing the criminal proceedings to go on against the appellant, would result in abuse of the process of the court — Hence, proceedings against the appellant quashed — CrPC, 1973, S. 482 — Constitution of India, Art. 136*

Except using the expressions "fraudulent misappropriation" and "mala fide intention", the allegations in the complaint do not at all disclose as to how the appellant can be found guilty of the offence under Section 420 IPC. The ingredients constituting Section 420 are conspicuously lacking in the complaint. All the courts have failed to address themselves to the crucial question whether as far as the appellant is concerned any offence under Section 420 or for that matter any offence under Section 409 has been committed. Even going by the allegations in the complaint, allowing the criminal proceedings to go on against the appellant, would result in abuse of the process of the court. Hence, the proceedings against the appellant are quashed. (Para 5). *Vijaya Rao* v. *State of Rajasthan*, (2005) 7 SCC 69: 2005 SCC (Cri) 1600.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.N. Srikrishna*, JJ. [Date of decision: 29-7-2005]

[10494] — S. 420 — Quashing of criminal proceedings — Offence under S. 420 alleged — *Allegation in complaint that the complainant supplied material to the accused on unequivocal assurance given by him and accepted cheque which was later dishonoured for lack of funds — Held, merely because the alleged offence was committed during the course of a commercial transaction the High Court was not justified in quashing the complaint — Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial — CrPC, 1973 — S. 482. Nagpur Steel & Alloys (P) Ltd.* v. *P. Radhakrishna*, 1997 SCC (Cri) 1073.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *K. Venkataswami*, JJ. [Date of decision: 6-5-1997]

[10495] — Ss. 420 and 120-B — Bar to criminal proceedings, if any — Offence under Ss. 420 and 120-B IPC, as well as S. 138 of the Negotiable Instruments Act — *Held, taking cognizance of criminal proceedings is not barred under the RBI Act — Bar under Ss. 45-QA and 58-E of the RBI Act applies only to offences committed under the RBI Act — High Court, held, rightly acted by not quashing the order of cognizance taken by the criminal court — Negotiable Instruments Act, 1881, S. 138 — CrPC, 1973, S. 482 — Reserve Bank of India Act, 1934 — Ss. 45-QA and 58-E. Prudential Capital Mkt. Ltd.* v. *State of Bihar*, (2000) 9 SCC 539: 2001 SCC (Cri) 644: AIR 2000 SC 3668.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 3-4-2000]

[10496] — Ss. 420 and 120-B — Quashing of criminal proceedings without notice to original complainant — Held, unsustainable — *CrPC, 1973 — S. 482*

It is uncontroverted that proceedings under Section 156(3) CrPC for offences under Sections 420/120-B IPC against the respondent-accused had been quashed under Section 482 CrPC without notice to the appellant, who was the original complainant. The impugned order was, therefore, set aside and remitted back to the High Court for a fresh decision in accordance with law. (Para 4). *Mosiruddin Munshi* v. *Mohd. Siraj*, (2008) 8 SCC 434: (2008) 3 SCC (Cri) 525: (2008) 67 AIC 192 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.S. Bedi**, JJ. [Date of decision: 9-5-2008]

[10497] — Ss. 420 and 120-B — Where dispute purely civil in nature whether offence under S. 420 or S. 120-B of Penal Code cannot be said to have been made out — *Held, it may be true that in the event court finds that dispute between parties is civil in nature, it may not allow criminal proceedings to go on — But, no law as such can be laid down, since in a given case both civil suit and criminal complaint would be maintainable although the cause of action for both the proceedings is the same* (Paras 12 and 13). *V.R. Dalal* v. *Yougendra Naranji Thakkar*, (2008) 15 SCC 625: (2009) 3 SCC (Cri) 1141: AIR 2008 SC 2793: (2008) 66 AIC 113 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 16-5-2008]

Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336: (2006) 2 SCC (Cri) 49, considered

[10498] — Ss. 420, 120-B and 34 — Quashment of proceedings — Evaluation of plausibility/credibility of averments in complaint — Permissibility — Doubt as to the same, held, must be based on some material — *High Court cannot quash complaint if allegations prima facie disclose commission of cognizable offence — Complaint alleging sale of cooperative society land illegally for higher price but showing lesser price in records and conspiracy to cheat society and its members — High Court quashing entire criminal proceedings holding that averments in complaint were "imaginary" — Sustainability — In present case, allegations in* *complaint disclose conspiracy to put cooperative society and its members to loss in view of report of Registrar and hence prima facie disclose commission of cognizable offence — High Court's conclusion that averments in complaint are imaginary is not based on any material — Hence, judgment of High Court is unsustainable — CrPC, 1973, S. 482*

Allowing the appeal,

Held :

It is now a well-settled principle of law that the High Court in exercise of its inherent jurisdiction under Section 482 of the Code may quash a criminal proceeding inter alia in the event the allegations made in the complaint petition even if they are taken at their face value and accepted in their entirety do not disclose commission of a cognizable offence. (Para 14)

The opinion of the High Court that the averments made in the complaint petition are imaginary is not based on any material. Even assuming that the complainant had a score to settle against the accused, the same by itself may not be a ground to quash the entire criminal proceedings particularly in view of the fact that at least a prima facie case has been established in view of the report of the Registrar. (Para 22)

The allegations made in the complaint petition disclose commission of a cognizable offence. A conspiracy is said to have been entered into for putting the Society and consequentially the members to a great loss. A conspiracy is also said to have been hatched for the aforementioned purpose as a result whereof not only an allotment was made in favour of a person who was not entitled thereto but also the allotted plot was assigned in favour of a third party for a huge sum. Whether the allegations made in the complaint petition are correct or not have to be considered during trial. It may be true that the question as to whether the report of the Registrar can be relied upon for the purpose of showing as to how the act of cheating has been committed by the respondents is a matter which must be considered at the time of trial but there cannot be any doubt whatsoever that so long as the report is not set aside, the same could form the basis for forming of an opinion at least for the purpose of proceeding against the respondents that they manipulated the records of the cooperative Society to make unlawful gain for themselves and causing unlawful loss to the Society. (Paras 16, 17 and 19). *K. Ashoka* v. *N.L. Chandrashekar,* (2009) 5 SCC 199: (2009) 2 SCC (Cri) 730: (2009) 77 AIC 58 (SC): 2009 Cri LJ 2952.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, followed

[10499] — Ss. 420 and 201 r/w S. 120-B — Quashing of criminal proceedings — Material collected by investigating agency not gone through by High Court — *Offences under Ss. 420, 201 r/w S. 120-B IPC as well as under Ss. 13(1) and 13(2), Prevention of Corruption Act — Proceedings quashed by High Court on the ground that accused persons have been exonerated of the charges in departmental proceedings conducted for the same cause of action — Held, before quashing the proceedings, High Court ought to have considered the aforesaid material so as to find out if the charges could be framed against the accused on the basis of it — Order passed by High Court set aside — Prevention of Corruption Act, 1988, Ss. 13(1) and 13(2) — CrPC, 1973 — S. 482. State of Bihar* v. *Purushottam Singh*, (2002) 10 SCC 333.

Bench Strength **2**. Coram: *M.B. Shah* and *S.N. Variava*, JJ. [Date of decision: 17-11-2000]

[10500] — Ss. 420, 406 and 120-B — Quashing of complaint — Complaints alleging commission of offences under Ss. 420, 406 and 120-B IPC, etc. — *Held, no prima facie case made out against appellants in respect of alleged offences under Ss. 420 and 406 IPC, hence question of alleged conspiracy between appellants does not arise — Complaint lacks any such substance regarding conspiracy — It was a fit case where High Court should have exercised its jurisdiction under S. 482 CrPC — Complaint case, quashed* (Paras 8 to 10, 14, 15 and 39 to 41). *V.P. Shrivastava* v. *Indian Explosives Ltd.*, (2010) 10 SCC 361: (2010) 159 Comp Cas 529.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 24-9-2010]

All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Dinesh Dutt Joshi v. State of Rajasthan, (2001) 8 SCC 570: 2002 SCC (Cri) 24; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513, relied on

[10501] — Ss. 420, 406 and 120-B — Quashment — Relevant considerations — Results of/material collected during preliminary investigations — Offences in relation to civil dispute — *Though FIR disclosing only a pure civil case, preliminary investigations revealing offences under Ss. 406 and 120-B IPC and under RBI Act, 1934 — Effect — But High Court going by contents of FIR alone holding that S. 420 IPC not attracted and that it was a simple breach of contract and pure civil dispute and therefore quashing FIR — Sustainability — Held, materials collected during preliminary investigations are relevant — Hence quashment of FIR not sustainable — Fair and impartial investigation directed — CrPC, 1973, Ss. 482 and 154*

(10)(xi) Quashment *(contd.)*

Respondent 1, accused was the Director of a Company, which floated a car buying and rental scheme, whereby, it promised to give its investors (investing a sum of Rs 97,907), a monthly rent of Rs 4000 and also give an option to the investor to take back his car at the end of sixty months. Respondent 2 complainant invested in the scheme, got his monthly rent of Rs 4000 as agreed upon but when after the expiry of sixty months, he demanded back his car, it was not given. Instead the Company gave Respondent 2 post-dated cheques amounting to Rs 25,000, Rs 20,000 and Rs 10,000. Respondent 2, therefore, filed an FIR, which however, was quashed under Section 482 CrPC by the impugned judgment of the High Court.

Grounds taken in the memorandum of SLP revealed that during investigations statements of various witnesses had been recorded. Public at large, especially middle class and lower class people had invested their hard-earned money in the scheme. It was also complained of by an investor that no vehicle had been purchased in his name. Statements of witnesses during preliminary investigations also revealed that the Company had resorted to false registrations of vehicles in the name of investors which were actually owned and registered by non-investors who had no link with the Company. For instance, as per the statement of a non-investor his Maruti Esteem car was shown in the Company data as being registered in the name of an investor.

Allowing the appeal,

Held :

There cannot be any doubt or dispute whatsoever that a simple breach of contract or a case involving a pure civil dispute would not attract any offence either under Section 406 or Section 420 IPC. Had the dispute between the parties rested on the aforementioned premise, interference with the judgment of the High Court probably would not have been warranted. The petition of the complainant did not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC. It was purely civil in nature. But then, certain evidences surfaced during investigation which are disclosed in the grounds stated in the memo of this appeal. (Paras 13 and 19)

The allegation made in the FIR and the materials collected during investigation, should be allowed to be taken to its logical end. A large number of illegalities were committed by the said Company including the violation of the provisions of the Reserve Bank of India Act. The High Court in its judgment only considered the case from the point of view of Section 420 IPC and not Sections 406 and 120-B thereof. The legal position in regard to exercise of jurisdiction by the High Court for quashing of an FIR is now well settled. The State contended that having regard to the well-settled principle of law, the High Court should not quash an FIR save and except sparingly and in the rarest of rare cases. In the peculiar facts and circumstances of this case and particularly in view of the materials which have surfaced during investigation, the impugned judgment cannot be sustained. It is set aside accordingly. (Paras 6, 10, 14 and 20)

The investigating officer shall conduct the investigation fairly and impartially and shall allow the Company to carry on its business without any hindrance whatsoever. If any books of account or other documents are required, the investigating officer subject to just exceptions may take the xerox copies thereof duly certified by the accused as also an undertaking that, as and when called upon, they would produce the said books of account in a court of law. Subject to the aforementioned directions, the investigating officer shall carry out the investigation in accordance with law. (Para 19). *State of Maharashtra* v. *Sayed Mohammed Masood*, (2009) 8 SCC 787: (2009) 3 SCC (Cri) 945.

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 4-8-2009]

R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, relied on

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; Radha Ballav Pal v. Emperor, AIR 1939 Cal 327; Velji Raghavji Patel v. State of Maharashtra, AIR 1965 SC 1433; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; New India Assurance Co. Ltd. v. Sadanand Mukhi, (2009) 2 SCC 417: (2009) 1 SCC (Cri) 815; Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336: (2006) 2 SCC (Cri) 49, distinguished

[10502] — Ss. 420 and 415 — On facts, ingredients to make out an offence under S. 420 not brought out for framing any charge against the appellant — *No law point laid down. Prabhat Kumar Bose* v. *Tarun Kanti Bagchi*, AIR 1994 SC 960: 1994 Cri LJ 1211.

Bench Strength **3**. Coram: *S. Ratnavel Pandian, K. Jayachandra Reddy* and *Yogeshwar Dayal*, JJ. [Date of decision: 28-2-1992]

[10503] — Ss. 420, 415, 24 and 25 — Quashment of proceedings — When justified — Offence by company — Ex-Director proceeded against — *Where basic ingredients of the offence alleged against accused are altogether absent, held, he should not be compelled to face criminal prosecu-*

tion — On totality of facts, such being the case, proceedings pending before Magistrate under S. 420 IPC r/w Ss. 3, 4, 5 and 6, Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against ex-Director of company which had invited deposits from public but had subsequently closed its business without paying interest and repaying dues of investors, quashed — Prize Chits and Money Circulation Schemes (Banning) Act, 1978, Ss. 3 to 6 — Companies Act, 1956, S. 290 — CrPC, 1973 — S. 482

The appellant was one of the Directors of a company. He resigned w.e.f. 27-12-1997. Respondent 2 filed a complaint FIR with the police alleging that the said company had invited deposits from the public and that monies had been invested by Respondent 2 and his wife in the Pensioner's Benefit Fund, pursuant to the approval of the scheme by Reserve Bank of India. That the company had since closed its business without repaying the money due to the complainant. Respondent 2 lodged an FIR alleging offences under Section 420, Penal Code, 1860 read with Sections 3, 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Consequent to the FIR, the Additional Chief Metropolitan Magistrate issued a non-bailable warrant against the appellant.

The appellant filed a petition before the High Court under Section 482 CrPC seeking quashment of the proceedings on the ground that the appellant could not be held liable for any of the alleged illegalities committed by the company after he had resigned from the company. However, the High Court held that it was for the trial court to ascertain the questions arising in the petition and pass necessary orders. The appellant then filed the present appeal by special leave.

Before the Supreme Court, the appellant contended that even according to the averments of the complaint in the first information report there were no allegations whatsoever against the appellant, and the High Court ought to have quashed the proceedings against the appellant.

Allowing the appeal,

Held :

The inherent power should not be exercised to stifle the legitimate prosecution but at the same time no person be compelled to face criminal prosecution if basic ingredients of the offence alleged against him are altogether absent. (Para 38)

In the instant case, the appellant ceased to be a Director of the company from 27-12-1997 whereas the alleged offences, if any, were committed during the period from 24-5-1998 to 17-9-1999. There were no allegations against the appellant in the first information report. The company had invited investment from the depositors to invest in the business/benefit funds after receiving due approval of the scheme from Reserve Bank of India. Therefore, in any event, the element of cheating as alleged cannot be made out by any stretch of imagination. [Paras 37(*a*) to (*c*)]

Respondent 2 complainant has submitted in writing to that he does not want to proceed against the appellant because according to him the appellant has been inadvertently included as an accused by the investigating officer. He further mentioned in the letter that he had already received 55% of the deposited amount from the Official Liquidator and he did not want to proceed against the appellant. [Para 37(*d*)]

Even assuming that there could have been a vicarious liability thrust on the appellant, even then there cannot be any such vicarious liability in the absence of any allegations and material to show that the appellant was in charge of or responsible for the conduct of the company's business which had given rise to the offence. From any angle of the matter, the appellant cannot be compelled to face the criminal trial in the present case. [Para 37(*e*)]

On consideration of the totality of the facts and circumstances of the present case, the proceedings initiated against the appellant are quashed. (Para 39). *M.A.A. Annamalai* v. *State of Karnataka*, (2010) 8 SCC 524: (2010) 3 SCC (Cri) 950: (2010) 158 Comp Cas 369.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 12-8-2010]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, considered

Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259: 1999 SCC (Cri) 401; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615, considered and relied on

Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336: (2006) 2 SCC (Cri) 49; S.V.L. Murthy v. State, (2009) 6 SCC 77: (2009) 2 SCC (Cri) 941; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370, relied on

[10504] — Ss. 420, 417 and 415 — Quashing of complaint — *If averments in complaint prima facie make out a case for investigation the High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail — Quashing of complaint on ground that the complaint disclosed a commercial or money transaction not justified — Many a cheating is committed in the course of commercial or money transaction — Constitution of India, Art. 226 — CrPC, 1973 — Ss. 482 and 2(d), 154, 155 and 190, 200*

(10)(xi) Quashment *(contd.)*

It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence.

It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.

The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

In the present case the High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 415 IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved. *Rajesh Bajaj* v. *State (NCT of Delhi)*, (1999) 3 SCC 259: 1999 SCC (Cri) 401: AIR 1999 SC 1216: 1999 Cri LJ 1833.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision: 12-3-1999]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

(1998) 3 Chand Cri Cases 238 (P&H), reversed

Distinguished in Anil Ritolla v. State of Bihar, (2007) 10 SCC 110

[10505] — Ss. 420, 423, 467, 468, 471 and 120-B — Proceedings under when abuse of process — Exercise of power under Art. 142 — Relief — Doing substantial justice — Impugned judgment although not sustainable, in view of facts of case and with a view to do substantial justice, interference refused — *Parallel sale agreements with respondents and appellants in respect of same property — Consequent to decree in specific performance suit, passed seven long years later, sale deed executed in favour of respondents — Appellants' suit for annulment of said decree dismissed with a finding that sale agreement in favour of respondents was not forged or fabricated — Still six long years after decree in former suit, appellants lodging FIR under Ss. 420/323/467/468/471/120-B IPC against respondents reiterating allegation of forgery as made by them in their civil suit for annulment — High Court quashing FIR on the ground of the finding recorded by court in civil suit — Said judgment of High Court, held, legally not sustainable — However, FIR, in view of unexplained inordinate delay in its filing and that too after losing civil suit, held, not bona fide and amounted to abuse of process of law — Hence, for doing substantial justice, said judgment left undisturbed — Constitution of India, Arts. 142 and 136*

One *K* executed an agreement dated 4-1-1988 to sell the land specified, in favour of the respondents. The land was already mortgaged with the respondents. The sale deed was to be executed and registered by 10-6-1989. According to the appellants herein, on 22-10-1988, *K* entered into an agreement with their father to sell the same land, and received a certain amount as earnest money. The sale was to be executed and registered by 15-6-1989.

The respondents filed a suit for specific performance of the sale deed against *K* in 1989 which was decreed in 1996 and in pursuance thereof, the sale was executed by *K* in favour of the respondents. The father of the appellants filed a suit seeking cancellation/setting aside of the said decree but the same stood dismissed. An appeal filed thereagainst continued to be pending.

In 2002, the father of the appellants filed an FIR under Sections 420/423/467/468/120-B IPC alleging that *K*'s signatures on the agreement to sell dated 4-1-1988 were forged. At the instance of the respondents, the High Court quashed the FIR on the ground that the civil court had recorded a finding that the document in question was not forged or fabricated. The first informants then filed the present appeal by special leave.

Finding the order of the High Court to be not sustainable legally but in the facts and circumstances of the case refusing interference,

Held :

The findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration. (Para 18)

No explanation has been furnished as to why after expiry of the date of execution of the sale deed in favour of the appellants' father i.e. 15-6-1989, the appellants' father did not file the suit for specific performance which was subsequently filed on 6-2-1996. Even if it is presumed that he was not aware of the suit filed by the respondents, no explanation could be furnished that in case the appellants' father filed another suit for setting aside the decree passed in the respondents' suit, why did he wait till the decision of that suit for lodging FIR, as the civil and criminal proceedings could have proceeded simultaneously. The FIR was filed only after filing of appeal thereagainst before High Court on 15-7-2002. (Para 20)

Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Paras 21 and 24)

In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Para 22)

The appellants' father lodged FIR under Sections 420/423/467/468/471/120-B IPC, against the respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in the civil suit which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the civil court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. Such an action on the part of the appellants' father would not be bona fide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law. (Para 25)

In view of the said facts, and to do substantial justice, it would not be appropriate to interfere with the order passed by the High Court quashing the criminal proceedings against the respondents in spite of the fact that the impugned judgment is not sustainable in the eye of the law. (Para 26). *Kishan Singh* v. *Gurpal Singh*, (2010) 8 SCC 775: (2010) 3 SCC (Cri) 1091: AIR 2010 SC 3624: (2010) 94 AIC 35 (SC): (2010) 3 SCC (Civ) 583.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 12-8-2010]

(10)(xi) Quashment *(contd.)*

M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019; K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87: 2003 SCC (Cri) 223; P. Swaroopa Rani v. M. Hari Narayana, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79; Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.), (2009) 5 SCC 528; Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729: (2010) 1 SCC (Cri) 1229; Sahib Singh v. State of Haryana, (1997) 7 SCC 231: 1997 SCC (Cri) 1049; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Gorige Pentaiah v. State of A.P., (2008) 12 SCC 531: (2009) 1 SCC (Cri) 446, relied on

King Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203: AIR 1945 PC 18; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, considered

Karam Chand Ganga Prasad v. Union of India, (1970) 3 SCC 694; V.M. Shah v. State of Maharashtra, (1995) 5 SCC 767: 1995 SCC (Cri) 1077, held, overruled

[10506] — Ss. 420 and 424 — High Court dismissing writ petition for quashing FIR by applying ratio of the decision by which High Court had previously disposed of large number of cases involving more or less similar prayers to quash FIR in each case — Sustainability — *Held, on facts, impugned order of High Court does not show as to how the ratio of decision in a batch of writ petitions disposed by it previously had any application or relevance to the present case — Hence, impugned order of High Court set aside and matter remitted — U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (7 of 1986), Ss. 2 and 3 — CrPC, 1973, S. 154 — Constitution of India, Art. 226* (Paras 2 to 6). *Ashfaq Khan* v. *State of U.P.*, (2008) 11 SCC 143: 2008 Cri LJ 1598: (2008) 2 All LJ 710.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 1-2-2008]

[10507] — Ss. 420 and 467 — Quashing of criminal proceedings — Grounds — Abuse of process of court — Dispute purely of civil nature — Absence of ingredients of offences alleged in FIR — *A charitable society executing a power of attorney and sale agreement in respect of a land in favour of Respondent 3 — Respondent 3 failing to pay the balance amount in respect of sale in question despite several requests made by appellant office-bearers of the society — Respondents misusing the said deeds for further sale of the property in question — Hence, appellants, after giving due notice to respondents, forfeiting the earnest money and cancelling the said deeds and thereafter selling the part of land in question (which was subject-matter of above sale agreement) to one* S *to protect the interest of the society — Aggrieved against the said action, Respondent 3 lodging a criminal case against appellants under Ss. 420 and 467 IPC — Held, the present matter was purely a civil dispute — Even taking into account the entire averments made in FIR to be correct, no offence under Ss. 420 and 467 IPC made out against appellants — Hence, filing of criminal case against appellants was an abuse of process of court — In order to secure the ends of justice, it was imperative to quash FIR/criminal proceedings against appellants — CrPC, 1973 — S. 482*

The impugned judgment was passed by the High Court declining to quash the criminal proceedings initiated against the appellants by the respondents.

In 1923, a Sanatan Dharma Pratinidhi Sabha (for short "the Sabha") was founded. The said Sabha was registered in the year 1949 under the Societies Registration Act. In order to develop a ghat on the banks of a river, the Sabha issued an advertisement in the newspapers. It invited bids from the eligible civil contractors to construct the ghat in consideration of 13.5 bighas (approximately) of its land. The ghat was so constructed by Respondent 3. On completion of the construction of the ghat, the Sabha through its President executed a general power of attorney in favour of Respondent 3 in regard to the abovementioned land. A receipt of Rs 17,92,000 lakhs (approximately) was issued by the Sabha to Respondent 3 as an adjustment towards the cost of construction. On the same day the parties executed an agreement to sell the remaining land which was approximately 11.19 bighas. In pursuance to this, an earnest money of Rs 4,00,000 was received by the Sabha from Respondent 3. As per the agreement, Respondent 3 had to pay another Rs 1,00,000 to the Sabha by 31-1-1997. Respondent 3 paid the said amount on 21-3-1997. The balance amount of Rs 10,10,650 was to be paid by 31-3-1997.

According to the appellants (office-bearers of the society in question), time was the essence of the contract and Respondent 3 had failed to pay the balance amount. The Sabha had sent a legal notice to Respondent 3 to fulfil his contractual obligations under the sale agreement and informed him that if he failed to do so, the agreement to sell would stand cancelled and the amount paid as earnest money would be forfeited. In reply to the said notice, Respondent 3 stated that he had not defaulted in payment of the remaining amount. He stated that as per the agreement the land had to be measured and that he was ready to pay the balance amount once that was done. Subsequently, both the parties met at the site of the disputed land in the presence of Patwari (Revenue Official). The land was measured by the Patwari. The Sabha reduced the balance amount and gave some concession to Respondent 3. Respondent 3 was asked to pay Rs 8 lakhs. In the meantime the President of the Sabha had expired. Therefore, the general power of attorney executed by him had ceased to be in effect. Need of a fresh power of attorney was felt. Respondent 3 desired that the fresh power of attorney be executed in the name of his son i.e. Respondent 4 for the very same 13.5 bighas of land in regard to which earlier power of attorney had been given. Accordingly, the General Secretary of the Sabha, Appellant 1 herein, executed a fresh general power of attorney.

As per the appellants, the Sabha made several requests to Respondents 3 and 4 asking them to pay the balance amount of Rs 8,00,000. However, despite repeated requests, the respondents failed to do so. The appellants submitted that the Sabha had learnt from reliable sources that Respondent 3, by misrepresentation and by misusing his general power of attorney for the 13.5 bighas of land, was attempting to sell the entire 26 bighas of the Sabha's land to other parties and was executing sale deeds without any right whatsoever in respect of the remaining 11.19 bighas. Thereafter, Appellant 1 sent a legal notice (second notice) to Respondents 3 and 4 informing them that if the balance amount of Rs 8,00,000 was not paid, he would have to cancel the general power of attorney. No reply to the said notice was received from the respondents nor was Rs 8,00,000 paid. In these circumstances, Appellant 1 cancelled the power of attorney issued in favour of Respondent 4 and informed Respondent 4 accordingly. A public notice of the same was also published by the Sabha in a local newspaper. According to the appellants, in order to protect the interest of the Sabha, the remaining land of 11.19 bighas was sold to one *S*.

After the said action of the appellants, Respondent 3 lodged a first information report against the appellants. Respondent 3 also filed a civil suit in the said matter. On being aggrieved by the filing of the false and incorrect charge-sheet in the said criminal case, the appellants filed a petition under Section 482 CrPC before the High Court for quashing the proceedings. The High Court dismissed the said petition on the ground that the record showed that the allegations in the FIR constituted an offence as alleged by the complainant. Hence, the present appeal.

Setting aside the judgment of the High Court, *Held* :

The appellants who are office-bearers of a charitable organisation in order to protect the interests of the Sabha cancelled the power of attorney by executing a registered cancellation deed after giving notice to the power-of-attorney holders. The appellants sold only that part of the land to *S* on behalf of the society for which an agreement to sell with the complainants (the respondents) had already been terminated. The respondents' earnest money had been forfeited. All this was done only after the appellants had given the respondents due notice. (Para 21)

The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and Respondent 3 has already instituted a civil suit in the Court of the Civil Judge. In the facts and circumstances of this case, initiation of criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court. (Para 22)

Even if all the averments made in the FIR are taken to be correct, the case for prosecution under Sections 420 and 467 IPC is not made out against the appellants. To prevent abuse of the process of the court and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom. (Paras 45, 58 and 60). *Inder Mohan Goswami* v. *State of Uttaranchal*, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259: AIR 2008 SC 251: (2007) 144 DLT 257: (2007) 59 AIC 30 (SC): (2008) 1 All LJ 40.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 9-10-2007]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

[10508] — Ss. 420, 467 and 468 — Quashing of charge-sheet — Inherent jurisdiction of High Court — Scope and limitations — Allegations of fraud and forgery — *Held, power under is to be exercised to prevent abuse of process of court or to secure ends of justice — Court can quash charge-sheet if allegations in FIR or complaint petition do not disclose commission of offence even if on face value they are taken to be correct in their entirety — While doing so, High Court is not to embark upon appreciation of evidence but to consider only material on record as a whole though the High Court is required to consider as to whether the*

(10)(xi) Quashment *(contd.)*

allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused — Further held, dispute being primarily of civil nature is not by itself a ground to quash criminal proceedings because in cases of forgery and fraud there would always be some element of civil nature — CrPC, 1973, S. 482

The appellant, a partner of a firm entered into a contract with complainant's firm to get knowledge and know-how for carpet production and in turn to pay 10% commission on the invoice value of each and every invoice. Alleging that the appellant has committed the offences of criminal breach of trust and/or of cheating and forgery, on the premise that he had made sale of about Rs 9 crores through a sister concern wherefor no commission was paid although the technical know-how was made available by the complainant's firm, a complaint petition was filed and an FIR was lodged. On completion of the investigation, a detailed charge-sheet was submitted. In the said charge-sheet, it was stated that the amount of commission in the invoices was falsely and wrongly shown by showing less sale turnover for paying less commission than the actual due commission amounting to commission of offences under Sections 420, 467, 468 IPC. The Magistrate took cognizance of the offences against the appellant. The appellant filed an application for quashing of the order before the High Court which was dismissed by reason of the impugned judgment.

Dismissing the appeal, the Supreme Court, held as above.

Held :

The principles providing for exercise of the power by a High Court under Section 482 to quash a criminal proceeding are well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety do not disclose commission of an offence. (Para 11)

The High Court's power under Section 482 is primarily either to prevent abuse of the process of any court or to secure the ends of justice. The Court at that stage would not embark upon appreciation of evidence. The Court shall moreover consider the materials on record as a whole. (Para 14)

Except in very exceptional circumstances, the Court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. The High Court should be slow in interfering with the proceedings at the initial stage. Merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused. (Paras 12 and 14)

In the instant case, the charge-sheet prima facie discloses commission of offences. A fair investigation was carried out by the investigating officer. The charge-sheet is a detailed one. If an order of cognizance has been passed relying on or on the basis thereof by the learned Magistrate, no exception thereto can be taken. Therefore, there is no legal infirmity in the impugned orders. (Paras 17 and 18). *Mahesh Chaudhary* v. *State of Rajasthan*, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332: (2009) 2 ECrN 1051 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 3-3-2009]

Kamaladevi Agarwal v. State of W.B., (2002) 1 SCC 555: 2002 SCC (Cri) 200; B. Suresh Yadav v. Sharifa Bee, (2007) 13 SCC 107: (2009) 1 SCC (Cri) 282; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567, applied

[10509] — Ss. 420, 467, 468 and 469 — Quashing of criminal proceeding — Exercise of jurisdiction under S. 482 CrPC when justified — Principles reiterated — Dispute purely of civil nature — *No offence made out from allegations in FIR — Initiation of criminal proceedings (under Ss. 420, 467, 468 and 469 IPC) in such a case, held, was not justified — Proceedings quashed — CrPC, 1973, Ss. 482 and 154*

One *S* had five sons i.e. *G*, *N*, *B*, *R* and *H*. Appellants 1 and 2 were grandsons of *G*. Legal proceedings were initiated by son of *H* i.e. *L* claiming partition of his 1/3rd share in the suit property. The said suit was decreed by the Additional Sub- Divisional Officer. However, aggrieved thereby *L* challenged that decision in an appeal before the Commissioner. Aggrieved by the order of the Commissioner, son of *R* filed an appeal before the Board of Revenue, which set aside the order passed by the Commissioner and affirmed the order of the Additional Sub-Divisional Officer. Aggrieved thereby, *L* preferred a writ petition before the High Court wherein Appellants 1 and 2 were not impleaded. The High

Court, while issuing notice, stayed the operation of the order passed by the Board of Revenue.

Thereafter, a sale deed was executed by Appellants 1 and 2 in favour of Appellants 3 and 4 stating therein that they had one-third share in the joint property although, according to the respondent co-sharer, they were not entitled therefor. Subsequent thereto, the respondent co-sharer filed a suit for cancellation of the said deed. He also lodged an FIR against the appellants.

The appellants filed an application under Section 482 CrPC for quashing of FIR. The High Court, while dismissing the said application, directed the investigating officer to conclude the investigation within three months. After conclusion of the investigation, a charge-sheet was submitted before the Chief Judicial Magistrate concerned. The said Magistrate took cognizance of the offence. Questioning the legality of the said order, the appellants filed another application under Section 482 CrPC, which by reason of the impugned judgment had been dismissed. Hence, the present appeal.

Allowing the appeal,

Held :

It is now well settled that the High Court ordinarily would exercise its jurisdiction under Section 482 CrPC if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing. (Para 24)

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out. (Para 27)

The fact that the appellants are co-sharers is not in dispute. The dispute between the parties is confined to the extent of their respective shares. It must be determined only in a civil suit. (Para 11)

If Appellants 1 and 2 had executed a deed of sale in favour of a third party stating that they have one-third share in the entire properties, the same would not be binding on the respondent complainant. If any cause of action arose by reason of a threat of dispossession at the hands of the co-sharer or at the hands of the third party, as was contended, recourse to legal action could always be taken. Even for that purpose, a proceeding under Sections 144 and 145 CrPC would be maintainable. The decision of a criminal court in a case of this nature would not be binding on the civil court. (Paras 11). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Kamaladevi Agarwal v. State of W.B., (2002) 1 SCC 555: 2002 SCC (Cri) 200; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, considered

[10510] — Ss. 420, 467, 468 and 471 — Circumstances warranting quashing of prosecution — Malicious prosecution — Alleged facts disclosing no offence — *Appellant, an old lady, prosecuted for tampering with certified copy of revenue records wherein dates "6-5-2002" and "7-5-2002" were alleged to have been changed to "16-5-2002", "17-5-2002" and "27-5-2002" and tampered copy was made use of in civil suits — On appreciation of facts found that appellant was not to gain anything in the civil suits by tampering — Facts also did not disclose commission of offences under Ss. 420, 467, 468 and 471 IPC — It was also doubtful whether appellant had filed civil suits or they were filed by someone else in her name — Prosecution, held, was abuse of process of law and therefore quashed — CrPC, 1973, S. 482*

The appellant was an old lady against whom Respondent 2 filed an FIR that she had tampered certified copy of revenue records and made of use this tampered document in civil suits filed by her so as to save the cases from bar of limitation. It was alleged that dates relating to application for certified copy and receipt of certified copy had been changed from "6-5-2002" and "7-5-2002" to "16-5-2002" and "17-5-2002" and "27-5-2002". It was alleged that appellant applied for certified copy of revenue records on 6-5-2002 and she got it on 7-5-2002 but she made interpolations in the document. The appellant denied that civil suits were filed by her though civil suits appeared to have been filed through her counsel on 27-5-2002.

The appellant approached the High Court under Section 482 CrPC for quashing of prosecution but High Court took view that FIR as well as material collected by prosecution were good enough at least to proceed, and it could not be said that no offence was disclosed from the same.

(10)(xi) Quashment *(contd.)*

Allowing the appeal,

Held:

It is clear from the manner in which litigation is being fought that it is nothing but to wreak vengeance against appellant. There is absence of bona fides on the part of Respondent 2 to file FIR. The appellant has committed no offence. This is a classic example where investigating officer has subverted investigation system and started prosecution of an old lady. The Court is also surprised that appellant who is an old lady was arrested and had to stay behind the bars for more than a week. It is also not understood as to how trial court mechanically took cognizance of a non-existent offence. Even if it is presumed that somebody interpolated records by adding figure "1" and even if it is presumed that the appellant did so, still it does not become a forged document. The Court is also surprised at the manner in which investigation was done and the manner in which cognizance was taken by the courts below. In its written submissions also the State has merely justified that figure of "1" was added in order to show that there were no laches or negligence for filing civil suits. It is not understood as to how ten days could have amounted to laches or negligence because ultimately suits seem to have been filed after ten days. Attitude of State is surprising that it is insisting on trial despite the fact that prosecution is mala fide, malicious and vengeful only to settle scores by Respondent 2 against the appellant. (Paras 25, 28, 35 and 36)

Respondent 2 has not been able to show as to how the appellant could be benefitted in any manner by changing the dates. Since there was no question of the appellant gaining anything, she would not have made changes in the document. It is not for the Court to explain how the document was changed. Whosoever may have changed those documents, the said change did not result in any illegal gains to the appellant or illegal loss to anybody. Such changes were innocuous and did not give rise to any offence. This is a case of malicious and vengeful prosecution which has no base. Exercise of power under Section 482 CrPC is justified in this case. The Court is convinced of whole lack of bona fides on the part of investigating officer. Affidavit filed by him in the Supreme Court does not give any explanation or justification for arrest and subsequent investigation of non-existing crimes. The prosecution in this case is nothing but an abuse of process of law and is therefore quashed. (Paras 40 to 43). *Parminder Kaur* v. *State of U.P.*, (2010) 1 SCC 322.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 26-10-2009]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

Parminder Kaur v. State of U.P., (2007) 6 All LJ (NOC) 954, reversed

[10511] — Ss. 420, 467, 468 and 471 — Inherent powers of High Court — Parameters of — Appellant's petition for quashing the charge-sheet and consequent proceedings initiated against him by complainant (Respondent 2) for allegedly committing offences punishable under Ss. 420, 467, 468 and 471 IPC, dismissed by High Court on ground that it was not permissible for it to look into the materials placed before the Magistrate — *Held, such an approach was not in consonance with the broad parameters, enumerated in a series of decisions of Supreme Court to be applied while dealing with a petition under S. 482 for discharge and therefore, impugned order unsustainable — To arrive at the conclusion whether or not the appellant had made out a case for quashing of charge-sheet against him, High Court ought to have taken into consideration the material which was placed before the Magistrate — For dismissal of petition, High Court had to record a finding that uncontroverted allegations, as made, establish a prima facie case against appellant — In absence of material stated to have been filed along with charge-sheet, High Court did not get an opportunity to apply its mind as to whether on the basis of material before the Magistrate, a prima facie case had been made out against appellant-accused — Impugned order set aside and matter is remitted to High Court for fresh consideration in accordance with law — CrPC, 1973, S. 482* (Paras 19, 21 and 22). *Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157: (2008) 6 All LJ 249: (2009) 1 ECrN 455 (SC): 2008 Cri LJ 4377: (2008) 3 APLJ 163 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 5-9-2008]

[10512] — Ss. 420, 467, 468 and 471 — Petition under, for quashing of criminal complaint under Ss. 420, 467, 468, 471 and 506 IPC — Principles for exercise of power under, restated — *CrPC, 1973, S. 482*

The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 CrPC are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide. (Para 12). *Hira Lal* v. *State of U.P.*, (2009) 11 SCC 89: (2009) 3 SCC (Cri) 1247: AIR 2009 SC 2380: 2009 Cri LJ 2849: (2009) 4 All LJ 520: (2009) 78 AIC 134 (SC): (2009) 2 APLJ 42 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-4-2009]

Applied in Dalip Kaur v. Jagnar Singh, (2009) 14 SCC 696 at p. 700

[10513] — Ss. 420, 467, 468 and 471 — Quashing of criminal proceedings — No case made out against accused — Criminal complaint alleging collusion and fraud between Special Officer of Board and allottees of developed land given in lieu of compensation — *Disputes arising out of agreement of sale of 20 bighas of land to Society which was refused compensation for lands acquired by Board — No complaint with respect to lands of Respondents 1 and 2 — High Court quashing FIR against Respondents 1 and 2 and Special Officer of Board — Sustainability — Held, no complaint of commission of any offence regarding 13 bighas of land of first respondent, therefore no question of involvement in any offence of cheating or forgery — Quashing of FIR qua Respondents 1 and 2, upheld — But, finding of High Court that Collector/Special Officer was a Judge set aside, quashing of FIR with reference to the Special Officer unwarranted — CrPC, 1973, S. 482*

One *C* entered into an agreement of sale agreeing to sell 20 bighas of land in Khasra No. 9 in Sukhalpura Village to Shiva Cooperative Housing Society Ltd. Some lands in Sukhalpura Village, including 31 bighas in Khasra No. 9, were acquired for a housing scheme floated by the Rajasthan Housing Board. *C* filed a revenue suit for a declaration that Khasra No. 9 was not government land and that he was one of the owners of the said land and for consequential reliefs which suit was decreed and was affirmed by the Revenue Board. In pursuance of it, the following five persons were shown as owners of Khasra No. 9 in the revenue records, their share being shown in brackets: *C* (15/33), *M* (2/33), *G* (2/33), *KD* (1/33) and *KL* (13/33).

The State Government formulated a scheme enabling the landowners to opt for allotment of developed land equal to 15% of the acquired land in lieu of the compensation for the acquired land.

The landowners/power-of-attorney holders of Khasra No. 9 approached the Board for such allotment. One *KC*, the successor (legatee) of *C* was one of them and he claimed allotment of developed land in lieu of 15 bighas of acquired land. The Society also filed an application before the Board claiming compensation in respect of 20 bighas in Khasra No. 9 on the basis of the agreement of sale which claim was rejected.

The power-of-attorney holders of four owners of Khasra No. 9 (*KC*, *M*, *G* and *KL*) entered into separate agreements with the Housing Board, consenting for allotment of developed land (15% of the extent of the acquired land) in lieu of compensation. In the said agreements, the landowners asserted and declared that their respective shares in the land were not subject to any encumbrance and no dispute or litigation was pending in regard to the same. A settlement award was passed by the Special Officer of the Rajasthan Housing Board recording the agreement to allot 15% developed land in lieu of compensation in respect of 28 bighas 17 biswas in Khasra No. 9 and pattas were issued in regard to such allotted land. Thereafter, the members of the Society filed a complaint before the Board claiming that the Society ought to have received the said 15% developed land in lieu of compensation relating to the 20 bighas of the acquired land. Some members of the Society, through a forum also made a representation to the Chief Minister alleging that the khatedars/power-of-attorney holders of Khasra No. 9 in collusion with the Special Officer had practised fraud and grabbed the valuable land from the Rajasthan Housing Board. The Chief Minister's office suggested action on such representation in pursuance of which the appellant on behalf of the Board lodged an FIR alleging that the khatedars/power-of-attorney holders of Khasra No. 9 had made false representations to the Board and in collusion with the Special Officer of the Board and office-bearers of the Society had fraudulently obtained allotment pattas.

The first respondent herein who claimed to be the owner of 13 bighas in Khasra No. 9 and Respondent 2 herein who was his power-of-attorney holder filed a petition under Section 482 of the Code for quashing the FIR. The High Court allowed the said petition and quashed the FIR insofar as Respondents 1 and 2 are concerned as also the Special Officer of the Board on the following two grounds:

(*i*) The Land Acquisition Officer, when passing an award under Section 11(2) of the Act functions as a "Judge" as defined in Section 19 of the Penal Code, 1860 ("IPC", for short) and therefore, is entitled to the protection of Section 77 IPC. Therefore making a settlement award by the Special Officer of the Board granting developed land in lieu of compensation to the landowners could not, under any circumstances, give rise to an offence under the Penal Code.

(10)(xi) Quashment *(contd.)*

(*ii*) The allegations in the FIR did not constitute an offence of cheating or forgery punishable under Sections 420, 467, 468 and 471 IPC.

Disposing of the appeal in terms below,

Held :

The question whether the Collector/Land Acquisition Officer while making an enquiry and award under the Act, acts in a judicial capacity or not, has been considered in a series of judgments. The well-settled principles are:

(*a*) Any inquiry as to the market value of property and determination of the amount of compensation by the Collector is administrative and not judicial in nature even though the Collector may have the power to summon and enforce the attendance of witnesses and production of documents. In making an award or making a reference or serving a notice, the Collector neither acts in a judicial nor quasi-judicial capacity but purely in an administrative capacity, exercising statutory powers as an agent and representative of the Government/acquiring authority.

(*b*) The award by a Collector is merely an offer of the amount mentioned as compensation on behalf of the Government/acquiring authority to the person(s) interested. It is neither an executable decree, nor binds the owners or persons interested in the acquired property.

(*c*) The Collector does not function as a Judicial Officer who is required to base his decision only on the material placed in the enquiry in the presence of parties, but functions as a valuer who ascertains the market value on material collected from all sources, personal inspection and his own knowledge and experience. (Para 22)

Only Judges (as defined in Section 19 IPC) acting judicially are entitled to the protection under Section 77 IPC. The Collector is neither a Judge as defined under Section 19 nor does he act judicially, when discharging any of the functions under the Act. Therefore he is not entitled to the protection under Section 77 IPC. The decision of the High Court that the FIR is to be quashed as the subject-matter of the complaint related to the action taken by the Collector/Special Officer in his capacity as a "Judge" is opposed to law and therefore, liable to be set aside. (Para 23)

Respondents 1 and 2 approached the High Court pointing out that neither the Society nor the members of the Society at any point of time had made any claim in regard to the 13 bighas in Khasra No. 9 which belonged to the first respondent, that the entire complaint related to 20 bighas agreed to be sold by *C* to the Society, and that as there was no complaint of irregularity or commission of any offence in regard to the 13 bighas of land belonging to the first respondent, there was no question of involvement of the first respondent or his power-of-attorney holder (second respondent) in any offence of cheating or forgery. Even the suit filed by the Society that was said to be pending at the relevant time was against *C* in regard to the 20 bighas in Khasra No. 9 and that no suit or proceeding was pending in regard to the remaining 13 bighas claimed by the first respondent. Only in January 2003, the second respondent and some others were impleaded in the said suit relating to 20 bighas in pursuance of an application filed on 14-11-2002, long after Respondents 1 and 2 had executed the agreement and consent award had been made. The High Court rightly held that the allegations in the FIR, even if accepted as true, did not relate to Respondents 1 and 2 but to others who had claimed to be the owners/the attorney holders in regard to power-of-remaining 20 bighas of land. The High Court was justified in holding that the allegations even if taken at their face value did not prima facie constitute an offence under Sections 420, 467, 468 and 471 IPC by Respondents 1 and 2. (Paras 25 to 27)

The FIR specifically alleged collusion between *KC* and the Special Officer of the Board in regard to 20 bighas of land which was agreed to be sold to the Society by *C*. In fact the writ petition filed by *KC* for quashing the FIR was rejected by the High Court. As the finding of the High Court that the Collector/Special Officer was a Judge has been set aside, the quashing of the FIR with reference to the Special Officer cannot be upheld. The quashing of the FIR with reference to the then Special Officer is set aside. The quashing of FIR as against Respondents 1 and 2 will have no bearing on the FIR insofar as the other accused with reference to the 20 bighas of land are concerned. (Paras 28 and 29). *Surendra Kumar Bhatia* v. *Kanhaiya Lal*, (2009) 12 SCC 184: AIR 2009 SC 1961.

Bench Strength **2**. Coram: **R.V. Raveendran** and *J.M. Panchal*, JJ. [Date of decision: 30-1-2009]

Ezra v. Secy. of State for India in Council, (1904-05) 32 IA 93; Raja Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500: (1962) 1 SCR 676; N. Boman Behram v. State of Mysore, (1974) 2 SCC 316; Khorshed Shapoor Chenai v. Controller of Estate Duty, (1980) 2 SCC 1: 1980 SCC (Tax) 156; Sharda Devi v. State of Bihar, (2003) 3 SCC 128; Kiran Tandon v. Allahabad Development Authority, (2004) 10 SCC 745; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259, relied on

Gokul Krishna Banerji v. Secy. of State, AIR 1932 Pat 134, approved

[10514] — Ss. 420, 467, 471, 323, 506-B and 120-B — Quashment — Matters to be considered — Enquiry to be made — Need for reasoned order — *Quashing of complaint as also the summons issued against accused-Respondents 2 and 3 by a cryptic order opining that it was abuse of process of court — Propriety — Held, while arriving at said conclusion High Court had not even taken pains to look into the complaint and other materials produced by the complainant — It was alleged that accused persons in criminal conspiracy with each other had cheated the complainant and his sons by getting their (complainant's sons) invention of petrol from polythene published in their (i.e. accused's) names and affixing their own photographs for taking direct or indirect benefits by committing forgery — It was further alleged that accused abused complainant and his sons by using words like "chamar" and also threatened to kill them — Held, the question is not whether there was any truth in allegations made, but whether on basis of allegations a cognizable offence had been alleged — Judicial Magistrate had taken cognizance under SCST Act, 1989 and IPC — Hence, held, High Court erred in exercising its extraordinary power and inherent jurisdiction in quashing the proceedings — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(2)(v) — CrPC, 1973, S. 482* (Paras 3 to 7 and 13 to 16). *Ram Babu* v. *State of M.P.*, (2009) 7 SCC 194: (2009) 3 SCC (Cri) 343: (2009) 80 AIC 39 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.L. Dattu**, JJ. [Date of decision: 8-5-2009]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Maharashtra v. Ishwar Piraji Kalpatri, (1996) 1 SCC 542: 1996 SCC (Cri) 150, considered and followed

Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, relied on

[10515] — Ss. 420, 468 and 471 — Scope of exercise of power under S. 482 CrPC restated — *Held, factual scenario clearly showed that impugned proceedings were initiated as a counterblast to the proceedings initiated by appellants under Ss. 138/142/141 of NI Act, 1881 — Hence, continuance of such proceedings would be an abuse of the process of law — Case falls under Category (7) of* Bhajan Lal case, *1992 Supp (1) SCC 335 — Therefore, proceedings accordingly quashed — Negotiable Instruments Act, 1881, Ss. 138, 141 and 142 — CrPC, 1973, S. 482* (Paras 2, 6, 9, 10, 13 and 14). *Eicher Tractor Ltd.* v. *Harihar Singh*, (2008) 16 SCC 763: (2009) 1 ECrN 422 (SC): (2009) 73 AIC 198 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 7-11-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, relied on

[10516] — Ss. 420, 468, 471 and 120-B — Power to quash criminal proceeding — Where FIR ex facie makes out no offence criminal proceeding instituted on the basis of such FIR liable to be quashed — *Allegations same against all accused — Prosecution of bank officials and account-holders for withdrawing certain amount from bank by making false credit entries in books of account and connected credit and debit vouchers — No particulars of alleged entries given in FIR — Absence of deliberate intention to cause any wrongful gain or wrongful loss — High Court rightly held that allegations made in FIR did not constitute any offence of cheating or forgery as such proceedings amounted to abuse of process of court — Failure to make entries in books of account cannot be characterised as false entries — Since allegations same against all accused persons entire proceedings and not only against one, as High Court did, liable to be quashed — Prevention of Corruption Act, 1947, S. 5(2) read with S. 5(1)(d) — CrPC, 1973 — Ss. 482 and 154. State of U.P.* v. *R.K. Srivastava*, (1989) 4 SCC 59: 1989 SCC (Cri) 713: AIR 1989 SC 2222: 1989 Cri LJ 2301.

Bench Strength **3**. Coram: **M.M. Dutt**, *S. Ratnavel Pandian* and *Dr. T.K. Thommen*, JJ. [Date of decision: 11-8-1989]

[10517] — Ss. 420, 468 and 471 r/w S. 120-B — Charges against a person appearing on the scene subsequently and unlikely to be a party to the conspiracy — *Held, charges rightly quashed under S. 439, CrPC, 1898. State of W.B.* v. *Raj Kumar Agarwalla*, (1976) 2 SCC 204: 1976 SCC (Cri) 259: AIR 1977 SC 301: 1977 Cri LJ 206.

Bench Strength **2**. Coram: **H.R. Khanna** and *M.H. Beg*, JJ. [Date of decision: 10-10-1975]

[10518] — Ss. 420, 468 and 471 r/w S. 120-B — Framing of charges — Propriety — Offence of fraud and misappropriation of huge amount of Govt. money by accused persons — *Charges against appellant government employee that she dishonestly processed and verified fake bills to cause undue pecuniary advantage to herself — Though appellant was not assigned any duty to process or sign the bills in question, she did so — Said bills were not sanctioned/approved by competent authority — Also, those bills were not entered in bill register — No file had been opened in respect thereof — File numbers written on fictitious bills were fake — Held (***Per Katju, J.***), there was existence of material on record to show a prima facie*

(10)(xi) Quashment *(contd.)*

case against appellant — Hence, framing of charges against her was proper — Plea that appellant signed the fake bills by negligence but without any mala fide intention, held, could be considered during trial — ***Per Sinha, J. (concurring)*** *though there was improper application of mind by trial court while framing charges, considering that prosecution already started examination of witnesses and assured that all endeavours would be made for early disposal of matter, the discretionary jurisdiction under Art. 136 of the Constitution would not be exercised at this stage for remitting the matter to trial court for consideration afresh — Thus, the order framing charges against appellant is upheld — Trial court directed to complete trial as expeditiously as possible — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2) — CrPC, 1973 — S. 228*

Charges were framed against the appellant and the other accused for various offences under the Indian Penal Code and the Prevention of Corruption Act. Allegations were made that by misusing their official position, the accused public servants, employees of Indian Trade Promotion Organisation (ITPO), caused an undue pecuniary advantage to themselves to the tune of Rs 30,30,057 and led to a corresponding loss to ITPO.

The prosecution case was that the publicity department of ITPO was concerned with the release of advertisements in newspapers. There were two types of advertisements: (*1*) regular advertisements; and (*2*) ad hoc advertisements. Regular advertisements were given to the national dailies and other leading newspapers and magazines, whereas ad hoc advertisements were those which were issued on ad hoc basis from time to time with the specific approval of the Chief Managing Director or Executive Director only.

At the relevant time, Deputy Manager *B* was in charge of the work relating to ad hoc advertisements. He was the authorised officer to process the bills for such advertisements. One *U*, Proof Reader/Senior Assistant of ITPO, floated 6 bogus firms and submitted 76 bogus bills worth Rs 30,30,057 for payment by signing under fictitious names. With these bills he enclosed photocopies of fake advertisements. Out of 76 bogus bills, 14 were dishonestly processed and verified by the appellant and one *J*, in connivance with the other accused to cheat ITPO and give wrongful gain to themselves. All the bogus vouchers had been filled in by the co-accused *G* who was neither posted in the publicity division nor was authorised to do so. The appellant knew that the said bogus bills had not been entered in the bill register of the Publicity Division of ITPO and no file had been opened/created in respect thereof. The file numbers written on the fictitious bills were also fake. None of the above bills bore initials or signatures of *B*, who was in charge of the ad hoc advertisements.

After examining the allegations and evidence collected by investigation, the trial court framed the impugned charges against the appellant and *J*. Against the order framing charges, a criminal revision was filed before the High Court. The said revision was dismissed by the impugned judgment. Hence, the present appeal.

Dismissing the appeal,

Held :

Per Katju, J.

It cannot be accepted there was no material to show that the appellant was prima facie guilty or had any mens rea. There are serious allegations of misappropriation of a huge amount of money belonging to the Government, and it cannot be said at this stage that there is no material at all for framing the charge against the appellant. Hence, the view taken by the High Court in this connection is proper. (Paras 11, 9, 12 and 15)

The appellant was never assigned any duty in respect of processing or signing the bills for ad hoc advertisements, and she was assigned duty only of regular advertisements. Moreover, these bills were not sanctioned/approved by the competent authority i.e. the Chairman/Executive Director. No doubt the appellant contended that she signed the fake bills by negligence but without any mala fide intention, but this is a matter which is to be seen at the time of the trial. (Paras 14 and 15)

Per Sinha, J. (concurring)

The trial Judge, it appears, did not properly apply its mind in regard to the different categories of the accused while framing charges. It ought to have been done. (Para 19)

Ordinarily, the matter would have been remitted to the trial Judge for consideration afresh, but as the prosecution has already started examination of witnesses and it is assured that all endeavours would be made for early disposal of the matter, the discretionary jurisdiction under Article 136 of the Constitution may not be exercised at this point of time. However, keeping in view the fact that a large number of officers of the Union of India are involved in the present case and as it is stated at the Bar that they have not been promoted because of the pendency of this case, the trial Judge is requested to dispose of the matter as expeditiously as possible. (Para 25). *Soma Chakravarty* v. *State*, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149.

Bench Strength **2**. Coram: **S.B. Sinha**[2] and **Markandey Katju**[1], JJ. [Date of decision: 10-5-2007]

[10519] — S. 420 r/w S. 34 — Fraud — Question to be determined — Quashment of proceedings if warranted — *Positive assertion in complaint that assurance had been given by petitioner (attorney of Accused 1) to complainant that property in question was free from all encumbrances and that Accused 1 was sole owner and that had not such a representation been made relating to status of ownership of property in question, complainant may not have entered into transaction at all — Held, whether petitioner was truly mistaken as regards information given by him is an important issue which needs to be decided in answering the charge made — Prima facie case for going to trial, thus, made out — Hence, no interference with impugned judgment dismissing petitioner's application under S. 482 CrPC called for — CrPC, 1973, S. 482* (Paras 15 to 20). *S.P. Gupta* v. *Ashutosh Gupta*, (2010) 6 SCC 562.

Bench Strength **2**. Coram: **Altamas Kabir** and *Anil R. Dave*, JJ. [Date of decision: 13-5-2010]

[10520] — S. 420 r/w S. 511 — Technical offence under — Accused altering his own affidavit for securing customs clearance — *Accused's explanation that he did so under an honest belief found reasonable on facts and as such act complained of may or may not amount to offence under S. 420 r/w S. 511 — Accused neither cheated nor attempted to cheat the Customs Deptt. — Accused already suffered a prosecution under S. 420 — Nearly 20 years elapsed since commission of the alleged act — In the circumstances held, it would not be expedient in the interest of justice to maintain High Court's order passed about ten years ago remanding the case to the Magistrate concerned for trying the accused under S. 420 r/w S. 511. Kapoor Chand Maganlal Chanderia* v. *Delhi State (Admn.)*, 1985 Supp SCC 268: 1985 SCC (Cri) 441.

Bench Strength **2**. Coram: **A.P. Sen** and *E.S. Venkataramiah*, JJ. [Date of decision: 16-4-1985]

[10521] — Ss. 420/120-B — Quashing of prosecution — When warranted — *Complaint not disclosing any offence either under S. 420 or S. 120-B IPC — Case in question, a purely civil dispute — On such facts, held, allowing investigation to continue would amount to abuse of process of court — Hence, prosecution quashed* (Para 7). *Uma Shankar Gopalika* v. *State of Bihar*, (2005) 10 SCC 336.

Bench Strength **2**. Coram: *B.N. Agrawal* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 24-3-2004]

[10522] — Ss. 420/406/468 — Offence if made out on facts by presenting cheque allegedly given blank — Abuse of process of court — FIR not making out any offence — Rightly quashed — *Cheque given by the appellant to respondents bouncing — Appellants filing FIR under Ss. 420/406/468 alleging therein that respondents by an act of conspiracy committed criminal breach of trust by presenting for encashment blank cheques signed by the appellant for a purpose other than that for which the cheque had been given to them and thereby causing to the appellant loss of a certain amount — Apart from the fact that the said allegations did not make out the offence of cheating or criminal breach of trust, attendant circumstances indicating that FIR was lodged to pre-empt the filing of complaint under S. 138 of Negotiable Instruments Act against the appellant — In such circumstances, held, High Court was well within its jurisdiction to quash the FIR as amounting to abuse of the process of court — Hence, High Court's decision called for no interference under Art. 136 — Negotiable Instruments Act, 1881, S. 138 — CrPC, 1973 — Ss. 482 and 154* (Para 5). *Sunil Kumar* v. *Escorts Yamaha Motors Ltd.*, (1999) 8 SCC 468: 1999 SCC (Cri) 1466: AIR 2000 SC 27.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 27-10-1999]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149, considered

[10523] — Ss. 420/468/444/34 — Simultaneous civil and criminal proceedings in a given matter — Stay of one of the proceedings — Factors to be considered therefor — Primacy of criminal proceeding over civil proceeding — Consideration of general rule as to — Mode of determination of civil suit, if primacy to be given to criminal proceeding — *Reiterated, in a given case, a civil proceeding as also a criminal proceeding can proceed simultaneously — Whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case — Ordinarily, a criminal proceeding will have primacy over the civil proceeding in view of the fact that disposal of a civil proceeding generally takes a long time — If primacy is to be given to a criminal proceeding, the civil suit must be determined on its own merit, keeping in view the evidence brought therein and not in terms of the evidence brought in the criminal proceeding — Simultaneous pendency of criminal proceeding for forgery of will, etc. as*

(10)(xi) Quashment *(contd.)*

well as probate proceeding as to said will — Having regard to facts as to: (i) institution of criminal case much prior to initiation of probate proceeding, (ii) conduct of appellant-accused (criminal case not proceeding further for the last 7 years in view of pendency of matters before High Courts in different proceedings initiated by accused, though the charge-sheet was filed and cognizance of offence was taken), (iii) stage of pending probate proceeding (absence of much progress therein after about 6 years of filing of proceeding as the will in question was not yet sent to handwriting expert for his opinion), and (iv) the fact that the criminal case involved offence not only of forgery of will but also of house trespass, held, impugned judgment refusing to stay criminal proceeding not liable to be interfered with — CrPC, 1973, Ss. 309 & 190(1) — CPC, 1908, Ss. 151 & 9 — Succession Act, 1925, S. 276

A criminal case under Sections 420/468/444/34 IPC was instituted against the appellants alleging commission of forgery of a will by them. Prior to the said case, a civil suit was filed against the appellants, which was still pending, questioning the genuineness of the said will based on which the appellants had claimed mutation in respect of the property concerned.

Cognizance of offences in the said criminal case was taken in the year 2002. The appellants were granted anticipatory bail. On or about 30-1-2003, the appellants filed an application under Section 276 of the Succession Act, 1925 before the Jharkhand High Court for grant of probate in respect of the said will. Thereafter, the appellants preferred a writ petition before the Delhi High Court for quashing of the FIR. The said petition was disposed of making observations that the petitioners therein (i.e. the accused) could move the trial court by filing an application for stay of the criminal trial pending adjudication of the question of genuineness of the will by the civil court.

Pursuant to the said order of the High Court, the appellants filed an application under Section 309 CrPC before the Magistrate concerned seeking stay of the criminal proceedings. But that application was dismissed. Aggrieved thereby, the appellants preferred a criminal revision petition but they did not succeed. Hence, the present appeal.

Dismissing the appeal,

Held :

Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case. (Para 21)

It is now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. (Para 22)

If primacy is to be given to a criminal proceeding, the civil suit must be determined on its own merit, keeping in view the evidence brought on record therein and not in terms of the evidence brought in the criminal proceeding. (Para 24)

In the present case, the impugned judgment refusing to stay the criminal proceeding cannot be interfered with. Firstly, because the criminal case was instituted much prior to the initiation of the probate proceeding and secondly, because of the conduct of the appellants and the stage at which the probate proceeding is pending. (Para 41)

Whereas the criminal case is pending before the Delhi Court, the testamentary suit has been filed before the Jharkhand High Court. Since 2003 not much progress has been made therein. The will has not been sent to the handwriting expert for his opinion, which is essential for determination of the question in regard to the genuineness of the will. Further, for the last seven years, in view of the pendency of the matters before the High Courts in different proceedings initiated by the appellants, the criminal case has not proceeded, although charge-sheet has been filed and cognizance of the offence has been taken. (Para 44)

Further, the FIR was lodged not only in regard to forgery of the will but also on the cause of action of a trespass. It is, thus, possible that even if the will is found to be genuine and that no case under Section 468 IPC is found to have been made out, the appellants may be convicted for commission of other offences for which they have been charged against, namely, trespass into the property and cheating. (Para 43)

Therefore, in view of the above, the impugned judgment cannot be interfered with exercising discretionary jurisdiction under Article 136 of the Constitution. (Para 46). *Syed Askari Hadi Ali Augustine Imam* v. *State (Delhi Admn.)*, (2009) 5 SCC 528: (2009) 5 Mah LJ 127.

Bench Strength **3**. Coram: **S.B. Sinha**, *L.S. Panta* and *B. Sudershan Reddy*, JJ. [Date of decision: 3-3-2009]

M.S. Sheriff v. State of Madras, AIR 1954 SC 397; K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87: 2003 SCC (Cri) 223; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101; P. Swaroopa Rani v. M. Hari Narayana, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79, relied on

Sardool Singh v. Nasib Kaur, 1987 Supp SCC 146: 1987 SCC (Cri) 672, distinguished

[10524] — Ss. 420/468/471/477-A/167/120-B — Settlement of land in tenant's favour (and his successors-in-interest) — Fraud by tenant/successor(s)-in-interest/government officials — Criminal case under Ss. 420/468/471/477-A/167/120-B IPC pending with Crime Branch — Effect not considered by High Court — *Matter, therefore, remanded for fresh consideration — State directed to unravel the truth and punish the erring officials and take all permissible actions (including criminal action) against everyone involved*

The High Court did not considered the effect of alleged fraud. As there were various fraudulent claims on the prime government land in the city of Bhubaneshwar on the basis of fraudulent title papers called "Hatapattas" allegedly issued by ex-intermediaries, the GA Department handed over the matter to Crime Branch. An interim report of the Crime Branch with respect to the suit land has been submitted. The Crime Branch report states that the power of attorney through which the suit land was sought to be alienated in favour of *H* (respondent-vendee successor in interest of *KD*, lessee) was tampered and manipulated by the power-of-attorney holder, *A* (son of *H*). The vendor, *KC* (successor of *KD*) had not given any powers of alienation to *A*. The report concludes that prima facie offences under Sections 420/468/471/477-A/167/120-B IPC, inter alia, have been made out against respondents *H* and *A*. Again the Sale Deed executed in favour of *H*, was impounded for non-payment of adequate stamp duty with the deficit stamp duty and registration fee amounting to about Rs 1.03 crores. (Paras 39 and 34 to 36)

In the background of the massiveness of apparent fraud involved, effective and participative role of officials of the State cannot be lost sight of. Without their active and effective participation manipulation of records, tampering with documents could not have been possible. The State would do well to pursue the matter with seriousness to unravel the truth and punish the erring officials and take all permissible actions (including criminal action) against everyone involved. (Para 43)

There is another statute which has great relevance to the present dispute i.e. the Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 which was enacted to prevent indiscriminate alienation of communal forest and private lands in the erstwhile estates. In view of the interpretations of these provisions in *Maganti Subrahmanyam case*, (1969) 2 SCC 96 the present matter needs to be reconsidered by the High Court. The High Court while rehearing the matter should also consider the effect of the observations of judgment, and various aspects highlighted above. (Paras 41, 42 and 44). *State of Orissa* v. *Harapriya Bisoi*, (2009) 12 SCC 378.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 20-4-2009]

(xii) Sanction for prosecution

See also under 'Ss. 405-409 — CRIMINAL BREACH OF TRUST', above

[10525] — Ss. 420, 465, 466, 467, 468 and 471 — Sanction for prosecution — When not required — Relatability of offence to official duty necessary — False allotment of premises and false issuance of rent receipts by public servant to various persons to show false possession of tenements — *Appellant-accused working with Maharashthon Housing and Area Development Authority (MHADA) allotted premises to various persons under his signature, issued rent receipts so that the said persons could claim that they were in possession of the tenements, though in fact, the tenements, in question, were vacant and were not in possession of MHADA — Appellant charged for offences punishable under Ss. 420, 465, 466, 467, 468 and 471 IPC — Held, the charged offences are not relatable to any official duty — Sanction under S. 197(1) CrPC, therefore, not needed — CrPC, 1973 — S. 197(1)*

The allegation against the appellant-accused was that while working with Maharashthon Housing and Area Development Authority (MHADA) the appellant allotted premises to various persons under his signature, issued rent receipts so that the said persons could claim that they were in possession of the tenements, though in fact, the tenements, in question, were vacant and were not in possession of MHADA. According to the prosecution, the appellant committed offences punishable under Sections 420, 465, 466, 467, 468 and 471 IPC.

Before the trial court, the appellant filed an application for discharge in terms of Section 228 CrPC primarily on the ground that sanction under Section 197 CrPC had not been obtained. It was also submitted that proceedings could not have been initiated after his retirement in view of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. The application was dismissed by the trial

(10)(xii) Sanction for prosecution *(contd.)*

court. It was noted that the appellant was in government service till 31-8-1989. The complaint was filed on 17-7-1989 which was treated as an FIR and, therefore, Rule 27 of the Pension Rules had no application. As regards the requirement of sanction in terms of Section 197 CrPC it was held that acts done by the accused did not fall within the ambit of official duty and, therefore, question of sanction did not arise.

The High Court by the impugned order dismissed the criminal writ petition filed by the appellant, affirming the view taken by the trial court although it held that on 10-8-1992 when the cognizance was taken, the appellant had ceased to be a public servant and that no sanction under Section 197(1) CrPC is needed in the case of retired government servant.

Dismissing the appeal,

Held :

Though the view of the High Court that no sanction under Section 197(1) CrPC is needed in the case of retired government servant is erroneous, in view of the finding that the charged offences are not relatable to any official duty, the appeal fails and deserves to be dismissed. The High Court, was in error in observing that sanction was not necessary because the expression used in Section 197(1) CrPC to refer to a public servant is "was". But the question is really of academic nature because the alleged offences cannot be related to any official duty. (Paras 13, 8 and 9). *Raghunath Anant Govilkar* v. *State of Maharashtra*, (2008) 11 SCC 289: 2008 Cri LJ 2054: (2008) 63 AIC 28 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 8-2-2008]

Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432; R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096, relied on

[10526] — Ss. 420, 467, 468, 471 and 120-B — Sanction under S. 197 CrPC for prosecution for offences under — Held, there is no such requirement — *CrPC, 1973 — S. 197*

The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B, Penal Code, 1860 can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence. (Para 50). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193: AIR 2007 SC 1274: (2007) 51 AIC 623 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432, distinguished

[10527] — Ss. 420, 467, 471 and 474 — Offences under Ss. 420, 467, 471 and 474 IPC — *Bar under S. 195 CrPC regarding court's power to take cognizance — Applicability — High Court not expressing any view on this aspect — Since it was a contentious issue and High Court's order under Ss. 482 and 468 CrPC found unsustainable, held, proper course would be to remit the matter to the High Court for fresh consideration — CrPC, 1973 — S. 195* (Para 7). *Harnam Singh* v. *Everest Construction Co.*, (2004) 6 SCC 754: 2004 SCC (Cri) 1828.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 17-8-2004]

(xiii) Transfer/Consolidation of Cases

[10528] — Ss. 420 and 109 — Accused tried with an officer of Government — Accused charged under S. 420 IPC and officer charged for abetment of the offence — *Trial of accused not bad if the officer was being tried without sanction under S. 197, CrPC. Bakhshish Singh Dhaliwal* v. *State of Punjab*, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656, 658, 66.

Bench Strength 3. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 31-8-1966]

[10529] — Ss. 420 and 109 — Permission for prosecution not necessary when an officer of Government prosecuted for abetment of the offence of cheating committed by persons submitting bogus bills by falsely certifying the correctness of bills

H was not being prosecuted for the act of certification of the correctness of the bills which were sent to him for verification, but was to be prosecuted for abetment of the offence of cheating committed by those persons who had submitted the bills by falsely certifying the correctness of those bills. The act of thus abetting the principal offenders could not possibly be held to have been done in the discharge of official duties as a public servant. *Bakhshish Singh Dhaliwal* v. *State of Punjab*, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656.

Bench Strength 3. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 31-8-1966]

[10530] — Ss. 420 and 161 — Sanction for prosecution — Accused certifying a false claim knowing it to be false and thereby abetting offence of cheating — *Sanction for prosecution under CrPC, 1898 is not necessary — Offence cannot be regarded as having been committed by public servant while acting or purporting to act in discharge of his official duty. K. Satwant Singh* v. *State of Punjab*, AIR 1960 SC 266: (1960) 2 SCR 89: 1960 Cri LJ 410.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.*[1] and **Syed Jafer Imam**[1], **J.L. Kapur**[1], *K.N. Wanchoo*[1] and *K.C. Das Gupta*[1], JJ. [Date of decision: 28-10-1959]

Applied in AIR 1966 SC 220: 1966 Cri LJ 179
See also AIR 1967 SC 752: 1967 Cri LJ 656

[10531] — Ss. 420, 406, 409, 120-B, 467, 468 and 471 — Relief — Transfer of investigations in different cases to one agency — *Finance companies accepting deposits from a large number of persons but not repaying them — FIRs lodged by depositors against Directors of such companies at different places in different States — Prayer of accused persons for transferring the investigation in all such cases to CBI, rejected — CrPC, 1973, S. 156 — Negotiable Instruments Act, 1881, S. 138 — Constitution of India, Art. 32*

The petitioners' prayer that the investigations of all cases should be transferred to CBI has to be rejected. (Para 62). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

[10532] — Ss. 420, 406, 409, 407, 120-B, 467, 468 and 471 — Relief — Consolidation of cases — *Finance companies accepting deposits from a large number of persons but not repaying the same — Consequently, criminal cases initiated against Directors of such companies in courts in different States — Prayer of accused persons for consolidation of such cases, rejected by Supreme Court — However, liberty granted to approach the High Court, or as the case may be, the Appellate Consumer Forum in that regard — CrPC, 1973, S. 407(1)(c) — Negotiable Instruments Act, 1881, S. 138 — Constitution of India, Art. 32*

In regard to the prayer for consolidation the petitioner would be at liberty to approach the High Court in accordance with law. Similar is the situation as regards the orders of the Consumer Forum and the petitioner in the normal course of events would be at liberty to ventilate the grievance if any, before the Appellate Forum in accordance with law. (Para 63). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

(xiv) Vicarious liability — Offence by company

See also S. 482 CrPC, '(11)(xix) Quashment re offences involving companies' in Vol. 18, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 2 of *SC on CrPC and Criminal Trial*

[10533] — Ss. 415, 24, 25 and 23 — Offences requiring mens rea or a particular state of mind (like dishonesty) — Whether a corporate body can be prosecuted when offence is committed in relation to business of a company — Doctrine of attribution and imputation — Degree of control exercised by persons in charge of affairs of company — Principle of alter ego — *Held, if degree of control is so intense that a corporation may be said to think and act through a person or body of persons, mens rea of person or persons in control is attributable to the corporation — A corporate body cannot also escape criminal liability merely on the ground that punishment prescribed is imprisonment and fine — On facts held, prosecution could be launched against respondent Company for offence of cheating under S. 415 IPC — Companies Act, 1956, Ss. 34 and 291*

The respondent Company had effective control over another company which was engaged in a project known as Iridium project, for developing world's first commercial system designed to provide global digital hand-held telephone data, facsimile, paging, geolocation services but the project ultimately did not succeed, with the result that huge investment made by appellant Company in the project resulted in loss. It was the case of appellant Company that Respondent 1 had knowledge of unviability of the project yet they made misleading statements to attract investment. The appellant further alleged that the entire exercise of Respondent 1, besides generating money for itself, was to experiment with others' money and at others' risk. The appellant therefore filed a detailed criminal complaint dated 3-10-2001 of thirty-five pages giving all the necessary facts which constituted the offence of cheating under Section 415 IPC. The trial court vide its order dated 6-11-2001 issued process against the accused persons including Respondent 1 Company. The High Court initially stayed the proceedings before the trial court and finally quashed the criminal complaint dated 3-10-2001

(10)(xiv) Vicarious liability — Offence by company *(contd.)*

vide its judgment dated 8-8-2003, inter alia on the ground that Respondent 1 being a juristic person, could not be proceeded against, for an offence like cheating.

Allowing the appeal,

Held :

There is much substance in the submission that virtually in all jurisdictions across the world governed by the rule of law, companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The legal position in England and the United States has now crystallised to leave no manner of doubt that a corporation would be liable for crimes of intent. The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. The criminal intent of the "alter ego" of the company/body corporate i.e. the persons or group of persons that guide the business of the company, would be imputed to the corporation. (Paras 55 and 59)

A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of "alter ego" of the company. (Para 63)

A company/corporation cannot escape liability for a criminal offence merely because the punishment prescribed is that of imprisonment and fine. The conclusion reached by the High Court that the respondent could not have the necessary mens rea is clearly erroneous. (Para 66). *Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 20-10-2010]

New York Central & Hudson River Railroad Co. v. United States, 53 L Ed 613: 212 US 481 (1908); Director of Public Prosecutions v. Kent and Sussex Contractors Ltd., 1944 KB 146: (1944) 1 All ER 119 (DC); Bolton (H.L.) (Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd., (1957) 1 QB 159: (1956) 3 WLR 804: (1956) 3 All ER 624 (CA); Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd., 1915 AC 705: (1914-15) All ER Rep 280 (HL); Tesco Supermarkets Ltd. v. Nattrass, 1972 AC 153: (1971) 2 WLR 1166: (1971) 2 All ER 127 (HL); Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530: 2005 SCC (Cri) 961, relied on

19 American Jurisprudence 2d, Para 1434; 19 Corpus Juris Secundum, Para 1363, quoted

[10534] — S. 420 — Dishonour of cheque — Dishonour of cheque — Offence by company — Legislative intention — Complaint, against any and every person of the company — If maintainable — Harassment and hardship — *Held, legislative intention is not to implead all and sundry as accused if requirements of Ss. 138 and 141 of NI Act are not fulfilled, as the trauma, harassment and hardship in such cases is more serious than the ultimate punishment — Negotiable Instruments Act, 1881, Ss. 141 and 138. K.K. Ahuja* v. *V.K. Vora*, (2009) 10 SCC 48: (2009) 80 AIC 202 (SC).

Bench Strength **2**. Coram: **R.V. Raveendran** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-7-2009]

[10535] — S. 420 — Dishonour of cheque — Offence by company — Vicarious liability of persons of the company — When arises — Essential averments in complaint, requirement of — *Held, persons/officers who were in charge of and also responsible for the conduct of business of the company, are vicariously liable for offences of company — Hence, no specific averment in complaint as to role of each is required — Duly affirmed sworn statement to that effect, may be sufficient — However, complaint against persons/officers who were either not responsible for conduct of business of the company, or were not in charge of the company should be specific as to their position, duties and role in the issue of said dishonoured cheque disclosing consent, connivance or negligence — Distinction between Ss. 141(1) and (2) NI Act as to nature of averment — Averments that are to be specifically made in complaint against officers of company who fall under Ss. 141(1) and (2) NI Act summarised — Negotiable Instruments Act, 1881, Ss. 141 and 138. K.K. Ahuja* v. *V.K. Vora*, (2009) 10 SCC 48: (2009) 80 AIC 202 (SC).

Bench Strength **2**. Coram: **R.V. Raveendran** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-7-2009]

[10536] — Ss. 420, 415, 24 and 25 — Quashment of proceedings — When justified — Offence by company — Ex-Director proceeded against — *Where basic ingredients of the offence alleged* *against accused are altogether absent, held, he should not be compelled to face criminal prosecution — On totality of facts, such being the case, proceedings pending before Magistrate under S. 420 IPC r/w Ss. 3, 4, 5 and 6, Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against ex-Director of company which had invited deposits from public but had subsequently closed its business without paying interest and repaying dues of investors, quashed — Prize Chits and Money Circulation Schemes (Banning) Act, 1978, Ss. 3 to 6 — Companies Act, 1956, S. 290 — CrPC, 1973, Ss. 482 and 190*

The appellant was one of the Directors of a company. He resigned w.e.f. 27-12-1997. Respondent 2 filed a complaint FIR with the police alleging that the said company had invited deposits from the public and that monies had been invested by Respondent 2 and his wife in the Pensioner's Benefit Fund, pursuant to the approval of the scheme by Reserve Bank of India. That the company had since closed its business without repaying the money due to the complainant. Respondent 2 lodged an FIR alleging offences under Section 420, Penal Code, 1860 read with Sections 3, 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Consequent to the FIR, the Additional Chief Metropolitan Magistrate issued a non-bailable warrant against the appellant.

The appellant filed a petition before the High Court under Section 482 CrPC seeking quashment of the proceedings on the ground that the appellant could not be held liable for any of the alleged illegalities committed by the company after he had resigned from the company. However, the High Court held that it was for the trial court to ascertain the questions arising in the petition and pass necessary orders. The appellant then filed the present appeal by special leave.

Before the Supreme Court, the appellant contended that even according to the averments of the complaint in the first information report there were no allegations whatsoever against the appellant, and the High Court ought to have quashed the proceedings against the appellant.

Allowing the appeal,

Held :

The inherent power should not be exercised to stifle the legitimate prosecution but at the same time no person be compelled to face criminal prosecution if basic ingredients of the offence alleged against him are altogether absent. (Para 38)

In the instant case, the appellant ceased to be a Director of the company from 27-12-1997 whereas the alleged offences, if any, were committed during the period from 24-5-1998 to 17-9-1999. There were no allegations against the appellant in the first information report. The company had invited investment from the depositors to invest in the business/benefit funds after receiving due approval of the scheme from Reserve Bank of India. Therefore, in any event, the element of cheating as alleged cannot be made out by any stretch of imagination. [Paras 37(*a*) to (*c*)]

Respondent 2 complainant has submitted in writing to that he does not want to proceed against the appellant because according to him the appellant has been inadvertently included as an accused by the investigating officer. He further mentioned in the letter that he had already received 55% of the deposited amount from the Official Liquidator and he did not want to proceed against the appellant. [Para 37(*d*)]

Even assuming that there could have been a vicarious liability thrust on the appellant, even then there cannot be any such vicarious liability in the absence of any allegations and material to show that the appellant was in charge of or responsible for the conduct of the company's business which had given rise to the offence. From any angle of the matter, the appellant cannot be compelled to face the criminal trial in the present case. [Para 37(*e*)]

On consideration of the totality of the facts and circumstances of the present case, the proceedings initiated against the appellant are quashed. (Para 39). *M.A.A. Annamalai* v. *State of Karnataka*, (2010) 8 SCC 524: (2010) 3 SCC (Cri) 950: (2010) 158 Comp Cas 369.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 12-8-2010]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, considered

Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259: 1999 SCC (Cri) 401; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615, considered and relied on

Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336: (2006) 2 SCC (Cri) 49; S.V.L. Murthy v. State, (2009) 6 SCC 77: (2009) 2 SCC (Cri) 941; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370, relied on

[10537] — Ss. 420, 463 and 405 — Company involved — Fastening of vicarious liability on persons running the affairs of the company — Requirements for — *In the instant case, Respondents 1 and 2 were sought to be proceeded against* *on the premise that they were vicariously liable for the affairs of the company — For that the company must be made an accused as legal fiction is raised both against the company as well as the person responsible for the acts of the company — Besides, when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled — Respondents 1 and 2 were charged in their individual capacity for commission of offences of cheating, criminal breach of trust and forgery — As there had never been any interaction between the appellant and them, the question of any representation which is one of the main ingredients for constituting an offence of cheating, would not arise — So far as allegations in regard to commission of the offence of forgery are concerned, the same had been made only against Respondent 3 and not against Respondent 2 — Sending a copy thereof to the National Stock Exchange without there being anything further to show that Respondent 2 had any knowledge of the fact that the same was a forged and fabricated document cannot constitute an offence — Similarly, it has not been alleged that they were entrusted with or otherwise had dominion over the property of the appellant or they have committed any criminal breach of trust — Hence, impugned judgment quashing FIR against Respondents 1 and 2 calls for no interference — CrPC, 1973, S. 482. R. Kalyani* v. *Janak C. Mehta*, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567.

Bench Strength **2**. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 24-10-2008]

(xv) Witnesses

[10538] — Ss. 420 and 120-B — Non-examination of one of the witnesses — Effect — *Appellant, a postal clerk, charged with taking out a bank draft from a registered letter and handing it over to the other two accused for encashment, in pursuance of a conspiracy — Appellant pleading that the said registered letter was handed over to the postman in due course of his duties — Plea not accepted by courts below on the basis of the evidence of PW 8, another clerk, and the entries in the register — Accordingly, appellant convicted under S. 420 read with S. 120-B, IPC — In appeal to SC conviction challenged on the ground of non-examination of the postman as a witness — Held, admittedly the appellant received the registered letter and it was his duty to make the necessary entries as to whether it was delivered but there was no such definite entry — This coupled with the evidence of PW 8 was enough to bring home the guilt of the appellant — Non-examination of the postman did not make any difference. Nand Kumar* v. *State of Punjab*, 1994 SCC (Cri) 158.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 10-2-1993]

(11) Sentence/Fine/Compensation/ Other punishment/relief

[10539] — Ss. 417, 493 and 496 — Sentence — Reduction of sentence — *Appellant not shown to be inspired by any dishonest or mean motive — Other mitigatory circumstances — Sentence reduced to that already undergone. Ashwin Nanabhai Vyas* v. *State of Maharashtra*, (1970) 3 SCC 95: 1970 SCC (Cri) 567: AIR 1970 SC 1998: 1970 Cri LJ 1668.

Bench Strength **2**. Coram: *S.M. Sikri* and **I.D. Dua**, JJ. [Date of decision: 4-8-1970]

[10540] — Ss. 419 and 420 — Release of offender on probation of good conduct — Considerations for — Nature of the offence and character of the offender — Character — Meaning of — *Accused managing to get entry into legal profession by representing that he was a qualified legal practitioner having enrolled himself with the State Bar Council — Accused practising law for a period of eight years and also holding post of Secretary of Bar Association — Held, in the circumstances of the case, the accused must be dealt with deterrently and the courts below not justified in giving him benefit of S. 4 — Fact that the accused expressed repentance over his conduct or that later he obtained a law degree and got himself enrolled as an advocate is of no consequence — Accused awarded six months' RI under each count (Ss. 419 and 420 IPC) and a fine of Rs 5000 each (total Rs 10,000) to be added to fund of the Legal Service Board — CrPC, 1973, Ss. 360 and 361 — Probation of Offenders Act, 1958 — S. 4*

The respondent approached the Nilgiris Bar Association in the year 1978 for admitting him as a member therein by representing that he was a qualified legal practitioner having enrolled himself with the State Bar Council. Without suspecting the bona fides of the application he was admitted to the membership of the Bar Association. He started his practice at the new station and built up a good clientele and involved himself in all the activities of the Association. He contested for the post of Secretary and won it. In this way, he continued till 1985. But by then some members of the Bar who developed suspicion of his credentials made secret inquiries and discovered that he was imposturing as an advocate and his credentials were bogus. A complaint was lodged with the police who, after investigation, charge-sheeted the accused for offences under Sections 419 and 420 IPC. He pleaded guilty and prayed for mercy. The trial court released him under Section 4 of the Probation of Offenders Act. The High Court declined to interfere but made an endeavour to console the Bar by directing the delinquent person to donate a sum of Rs 15,000 to the Association for buying books to their library. Allowing the appeal by special leave filed by the Bar Council

Held :

Before the relief envisaged in Section 4(1) of the Probation of Offenders Act is granted court must take into account the circumstances of the case, among which "the nature of the offence and the character of the offender" must have overriding considerations. After bestowing judicial consideration on those factors, the court must form an opinion as to whether it would be appropriate in that case to release the particular accused therein as envisaged in the sub-section. The benefits mentioned in Sections 3 and 4 are subject to the limitations laid down in those provisions and the word 'may' in Section 4 of the Act is not to be understood as 'must.'

When considering the nature of the offence the court must have a realistic view of the gravity of the offence, the impact which the offence could have had on the victims and whether considerations of deterrence can be overlooked etc. No fixed yardstick can be laid down to measure the nature of the offence for affording or denying the reliefs envisaged in Section 4 of the Act. However, as the court is enjoined to take into consideration the character of the offender it is well to remember that character is not the abstract opinion in which the offender is held by others. The word "character" is not defined in the Act. Hence, it must be given the ordinary meaning.

Character of the offender in this case reflects in the modality in which he was inveigling in a noble profession duping everybody concerned. In such a view of the matter the two courts could not have formed an opinion in favour of the character of the respondent. It is apposite to observe here that the learned Single Judge did not mention anything about the character of the respondent qua the accusations found against him.

While adverting to the nature of offence the court must bear in mind the necessity to weed out impostors in the professions which require special learning and training, particularly at a time when such impostors are proliferating in the society. Any leniency shown to such wiles would certainly tend to sprout up weeds at menacing scales. The case of the respondent is not one of single lapse or even multiple delinquencies confined to a few days. The long period of 8 years during which the mountebank had successfully indulged in interloping as a qualified and learned counsel would have considerably eroded public confidence in the probity of the legal profession particularly in that area and besmirched the reputation of that Bar as the public might be looking upon every other member of the profession with suspectful eyes. The trial Magistrate and the learned Single Judge, who found a repenting mind in the respondent, have failed to notice that repentance had dawned on him, even if that also was not a pretension, only when he reached a cul-de-sac. When he was masquerading himself everyday in sartorial costumes prescribed only for accredited members of the legal profession it did not occur to him even once during the long period of eight years to think of repentance. On the contrary, he was flourishing at large and had even become the Secretary of the Bar Association. If the vigilant Bar had not discovered the trickery, perhaps he would still have persisted in his art of cheating. Therefore, the crimes committed by him should have been dealt with deterrently and the ameliorative reliefs envisaged in Section 4 of the Act should have been kept at bay. *Nilgiris Bar Assn.* v. *T.K. Mahalingam*, (1998) 1 SCC 550: 1998 SCC (Cri) 450: AIR 1998 SC 398: 1998 Cri LJ 398.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 8-12-1997]

Ramji Missar v. State of Bihar, AIR 1963 SC 1088: (1963) 2 Cri LJ 173; Rattan Lal v. State of Punjab, AIR 1965 SC 444: (1964) 7 SCR 676; Ishar Das v. State of Punjab, (1973) 2 SCC 65: 1973 SCC (Cri) 708; Ram Parkash v. State of H.P., (1972) 4 SCC 46: 1973 SCC (Cri) 119, relied on

[10541] — Ss. 419, 420, 468 and 471 — Sentence under — Reduction of — Cheating a financial corporation by obtaining loan in the name of a fake firm — *Offence committed more than 20 long years ago, amount involved being only Rs 39,352.50, accused already remaining in jail for some time under the order of conviction and under Supreme Court's direction depositing Rs 40,000 with the financial corporation — In such circumstances, sentence of imprisonment reduced to the period already undergone but a fine of Rs 2000 also imposed — Financial corporation granted liberty to recover its further dues, if any. Surender Kumar Garg* v. *State of U.P.*, 1993 Supp (3) SCC 359: 1993 SCC (Cri) 1032: 1993 Cri LJ 2085: (1993) 2 Crimes 424: 1993 ALJ 728.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 14-5-1993]

[10542] — S. 420 — Compounding of offences — Offences under S. 138, Negotiable Instruments Act, 1881 and S. 420 IPC — *Both the parties filing joint petition for compromise before the Supreme Court — Held, said compromise was lawful — Hence, permission granted to compromise the disputes — Convictions and sentences awarded against appellant, set aside — Negotiable Instruments Act, 1881, S. 138 — CrPC, 1973, S. 320* (Paras 4 and 5). *Sayeed Ishaque Memon* v. *Ansari Naseer Ahmed*, (2005) 12 SCC 140.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 25-4-2005]

[10543] — S. 420 — Sentence — *Reduced to the period already undergone, the accused having deposited the amount in question to the Court in pursuance of the Court's directions. Abdul Hamid* v. *State of U.P.*, 1981 Supp SCC 82: 1982 SCC (Cri) 470(1).

Bench Strength **2**. Coram: *Y.V. Chandrachud, C.J.* and *E.S. Venkataramiah*, J. [Date of decision: 14-2-1980]

[10544] — S. 420 — Sentence — *Strong indications that there were other and bigger persons involved in the fraud who were not brought to book — Circumstance has a bearing on the sentence — Trial protracted one and the appellant remaining in jail for a long time — Crime could be prevented by the precautions of senior officers — In the circumstances sentence of 18 months' R.I. was reduced to the period already undergone. K. Damodaran* v. *State of Travancore-Cochin*, AIR 1953 SC 462: 1953 Ker LJ 295: 1953 Cri LJ 1928, 1932.

Bench Strength **2**. Coram: *M.C. Mahajan* and **S.R. Das**, JJ. [Date of decision: 20-3-1953]

[10545] — S. 420 — Sentence — Is a matter of discretion — *Supreme Court not to interfere unless discretion has been improperly exercised — Sentence of 6 months' R.I. under S. 420 not held severe. Dharamdas Hukamatrai Dorwani* v. *State of Bombay*, AIR 1960 SC 734: 1960 Cri LJ 1148: (1960) 2 Ker LR 32.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K. Subba Rao* and *J.C. Shah*, JJ. [Date of decision: 4-11-1959]

[10546] — S. 420 — Sentence — Technical offence — Token sentence called for — *Sentence reduced to that already undergone. State of M.P.* v. *M.V. Narasimhan*, (1975) 2 SCC 377: 1975 SCC (Cri) 589: AIR 1975 SC 1835: (1976) 1 SCR 6: 1975 Cri LJ 1639.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 15-7-1975]

[10547] — S. 420 — Sentence reduced — *Cheating in respect of a sum of Rs 31.89 only — Conviction under S. 420, IPC and under S. 5(1)(d) r/w S. 5(2) of Prevention of Corruption Act which lays down that the sentence shall not be less than one year except for special reasons — Offences committed more than 12 years ago — Accused having already undergone some rigorous imprisonment — Delay in final decision owing to no fault of accused — Held, sentences of imprisonment reduced to the period already undergone — The long period for which the sentence imposed remained undecided should be taken into account — Possibility that in the period of 12 years the condition of life and outlook of a man may have changed entirely. Bhagwandas Keshwani* v. *State of Rajasthan*, (1974) 4 SCC 611: 1974 SCC (Cri) 647: AIR 1974 SC 898: 1974 Cri LJ 751.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 3-4-1974]

[10548] — S. 420 — White-collar crimes — Punishment merited — Conviction under S. 420 for cheating young unemployed persons by taking money from them by false pretences — *Congenial work of a mental-cum-manual type with wages for the educated 28 years' old accused proposed plus opportunity to stimulate his creativity and sensitivity recommended. Mohd. Giasuddin* v. *State of A.P.*, (1977) 3 SCC 287: 1977 SCC (Cri) 496: AIR 1977 SC 1926: 1977 Cri LJ 1557.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 6-5-1977]

[10549] — Ss. 420, 421, 466, 468, 471, 465 & 120-B — Health and old age as factors — Alteration of sentence to period already undergone i.e. 70 days — Relief of — Entitlement to — Forgery case — *Girl **B** securing admission on basis of forged marksheets — Sentence of 3 months and 6 months passed against **B** and her father **F** respectively by High Court — **B**, a housewife, having no job/source of income of her own — She was a heart patient and had undergone two open heart surgeries — **F**, a retired Engineer of 81 years, was also a heart patient and having no income other than his pension — Incident occurred a quarter of century back — Considering peculiar facts of the case and an earlier order of Supreme Court, held, sentence could be reduced to period already undergone by **B** and **F** i.e. 70 days — However, fine imposed by courts below would remain unaltered — CrPC, 1973, Ss. 28 and 29* (Paras 7, 8 and 10). *Beena Philipose* v. *State of Kerala*, (2006) 7 SCC 414: (2006) 3 SCC (Cri) 288.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 4-9-2006]

[10550] — Ss. 420, 468 and 471 — Matter compromised and fraud amount repaid — Effect — Quashing of criminal proceedings — *Accused charged under Ss. 420, 468, 471 IPC for defrauding a bank — Merely for the reason that a compromise had been reached between the bank officials and the accused and accused paid the disputed amount found due to the bank, held, High Court was not justified in quashing the trial which had reached almost the penultimate stage — Matter compromised and fraud amount repaid — Effect — CrPC, 1973 — S. 482. Inspector of Police, CBI* v. *B. Raja Gopal*, (2002) 9 SCC 533.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Phukan*, JJ. [Date of decision: 21-1-2002]

[10551] — Ss. 420/511, 420/120-B, 468 and 477-A — Sentence — Accused, a Development Officer in LIC, introducing false and fake insurance proposals to LIC with a view to earn promotion on the basis of inflated business — *Contents of proposals and Moral Hazard Report found to be in the handwriting of the accused — Plea of the accused that he was then imparting training to newly-recruited agents and in that process he had filled in the proposal forms, held, not acceptable — Policies not issued due to dishonour of cheques towards first premium and, therefore, loss to LIC might be negligible but the fact remains that the accused sought to take advantage of his inflated business — Held, in the circumstances of the case, accused rightly convicted by the courts below — However, in view of long lapse of time, loss of job and other retiral benefits, sentence altered to simple imprisonment for six months — Prevention of Corruption Act, 1947 — Ss. 5(1)(d), 5(3-A) and 5(2) — Insurance Act, 1938 — S. 104. Ram Prakash Singh* v. *State of Bihar*, (1998) 1 SCC 173: 1998 SCC (Cri) 300: AIR 1998 SC 296: 1998 Cri LJ 502.

Bench Strength **2**. Coram: *M.M. Punchhi* and **S.P. Kurdukar**, JJ. [Date of decision: 24-10-1997]

— S. 421 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 420, 421, 466, 468, 471, 465 and 120-B

— S. 422 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 409, 422, 426 and 120-B

— S. 423 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 406, 420, 423, 465, 477, 468, 471, 120-B, 124 and 34

See also Ss. 464, 423, 420 r/w S. 34

— S. 424 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 420 and 424

[10552] — Ss. 424 and 441 — After attachment under Ors. 21 and 43, CPC the attaching officer giving the cattle in supurdar's possession — *Supurdar keeping the cattle with decree-holder — Judgment-debtor using force and enticing the cattle from decree-holder's enclosures — Judgment-debtor causes wrongful loss to the court and wrongful gain to himself and is guilty under S. 424*

Where a property has been legally attached by a court, the possession of the same passes from the owner to the Court or its agent. In that situation, the owner of the said property cannot take the law into his own hands, but can file a claim petition to enforce his right. If he resorts to force to get back his property, he acts unlawfully and by taking the property from the legal possession of the Court or its agent, he is causing wrongful loss to the Court. As long as the attachment is subsisting, he is not entitled to the possession of the property and by taking that property by unlawful means he is causing wrongful gain to himself. Where the accused persons unlawfully took away the cattle from the possession of the decree-holder, who is only a bailee of the supurdar caused wrongful loss to him and therefore are guilty of an offence under S. 424 IPC. *Teeka* v. *State of U.P.*, AIR 1961 SC 803: (1962) 1 SCR 75: (1961) 1 Cri LJ 859, 863: 1961 All Cri R 198: 1961 MPC 441.

Bench Strength **2**. Coram: **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 15-2-1961]

Emperor v. Ghasi, AIR 1930 All 329: ILR 52 All 214: 31 Cri LJ 711, overruled

Emperor v. Kamlapat, AIR 1926 All 382: ILR 48 All 368: 27 Cri LJ 860; Dalganjan v. State, AIR 1956 All 630: 1956 Cri LJ 1176; State v. Rama, AIR 1956 Raj 190: ILR (1956) 6 Raj 772: 1956 Cri LJ 1430, approved

— S. 424 r/w S. 37 *See also* Ss. 406, 420 and 424 r/w S. 37

— S. 425 *See also* Ss. 34, 120-B, 177, 181, 191, 192, 425 and 500

See also Ss. 120-B, 177, 181, 191, 192, 425 and 500

See also Ss. 268, 290, 291 and 425

See also Ss. 378, 403, 405, 415 and 425

See also Ss. 427 and 425

[10553] — S. 425 — Mischief — Arson and burning of property and records

The target of arson, was an educational institution and particularly the registers and other papers maintained by it. The object obviously was vandalism, to disrupt its working by burning its records and to create a scare so that neither the teaching staff nor the pupils would dare attend it for prosecution of studies. The parents dare not henceforth send their wards for fear that the school might be set on fire while they are in it. The bomb was manifestly placed in the premises for creating that scare. It could not have been intended for any other purpose after the records and furniture had been set on fire. In these circumstances, the alleged acts did not merely constitute mischief under S. 425 of the Penal Code, but constituted such mischief which disturbed or was likely to disturb public order. *Nagendra Nath Mondal* v. *State of W.B.*, (1972) 1 SCC 498: 1972 SCC (Cri) 227: AIR 1972 SC 665: (1972) 3 SCR 75: 1972 Cri LJ 482.

Bench Strength **2**. Coram: **J.M. Shelat** and *H.R. Khanna*, JJ. [Date of decision: 13-1-1972]

[10554] — S. 425 — Mischief — Ingredients — ***Ownership and possession of the property is not relevant — Even though the property belongs to the accused, if the ingredients are made out, accused can be held to have committed mischief***

There are three ingredients of the section which are: (*i*) intention to cause or knowledge that he is likely to cause wrongful loss or damage to the public or to any person; (*ii*) causing destruction of some property or any change in the property or in the situation thereof; and (*iii*) the change so made destroying or diminishing the value or utility or affecting it injuriously. For the purpose of Section 425, ownership or possession of the property is not relevant. Even if the property belongs to the accused himself, if the ingredients are made out, mischief is committed, as is evident from Illustrations (*d*) and (*e*) to Section 425. The complaints clearly allege that NEPC India had removed the engines thereby making a change in the aircrafts and that such removal has diminished the value and utility of the aircrafts and affected them injuriously, thereby causing loss and damage to IOC, which has the right to possess the entire aircraft. The allegations clearly constitute the offence of "mischief". The Court is not concerned with the proof or ultimate decision. (Para 37)

Thus the High Court was not justified in quashing the complaints/criminal proceedings in entirety. The allegations in the complaints are sufficient to constitute offences under Sections 415 and 425 IPC. Accordingly, the appeals are allowed in part and the order of the High Court insofar as it quashes the complaints under Sections 415 and 425 is set aside. (Para 38). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[10555] — Ss. 425 and 429 — Ingredients and applicability of S. 429 — ***If commission of 'mischief' as defined under S. 425 is not made out S. 429 is not attracted***

Once the applicability of Section 425 IPC dealing with 'mischief' is ruled out on such material there would remain no occasion to invoke Section 429 which for its applicability requires the prosecution to show in the first instance any material against the accused concerned indicating the commission of mischief by the accused. *Keshub Mahindra* v. *State of M.P.*, (1996) 6 SCC 129: 1996 SCC (Cri) 1124.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and **S.B. Majmudar**, J. [Date of decision: 13-9-1996]

— S. 426 *See also* Ss. 302, 506, 324, 426, 427, 435, 143, 144, 147 and 148

See also Ss. 409, 422, 426 and 120-B

See also Ss. 420, 120-B and 426

See also Ss. 447 and 426

See also Ss. 503, 506, 447 and 426

— S. 427 *See also* Ss. 147, 148, 323, 324, 149, 427 and 395

See also Ss. 147, 148, 324, 447, 448, 427, 379, 307 and 302 r/w S. 149

See also Ss. 147, 427 r/w 149 and 323 r/w 149

See also Ss. 167, 109 and 427

See also Ss. 302, 148, 147, 452 and 427

See also Ss. 302, 307, 323, 324, 427, 448 and 34

See also Ss. 302, 307, 324, 323, 427, 453, 506 Pt. II, S. 147 r/w S. 149 and S. 148

See also Ss. 302, 506, 324, 426, 427, 435, 143, 144, 147 and 148

See also Ss. 304 Pt. II/149 and Ss. 148, 452, 427, 325 and S. 302

See also Ss. 307, 149, 147, 427 and 324

See also Ss. 307, 427, 323/120-B, 148 and 149

See also Ss. 307, 427 and 448

See also Ss. 323, 506, 427, 354 and 452

See also Ss. 324, 427 and 504

See also Ss. 395, 427, 506 Pt. II and S. 34

See also Ss. 420/34 and 427 and 384

See also Ss. 436, 447, 427, 147 and 506

See also Ss. 447, 341, 323 and 427

See also Ss. 452, 232, 427, 506 and 147 to 149

[10556] — Ss. 427 and 425 — Applicability of S. 427 — Where the allegations against the accused did not cover the ingredients of S. 425, held, the accused could not be convicted under S. 427 either (Para 5). *Krishna Gopal Singh* v. *State of U.P.*, 2000 SCC (Cri) 93: AIR 2000 SC 3616.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 9-2-1999]

— S. 427 r/w S. 149 *See also* Ss. 302, 148, 323, 325, 452, 436, 427 r/w S. 149

— Ss. 427/34 *See also* Ss. 149, 326/34, 324/34, 427/34, 450 and 392, 395 and 397

— Ss. 428/34 *See also* Ss. 447/379 and 428/34

— S. 429 *See also* Ss. 147, 323, 325, 429 and 436 r/w S. 149

See also Ss. 304 Pt. II, 326, 324 and 429 and 304-A, 336, 337 and 338

See also Ss. 425 and 429

[10557] — S. 429 — Ingredients of offence under, different from those under Wild Life (Protection) Act, 1972, S. 9(1) r/w S. 50(1)

Prima facie, the ingredients of an offence under S. 9(1) r/w S. 50(1) of the Act require for establishment of that offence certain ingredients which are not part of the offence under S. 429 and vice versa. *State of Bihar* v. *Murad Ali Khan*, (1988) 4 SCC 655: 1989 SCC (Cri) 27: AIR 1989 SC 1.

Bench Strength **2**. Coram: *Ranganath Misra* and **M.N. Venkatachaliah**, JJ. [Date of decision: 10-10-1988]

— S. 429 r/w S. 149 *See also* Ss. 302 r/w S. 149, S. 364 r/w S. 149, S. 429 r/w S. 149 and S. 436 r/w S. 149

— S. 430 *See also* Ss. 409 and 430

[10558] — Ss. 430/120-B — Matter of civil nature — Attempt of complainant to involve the appellant's harassment — *Commitment quashed. Sk. Alimuddin Ahmed* v. *State of W.B.*, (1972) 4 SCC 845: AIR 1971 SC 1371: 1971 Cri LJ 1100.

Bench Strength **2**. Coram: *S.M. Sikri, C.J.* and **P. Jaganmohan Reddy**, J. [Date of decision: 22-3-1971]

— S. 435 *See also* Ss. 149, 323, 325 and 435

See also Ss. 302, 307, 435, 148, 120-B and 149

See also Ss. 302, 506, 324, 426, 427, 435, 143, 144, 147 and 148

See also Ss. 323, 325 and 435

— S. 436 *See also* Ss. 107, 109 and 436

See also Ss. 109, 115 and 436

See also Ss. 153-A, 201, 302, 326, 324, 419 and 436

See also Ss. 300 Exception 1, 304 Pt. I, 302/149, 436 and 147

See also Ss. 302, 148, 302/149 and 436

See also Ss. 302, 148, 323, 325, 452, 436, 427 r/w S. 149

See also Ss. 302, 307 and 436

See also Ss. 302, 307, 436 and 147 to 149

See also Ss. 302, 307, 436 and 440 r/w S. 149

See also Ss. 302, 326, 436, 147, 148 r/w S. 149

See also Ss. 302 r/w 34 and 436

See also Ss. 302 r/w 148 and 149, 323, 324 and 436

See also Ss. 302/34, 201 and 436

[10559] — S. 436 — Absence of name of accused in FIR lodged under S. 436 — *Act of setting fire to school building and placing bomb in its premises — Accused granted bail — Accused obtaining certificate of good character — Held, these circumstances would not affect legality of detention W.B. (Prevention of Violent Activities) Act, 1970 (19 of 1970), S. 3(2)(b) & (d)*

Absence of name of the accused in the first information report can only mean that the Headmaster and other members of the staff refrained from doing so out of fear. Neither the fact of the petitioner having been granted conditional bail nor the fact of his having procured the certificate of good character by themselves further his contention that the impugned order was passed on baseless or false allegations. What the Court has to see is whether the incidents set out in the grounds for detention would clearly fall under S. 3(2)(*b*) and (*d*) of the Act. *Sasthi Chandra Roy* v. *State of W.B.*, (1973) 4 SCC 82: 1973 SCC (Cri) 729: AIR 1972 SC 2134.

Bench Strength **2**. Coram: **J.M. Shelat** and *H.R. Khanna*, JJ. [Date of decision: 24-4-1972]

[10560] — S. 436 — Sentence — Period already undergone — Mitigating circumstances — Appellant-accused convicted under S. 436 and sentenced to RI for 3 years — *In order to live in peace and tranquillity, appellant and widow of complainant entering into compromise on intervention of local elders whereunder an amount of Rs 1 lakh was given by appellant to the widow aged about 61 years as solatium — Appellant was a young married man having small children, only earning member of the family, and had spend more than seven months in jail — Held, offence punishable under S. 436 being non-compoundable, the same cannot be compounded on basis of compromise entered into between the parties — However, having regard to the circumstances interest of justice would be met if sentence is reduced to period already undergone — CrPC, 1973, S. 320* (Paras 7 to 10). *Amar Nath Shukla* v. *State of Uttaranchal*, (2009) 9 SCC 390: (2009) 82 AIC 14 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-8-2009]

[10561] — Ss. 436, 447, 427, 147 and 506 — Refusal by High Court to grant leave to appeal against acquittal of respondent-accused without assigning reasons — Impropriety — *Counsel for appellant State contending that it was imperative for the High Court to indicate reasons as to why prayer for grant of leave was found untenable — In absence of any such reasons, the order of High Court, contended, was indefensible — Relying on* Bhag Singh case, *(2004) 1 SCC 547, held, impugned judgment of High Court is unsustainable and is set aside — Leave granted to the State to file appeal — High Court directed to entertain the appeal and after formal notice to the respondents, to hear and dispose it of in accordance with law, uninfluenced by any observation made in the present appeal — CrPC, 1973 — S. 378(3)* (Paras 2, 6 and 8). *State of H.P.* v. *Paras Ram*, (2008) 3 SCC 655: (2008) 2 SCC (Cri) 117: AIR 2008 SC 930: (2008) 62 AIC 47 (SC): 2008 Cri LJ 1026: (2008) 105 Cut LT 392.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 3-1-2008]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, followed

[10562] — Ss. 436 and 477-A — Respondent alleged to have set on fire his office causing damage to the office building and the documents therein, with a view to destroy the evidence that was likely to be used against him in a pending departmental enquiry — Circumstantial evidence — *Held, out of the seven circumstances relied on by the prosecution at least five based on evidence of PW 9 alone and if that evidence is disbelieved then leftover circumstances like existence of motive and the respondent's conduct, are not sufficient to base the conviction — Hence, High Court's judgment acquitting the respondent affirmed* (Paras 4 and 7). *State of H.P.* v. *Rajinder Singh*, (2008) 17 SCC 737.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

— S. 436 r/w S. 34 *See also* Ss. 302 and S. 436 r/w S. 34

See also Ss. 396 and 436 r/w S. 34

— S. 436 r/w S. 149 *See also* Ss. 147, 323, 325, 429 and 436 r/w S. 149

See also Ss. 302 r/w S. 149, S. 364 r/w S. 149, S. 429 r/w S. 149 and S. 436 r/w S. 149

[10563] — Ss. 436 r/w 149, 364 r/w 149 and 302 r/w 149 — Houses burnt and two persons charred to death by mob — Two persons also found to be missing — *Accused-appellants members of the mob — Specific overt act of actively participating in setting fire and throwing the victims into the fire disbelieved — No evidence adduced showing that the missing persons had been murdered — None of the accused shown to be armed — On facts held, common object of the unlawful assembly of committing murder not established — In absence of any evidence missing persons also cannot also be held to have been murdered — But common object of setting fire punishable under Ss. 436 read with 149 established beyond reasonable doubt — Hence conviction under Ss. 302 read with 149 and sentence of life imprisonment set aside — Sentence under Ss. 436 read with 149 and 364 read with 149 reduced from 10 years to 5 years. Mukteshwar Rai* v. *State of Bihar*, 1992 Supp (1) SCC 727: 1992 SCC (Cri) 349: AIR 1992 SC 483: 1992 Cri LJ 518.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 25-9-1991]

— Ss. 436/34 *See also* Ss. 302/34 and Ss. 436/34

[10564] — Ss. 436/34, 304, Pt. II/34 and 323/34 — On facts held, there was no infirmity in the appreciation of evidence by the High Court calling for any interference with the convictions under the various counts. *Bisram* v. *State (Delhi Admn.)*, 1984 Supp SCC 620: 1983 SCC (Cri) 129.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 14-12-1982]

— Ss. 436/149 *See also* Ss. 149, 302/149, 148, 436/149, 380 and 201/149

See also Ss. 302/149 and 436/149

— **Ss. 438/34** *See also* Ss. 353/34 and 438/34

— **S. 439** *See also* Ss. 406, 409, 420, 439, 471, 473 and 120-B

— **S. 440** *See also* Ss. 302, 307, 341, 440 and 120-B

See also Ss. 302 and 440

— **S. 440 r/w S. 149** *See also* Ss. 302, 307, 436 and 440 r/w S. 149

— **S. 441** *See also* Ss. 96, 97, 99, 104, 300 Exception 2 and 441

See also Ss. 97 Secondly, 99, 103, 441 and 300 Exception 2

See also Ss. 302 and 441

See also Ss. 424 and 441

[10565] — S. 441 — Accused, held, committed no trespass if they acted under bona fide claim of their legal right. *Hathi Singh* v. *State of Rajasthan*, (1979) 4 SCC 340: 1979 SCC (Cri) 976.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 9-1-1979]

[10566] — S. 441 — Criminal trespass — Meaning of — *Intention to commit an offence or to intimidate, insult or annoy the person in possession of property essential*

It is evident from the provision of Section 441 IPC that unauthorised entry into or upon property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate, insult or annoy the person in possession of the property. In other words, unless any of the intentions referred in Section 441 is proved no offence of criminal trespass can be said to have been committed. Such an intention has to be gathered from the facts and circumstances of a given case. (Para 21). *Rajinder* v. *State of Haryana*, (1995) 5 SCC 187: 1995 SCC (Cri) 852.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-7-1995]

[10567] — S. 441 — Criminal trespass — Encroachment on public properties by raising hutments on payments and in slum areas by poor people — *Held, on facts, does not amount to criminal trespass*

The encroachments committed by the petitioners are involuntary acts in the sense that those acts are compelled by inevitable circumstances and are not guided by choice. They manage to find a habitat in the pavements or slums out of sheer helplessness. Their intention or object in doing so is not to 'commit an offence or intimidate, insult or annoy any person', which is the gist of the offence of 'criminal trespass' under S. 441 of the Penal Code. *Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545: AIR 1986 SC 180.

Bench Strength **5**. Coram: **Y.V. Chandrachud, C.J.** and *S. Murtaza Fazal Ali, V.D. Tulzapurkar, O. Chinnappa Reddy* and *A. Varadarajan*, JJ. [Date of decision: 10-7-1985]

[10568] — S. 441 — Entry and stay of striking employees in the employer's premises does not constitute criminal trespass — *Intention to pressurise the management does not constitute the necessary mens rea under S. 441*

Even if one assumes that the employees' entry in the premises was unlawful or that their continuance in the premises became unlawful, it is difficult to appreciate the argument that the said entry was made with intent to insult or annoy the superior officers. The sole intention of the strikers obviously was to put pressure on the Bank to concede their demands. Even if the strikers might have known that the strike may annoy or insult the Bank's officers it is difficult to hold that such knowledge would necessarily lead to the inference of the requisite intention. In every case where the impugned entry causes annoyance or insult it cannot be said to be actuated by the intention to cause the said result. The distinction between knowledge and intention is quite clear, and that distinction must be borne in mind in deciding whether or not in the present case the strikers were actuated by the requisite intention. *Punjab National Bank Ltd.* v. *All India Punjab National Bank Employees' Federation*, AIR 1960 SC 160, 176: (1960) 1 SCR 806: (1959) 2 LLJ 666: (1959-60) 17 FJR 199.

Bench Strength **3**. Coram: *B.P. Sinha*[1], **P.B. Gajendragadkar**[1] and **K. Subba Rao**[2], JJ. [Date of decision: 24-9-1959]

AIR 1934 Pat 158, distinguished

[10569] — S. 441 — Ingredients of — *Warrant of execution of possession becoming unexecutable — Persons going to the land to take possession on the basis of such a warrant — Ingredients of S. 441 explained — No offence in the absence of intention to commit offence*

In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering; that in deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry.

When the accused went to the land armed with a warrant of execution, which had become unexecutable it is reasonable to think that the intention which prompted and dominated their action was to execute the warrants. They could not reasonably be expected to know that the warrants had ceased to be executable in law. Therefore criminal trespass was not committed or apprehended from the acts of accused who entered the property. *Mathri* v. *State of Punjab*, AIR 1964 SC 986: (1964) 5 SCR 916: (1964) 2 Cri LJ 57, 62.

Bench Strength **2**. Coram: *P.B. Gajendragadkar* and **K.C. Das Gupta**, JJ. [Date of decision: 11-12-1963]

Emperor v. Motilal, AIR 1925 All 540: ILR 47 ALL 855: 26 Cri LJ 1273; Bhagwant v. Kedari, ILR 25 Bom 202: 2 Bom LR 986; Emperor v. D'cunha, AIR 1936 Bom 15: 37 Bom LR 880: 1937 Cri LJ 309; Nizamuddin v. Jinnat Husain, AIR 1948 Cal 130: 49 Cri LJ 120; Satish Chandra Modak v. King, AIR 1949 Cal 107: ILR (1949) 2 Cal 171: 50 Cri LJ 161; Bala Krishna Ghosh v. State, AIR 1957 Cal 385: 1957 Cri LJ 719; State v. Abdul Sukur, AIR 1960 Cal 189: 1950 Cri LJ 342; Queen v. Rayapadayachi, ILR 19 Mad 240; Vullappa v. Bhima Row, AIR 1918 Mad 136: 19 Cri LJ 162, approved

Kesar Singh v. Rex, AIR 1950 All 157: 51 Cri LJ 496; Emperor v. Laxman Raghunath, ILR 26 Bom 558: 4 Bom LR 280; Sellamuthu v. Pallumuthu, 12 Cri LJ 30: ILR 35 Mad 186, overruled

[10570] — S. 441 — Lapse of time between commission of robbery or theft and recovery of crime articles — *Whether possession of the articles recent*

No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles are of the latter kind, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. There was no lapse of time between the date of his arrest and the recovery of the stolen property. *Earabhadrappa* v. *State of Karnataka*, (1983) 2 SCC 330: 1983 SCC (Cri) 447: AIR 1983 SC 446: 1983 Cri LJ 846.

Bench Strength **2**. Coram: **A.P. Sen** and *E.S. Venkataramiah*, JJ. [Date of decision: 11-3-1983]

[10571] — Ss. 441 and 447 — 'Intent to annoy' — Meaning of

There cannot be any doubt that the intention of the respondents was to annoy the appellant who was in possession of the case land. The litigation started in 1951 and it was on February 3, 1963, that the appellant was able to obtain possession. It is only three weeks after that day that the respondents chose to trespass and start construction. In this case, we cannot find any other dominant intention which promoted the trespass. The land in dispute was lying vacant after the appellant obtained possession and the actual possession must be of the appellant. Further the law does not require that the intention must be to annoy a person who is actually present at the time of trespass. *Rash Behari Chatterjee* v. *Fagu Shaw*, (1969) 2 SCC 216: AIR 1970 SC 20: 1970 Cri LJ 4.

Bench Strength **3**. Coram: **S.M. Sikri**, *R.S. Bachawat* and *V. Ramaswami*, JJ. [Date of decision: 28-4-1969]

[10572] — Ss. 441 and 448 — Trespass under, is a continuing offence within the meaning of S. 472 CrPC

House trespass is punishable under S. 448 of the Indian Penal Code. When entry into or upon property in possession of another is lawful then unlawfully remaining upon such property with the object of intimidating, insulting or annoying the person in possession of the property would be criminal trespass. The offence would be continuing so long as the trespass is not lifted or vacated and intimidation, insult or annoyance of the person legally in possession of the property is not stopped. (Para 14). *Gokak Patel Volkart Ltd.* v. *Dundayya Gurushiddaiah Hiremath*, (1991) 2 SCC 141: 1991 SCC (Cri) 315: (1991) 1 LLN 970: (1991) 71 Comp Cas 403.

Bench Strength **2**. Coram: **K.N. Saikia** and *M.M. Punchhi*, JJ. [Date of decision: 14-2-1991]

[10573] — Ss. 441 (as amended by U.P. Act 31 of 1961) and 448 — "Intent to commit an offence" essential condition for constituting offence under — *Mere trespass in absence of this condition would not amount to 'criminal trespass' — Matter in the nature of a civil dispute regarding eviction cannot be adjudicated under*

Offence under S. 441, IPC is not made out in this case and conviction under S. 448, IPC was therefore, not justified. Every trespass does not amount to criminal trespass within the meaning of S. 441, IPC. In order to satisfy the conditions of S. 441 it must be established that the appellant entered in possession over the premises with intent to commit an offence. But in the complaint made by the respondent there was absolutely no allegation in this regard. On the facts of the present case at the most it can be said that after the death of 'R', the leave and licence granted by him to the appellant came to an end and the appellant stayed in the premises thereafter as a trespasser. The appellant might be in a position to vindicate her right and justify her possession if a suit for eviction was filed in the civil court. This is thus essentially a civil matter which could be properly adjudicated upon by a competent civil court. To initiate criminal proceedings in the circumstances appears to be only an abuse of the process of the court. *Kanwal Sood* v. *Nawal Kishore*, (1983) 3 SCC 25: 1983 SCC (Cri) 553: AIR 1983 SC 159: 1983 ALJ 814: 1983 Cri LJ 173.

Bench Strength **2**. Coram: *D.A. Desai* and **R.B. Misra**, JJ. [Date of decision: 26-11-1982]

— S. 447 *See also* Ss. 96, 100, 99 and 447

See also Ss. 96, 100, 147, 353, 447 and 307 r/w S. 149

See also Ss. 100, 99 and 447

See also Ss. 100, 147, 353, 447 and 307 r/w S. 149

See also Ss. 120-B, 148, 147, 447 and 302 r/w S. 34 and S. 302 r/w S. 149

See also Ss. 143, 147, 447 and 448

See also Ss. 147, 148, 324, 447, 448, 427, 379, 307 and 302 r/w S. 149

See also Ss. 147, 447, 325/149 and 304 Pt. II/149

See also Ss. 300 Thirdly and 302 and 304 Pt. II and 447

See also Ss. 302 and 447

See also Ss. 302, 447 and 34

See also Ss. 302/149, 148, 201 and 447

See also Ss. 304 Pt. II, 323, 447, 96, 97 and 100

See also Ss. 304 Pt. II, 325 and 447

See also Ss. 307, 323, 326 and 447

See also Ss. 395, 447 and 506

See also Ss. 436, 447, 427, 147 and 506

See also Ss. 441 and 447

See also Ss. 503, 506, 447 and 426

[10574] — S. 447 — Trespass — Whether accused were in possession of land in question — *A-13 purchasing from S land in possession of deceased X — Thereafter, A-13 obtaining an order of eviction of X — Evidence indicating that the said order was followed by the execution proceeding in which actual delivery of possession was effected and A-13 came in possession of the said land — That apart, there was even an order passed by the Magistrate under S. 144 CrPC against X — Held, trial court was justified in holding that the accused were in actual physical possession of the said land — High Court erred in setting aside this finding* (Para 18). *Vajrapu Sambayya Naidu* v. *State of A.P.*, (2004) 10 SCC 152: 2004 SCC (Cri) 1768: AIR 2003 SC 3706: 2003 Cri LJ 4433.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 2-9-2003]

[10575] — Ss. 447, 341, 323 and 427 — Summons case — Stopping of proceedings and its subsequent reopening — Reasons for — Necessary requirement of — Effect of the order passed under S. 258 CrPC whether is either acquittal or discharge — *Held, reasons have to be assigned for reopening the case against accused — Further held, since appellant was not arrested in the present case, she cannot claim the benefit of discharge as no release order was passed — As such proceedings could be revived — But revival by an unreasoned order was bad — Hence matter remitted for fresh consideration — Constitution of India, Art. 20(2) — CrPC, 1973, Ss. 245, 258 and 300(1) & (5)*

A first information report was lodged for commission of offences punishable under Sections 447, 341, 323 and 427 IPC. On filing of the charge-sheet cognizance of offences was taken in 2002. Processes were issued against the appellant-accused. The same having not been served, non-bailable warrant was issued. In 2004 the Magistrate, in view of non-service of non-bailable warrant passed an order under Section 258 CrPC that further proceedings against the appellant be stopped.

In 2006, a requisition was filed praying for issuance of non-bailable warrant of arrest to the accused upon reopening the case. On the basis of the said purported requisition, the case was reopened and a non-bailable warrant of arrest was issued against the appellant.

The appellant filed an application under Section 482 CrPC before the High Court which was dismissed.

Disposing of the appeal,

Held :

An order of discharge can be passed in terms of Section 245 CrPC. For passing an order under the aforesaid provision, reasons are required to be recorded. It was obligatory on the part of the Magistrate to apply his mind with regard thereto. (Para 14)

In this case, no order for release of the accused was passed. No order of releasing the accused was necessary to be passed as the appellant was not before the court. She had not even been arrested.

Non-bailable warrant of arrest issued against her had not been executed. The benefit of effect of discharge could have been claimed by the appellant had she been directed to be released, the effect of discharge being correlated with release. If she had not been released, the question of her obtaining the benefit of the effect of discharge does not arise. (Paras 13 and 14)

Although the High Court was correct that the Magistrate in a situation of this nature could revive the proceedings, but, the Magistrate committed an error in not recording the reasons therefor. The Magistrate is directed to pass an appropriate order upon consideration of the requisition filed by the police authorities afresh. (Paras 14 and 15). *Renuka* v. *State of Karnataka*, (2009) 14 SCC 345: (2009) 76 AIC 147 (SC): 2009 Cri LJ 2245.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-2-2009]

Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82, relied on

[10576] — Ss. 447 and 426 — Sentence — Sarpanch and panchas removing embankment mala fide on complainant's land — *Enhancement of sentence justified. Nilkanth* v. *State of Maharashtra*, (1969) 2 SCWR 432.

Bench Strength **3**. Coram: *Sikri*, *Mitter* and **Jaganmohan Reddy**, JJ. [Date of decision: 1-9-1969]

[10577] — Ss. 447/379 and 428/34 — Prima facie case — Discharge under S. 253(2), CrPC, not proper

Where a prima facie case is made out regarding alleged criminal trespass etc. discharge of the accused person by bringing in a discussion of title to property is improper. *Mahant Abhey Dass* v. *S. Gurdial Singh*, (1972) 4 SCC (N) 44: 1971 SCC (Cri) 244: AIR 1971 SC 834: 1971 Cri LJ 691.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and *P.Jaganmohan Reddy* and *I.D. Dua*, JJ. [Date of decision: 11-2-1971]

— S. 448 *See also* Ss. 143, 147, 447 and 448

See also Ss. 147, 148, 324, 447, 448, 427, 379, 307 and 302 r/w S. 149

See also Ss. 148, 448, 307, 302 and 120-B r/w S. 149

See also Ss. 302, 307, 148 and 448

See also Ss. 302, 307, 323, 324, 427, 448 and 34

See also Ss. 302, 364, 448 and 148

See also Ss. 302, 448, 326, 147, 148, 149 and 34

See also Ss. 307, 427 and 448

See also Ss. 376 and 448

See also Ss. 441 (as amended by U.P. Act 31 of 1961) and 448

See also Ss. 441 and 448

[10578] — S. 448 — High Court refusing to quash proceedings for offence under — *On meticulous examination of the record, as well as statements under S. 161, CrPC, held, there was no material connecting the appellant with the offence of criminal trespass — Allegations vague and an afterthought — Charged quashed but not to affect proceedings against other accused under Ss. 448 and 380, IPC — Constitution of India, Art. 136. Bhaskar Chattoraj* v. *State of W.B.*, 1991 Supp (2) SCC 574: 1991 SCC (Cri) 1077: AIR 1991 SC 317: 1991 Cri LJ 451.

Bench Strength **3**. Coram: **S. Ratnavel Pandian**, *M. Fathima Beevi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 14-11-1990]

[10579] — S. 448 — Ingredients of — Held, on facts, commission of offence under clearly established

In order to sustain the conviction under Section 448 IPC it must be found that the intention of the accused was to commit an offence or to intimidate, insult or annoy the complainant. There must be unlawful entry and there must be proof of one or the other of the intentions mentioned in Section 441 IPC. In the case at hand, evidence clearly establishes the commission of offence punishable under Section 448. (Para 10). *Vidyadharan* v. *State of Kerala*, (2004) 1 SCC 215: 2004 SCC (Cri) 260: AIR 2004 SC 536: (2004) 1 KLT 105: 2004 Cri LJ 605: (2004) 2 MPLJ 251.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 14-11-2003]

[10580] — Ss. 448 and 354 — Deceased committing suicide due to outraging of her modesty by tenant/house trespasser — Conviction under Ss. 448 and 354 on the sole basis of dying declaration, upheld

The landlords of the appellant-accused (tenant) were parents of the deceased girl. The accused was soliciting the deceased for sexual intercourse. On 12-11-1999 at around 1 p.m., taking advantage of the absence of other family members, the accused allegedly came behind, caught hold of the deceased when she was collecting dried clothes. The deceased threatened him saying that she would complain to her mother about the acts of the accused, he in turn replied that he himself, would complain to her mother saying that she herself called him and thereby, would defame her and her family. Feeling disturbed and suffering from emotional turmoil, the deceased went into a room, poured kerosene and set herself on fire. On receipt of intimation from the hospital, police registered a case against the accused for the offences punishable under Sections 448, 354 and 306 IPC. The trial court placed reliance on the dying declarations (Exts. P-4 to P-9) recorded by a Civil Judge and a Head Constable on 12-11-1999. The High Court found that offence under Section 306 IPC as noted above was not made out. However, it concurred with the trial Judge that the offences punishable under Sections 354 and 448 IPC were clearly made out. Accordingly, the impugned judgment was passed.

Dismissing the appeal,

Held :

No interference is called for as the trial court and the High Court have analysed the evidence of the witnesses and the statements made in the dying declarations to hold the accused guilty. There is no substance in the plea that the deceased was not in a physical condition to give a statement. So far as the practicability of the deceased giving a dying declaration is concerned it is significant that the Senior Civil Judge (PW 7) and the constable (PW 10) have described in detail as to what the deceased has stated to each one of them. There was not even any suggestion to either of the witnesses that the deceased was not in a fit condition to give any statement as claimed. There is no reason to doubt the veracity of the dying declarations especially since there is consistency between them. There is no reason why the judicial officer should make a false statement about the dying declaration. (Paras 9 to 13). *Sk. Nagoor* v. *State of A.P.*, (2008) 15 SCC 471: AIR 2008 SC 1500: (2008) 64 AIC 87 (SC): 2008 Cri LJ 2079.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 20-2-2008]

Bapu v. State of Maharashtra, (2006) 12 SCC 73: (2007) 2 SCC (Cri) 545, relied on

[10581] — Ss. 448 and 506 Pt. II — SLP for compounding before Supreme Court of offences under Ss. 448 and 506 Pt. II — *Compounding permitted on the condition that the accused contribute Rs 3000 to the Prime Minister's Relief Fund — CrPC, 1973 — S. 320. Devender Kumar Sharma* v. *State of M.P.*, 1994 SCC (Cri) 145.

Bench Strength **2**. Coram: *K. Ramaswamy* and *N.P. Singh*, JJ. [Date of decision: 30-4-1993]

— S. 449 *See also* Ss. 149, 302/149, 327, 336, 449 and 147

See also S. 149 r/w Ss. 302, 307, 449, 323 to 325 and 148

See also Ss. 302, 120-B, 307 r/w Ss. 149, 397, 147, 506 and 449

See also Ss. 302, 302/34 and 449

See also Ss. 302, 302/149, 148, 449, 326 and 326/149

See also Ss. 302, 307, 148, 449 and 201

See also Ss. 302, 364, 369, 376(2)(f), 392 and 449

See also Ss. 302, 392, 449 and 380

See also Ss. 302, 394, 397 and 449

See also Ss. 302 and 449

See also Ss. 302, 449 and 34

See also Ss. 302, 449, 379 and 201

See also Ss. 302 r/w Ss. 34 and 449, 460, 394

See also Ss. 302/34, 394/397 and 449

See also Ss. 302/34 and 449

See also Ss. 302/34, 449 and 326/34

See also Ss. 302/34, 457(1), 398, 120-B and 449

See also Ss. 302/149, 148 and 449

See also Ss. 302/149, 307/149, 148 and 449

See also Ss. 395, 396, 397 and 449

[10582] — S. 449 — Applicability of section does not depend upon actual accomplishment of purpose

An act can be said to be committed "in order to the committing of an offence" even though the offence may not be completed. Thus, if a person commits a house trespass with the purpose of the committing of theft but has failed to accomplish the purpose, it will be proper to say that he has committed the house trespass in order to the committing of theft. There can be no doubt that the words "in order to" have been used to mean "with the purpose of". If the purpose in committing the house trespass is the commission of an offence punishable with death the house trespass becomes punishable under S. 449 of the Penal Code. Whether or not the purpose was actually accomplished is quite irrelevant in these cases. The fact that the murder was not actually committed will not affect the applicability of S. 449 of the Penal Code. *Matiullah Sheikh* v. *State of W.B.*, AIR 1965 SC 132: (1964) 6 SCR 978: (1965) 1 Cri LJ 126.

Bench Strength **3**. Coram: *K. Subba Rao*, **K.C. Das Gupta** and *Raghubar Dayal*, JJ. [Date of decision: 3-3-1964]

[10583] — S. 449 — Expression 'in order to' — Means 'with the purpose of'. *Matiullah Sheikh* v.

State of W.B., AIR 1965 SC 132: (1964) 6 SCR 978: (1965) 1 Cri LJ 126.

Bench Strength **3**. Coram: *K. Subba Rao*, **K.C. Das Gupta** and *Raghubar Dayal*, JJ. [Date of decision: 3-3-1964]

[10584] — Ss. 449, 394/397 and 302/34 — Robbery and murder committed in one and the same transaction — Recovery of stolen articles soon after the occurrence from the possession of the accused — *Held, it can be presumed that the person in whose possession the stolen articles were found committed the robbery and murder — Evidence Act, 1872 — S. 114 Ill. (a). Mukund* v. *State of M.P.*, (1997) 10 SCC 130: 1997 SCC (Cri) 799: AIR 1997 SC 2622: 1997 Cri LJ 3182.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 2-5-1997]

[10585] — Ss. 449, 458, 459, 392, 397, 302 and 307 — Fingerprint expert — Though the evidence of the fingerprint expert was free from any infirmity, but in view of the suspicious manner in which the fingerprints had been obtained, held, conviction cannot be sustained on the opinion of the expert alone — *Evidence Act, 1872 — S. 45* (Paras 21 to 24). *Chandran* v. *State of Kerala*, 1991 Supp (1) SCC 39: 1991 SCC (Cri) 245: AIR 1990 SC 2148: 1990 Cri LJ 2296.

Bench Strength **2**. Coram: *B.C. Ray* and **S. Ratnavel Pandian**, JJ. [Date of decision: 28-8-1990]

[10586] — Ss. 449, 458, 459, 392, 397, 302 and 307 — Recovery of crime articles made by police officers — Circumstantial Evidence — *None of the recoveries made pursuant to any statement made by accused — On scrutiny of evidence regarding the recoveries, held, the recoveries failed to clinchingly establish the guilt of the accused — Evidence Act, 1872 — S. 27. Chandran* v. *State of Kerala*, 1991 Supp (1) SCC 39: 1991 SCC (Cri) 245: AIR 1990 SC 2148: 1990 Cri LJ 2296.

Bench Strength **2**. Coram: *B.C. Ray* and **S. Ratnavel Pandian**, JJ. [Date of decision: 28-8-1990]

— S. 450 *See also* Ss. 149, 326/34, 324/34, 427/34, 450 and 392, 395 and 397

See also Ss. 302, 307, 148, 450, r/w Ss. 149 and 120-B

See also Ss. 375, 376 and 450

See also Ss. 376 and 450

See also Ss. 395, 397 and 450

See also Ss. 396, 397, 450 and 397/149

[10587] — Ss. 450, 302 r/w S. 34 — Accused charged for offences under TADA Act as well as IPC, acquitted of the charges under TADA Act but convicted for the offences under IPC only on the basis of the confessional statement recorded during the investigation in the said case — Propriety of — *Setting aside the conviction and sentence, held, confessional statement recorded during the investigation in a TADA case cannot be used for convicting an accused for offences punishable under IPC, when offences against such accused under the TADA Act have failed — TADA, 1987 — Ss. 15, 3 & 4*

The confessional statement recorded during the investigation in a TADA case cannot be used for convicting an accused for offences punishable under the Penal Code, when offences against such accused under TADA have failed. In the instant case, it is an admitted fact that the appellant has been acquitted of the charges framed under TADA and that, apart from the confessional statement, there is no other material before the court to support the prosecution case. In that view of the matter, the conviction and sentence passed by the trial court has to be set aside. (Paras 5 and 6). *Gurprit Singh* v. *State of Punjab*, (2002) 10 SCC 201: 2004 SCC (Cri) 466: AIR 2002 SC 2390.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.N. Variava*, JJ. [Date of decision: 20-9-2001]

Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431: 1997 SCC (Cri) 1094, relied on

Held to be per incuriam in Prakash Kumar v. State of Gujarat, (2005) 2 SCC 409

— S. 450 r/w S. 34 *See also* Ss. 326 and 450 r/w S. 34

[10588] — S. 450 [Ss. 302/148/149/450] — Conviction and sentence of appellants under — Sustainability — Murder trial — Five policemen accused of entering house of deceased with intention to rape her — Foiled by sons of deceased crying for help — *On suggestion of one accused to prevent implication another accused killed the deceased — On facts, held, there was no evidence that present appellants (two out of the five accused) had any role in the killing of the deceased lady — There was no evidence of common intention either — Hence, their conviction under S. 302, unsustainable — However, their conviction under other provisions mentioned in trial court judgment, upheld, as there was no doubt that appellants along with other co-accused committed criminal trespass into the house of the deceased and also formed unlawful assembly, though such attempt was frustrated by the presence of sons of the deceased — They surely had ill motive, although nature thereof was not proved — What could, however, be the nature thereof, was not known — Forcible entry in the house of the deceased, however, stands estab-*

lished — Ingredients of S. 450, thus, stand fully satisfied — Therefore, courts below have rightly found appellants guilty of commission of offence under the said provision (Paras 1, 3 and 7 to 10). *Surjit Singh* v. *State of Punjab*, (2007) 15 SCC 391.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 18-5-2007]

— S. 451 *See also* Ss. 4, 380 and 451

See also Ss. 148, 452, 392, 147 and 451

See also Ss. 149, 302/149, 148, 302, 451, 323/149 and 201/149

See also Ss. 149 and 302/149, 454, 451 and 148

See also Ss. 302/149, 454, 451 and 148

See also Ss. 376 and 451

See also Ss. 376, 511, 451 and 354

See also Ss. 452, 451 and 354

[10589] — Ss. 451 and 377 — House-trespass for committing unnatural offence — Evidence of victim of sex offence — Corroboration — Requirement of — *Trial court convicting and sentencing the respondent-accused for offences punishable under Ss. 451 and 377 IPC with fine to be paid to the victim — Appeal bringing no relief — Revision was filed before High Court which by the impugned order set aside the order of conviction and sentence and directed acquittal on the primary ground of absence of corroboration and alleged suppression of a report purported to have been given before the FIR in question was lodged — Held, an accused cannot cling to a fossil formula and insist on corroborative evidence, even if, taken as a whole, the case spoken to by the victim strikes a judicial mind as probable — The evidence of a victim of sexual offence is entitled to great weight, absence of corroboration notwithstanding — The rule regarding non-requirement of corroboration is equally applicable to a case relating to S. 377 IPC — On facts, held, the High Court has directed acquittal on untenable grounds — Impugned order of High Court is unsustainable and therefore set aside — Orders of the trial court and first appellate court restored — CrPC, 1973, S. 357(1)(b)*

An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity or dignity had ever occurred. She would be conscious of the danger of being ostracised by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. The evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. The rule regarding non-requirement of corroboration is equally applicable to a case of this nature, relating to Section 377 IPC. (Paras 7, 8 and 11)

The evidence of the victim who was 10 years of age at the time of occurrence and was about 14 years of age at the time of deposition in the Court has categorically and elaborately described the incident. She has graphically described as to how the offence was committed. (Para 12)

In cross-examination no material inconsistency has surfaced except some minor ones which are but natural. The High Court clearly lost sight of these factors and has directed acquittal on untenable grounds. It is unsustainable and is set aside. Orders of the trial court and first appellate court stand restored. (Para 13). *State of Kerala* v. *Kurissum Moottil Antony*, (2007) 1 SCC 627: (2007) 1 SCC (Cri) 403: (2006) 48 AIC 53 (SC).

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 9-11-2006]

Rafiq v. State of U.P., (1980) 4 SCC 262: 1980 SCC (Cri) 947; Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728; Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 Cri LJ 547; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550: 1990 SCC (Cri) 210; Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551: 2004 SCC (Cri) 31, relied on

[10590] — Ss. 451 and 381 r/w S. 120-B — Sentence — Absence of malicious intent — Offence committed for ulterior motive — Sentence reduced to period undergone — *Appellants found to have unlawfully trespassed into workshop of employer company and taken away three radioactive resources — They sentenced to RI for period of 3 years each (sentences to run concurrently) — No ulterior motive except to cause some nuisance to employer because of grievance against management occasioned by transfer of A-1 to Bombay — No evidence to show that appellants had stored the articles for some financial gain, nor they attempting to sell the articles — Appellants already undergoing sentence of more than 1 year and 9 months — Hence, sentence reduced to period* *already undergone* (Paras 1, 7 and 8). *Alistair* v. *State of T.N.*, (2009) 17 SCC 794.

Bench Strength **2**. Coram: *K.G. Balakrishnan, C.J.* and *P. Sathasivam*, J. [Date of decision: 5-2-2009]

— **S. 452** *See also* Ss. 96 and 302/34, 326, 324, 452

See also Ss. 148, 392 and 452

See also Ss. 148, 452, 392, 147 and 451

See also Ss. 149, 302/149, 325/149, 323/149 and 452

See also Ss. 302, 147, 148, 452, 341 and 149

See also Ss. 302, 148, 147, 452 and 427

See also Ss. 302, 148, 323, 325, 452, 436 and 427 r/w S. 149

See also Ss. 302, 307, 324, 148 and 452

See also Ss. 302, 307, 326, 324, 323, 342, 452 and 149

See also Ss. 302, 307, 452 and 34

See also Ss. 302 and 452

See also Ss. 302, 452 and 324

See also Ss. 302, 452 and 504

See also S. 302 r/w Ss. 34 and 149, 324 and 452

See also S. 302 r/w S. 149, Ss. 148 and 452

See also Ss. 302/34, 304, 452 and 300 Exception 4

See also Ss. 302/34, 307/34 and 452

See also Ss. 302/34 and 452

See also Ss. 302/34, 452 and 323/34

See also Ss. 302/149, 148 and 452

See also Ss. 302/149, 307/149, 452, 148 and 147

See also Ss. 302/149, 325/149, 323/149 and 452

See also Ss. 302/149, 452 and 307/149

See also Ss. 304 Pt. II/149 and Ss. 148, 452, 427, 325 and S. 302

See also Ss. 307 and 452

See also Ss. 323, 506, 427, 354 and 452

See also Ss. 324, 326 and 452

See also Ss. 325 and 452

See also Ss. 326 and 452

See also Ss. 354, 452, 323 and 506 Pt. II r/w S. 34

See also Ss. 376, 375, 148, 452, 149, 342, 323, 366 and 506

See also Ss. 376, 375, 148, 452, 149, 342, 323 and 506

See also Ss. 376/149, 375, 148, 452, 342, 323, 366 and 506

See also Ss. 376(1) r/w S. 511 and Ss. 324 and 452

See also Ss. 393 and 452

[10591] — Ss. 452, 232, 427, 506 and 147 to 149 — Further investigation — Scope of — Non-investigation of vital aspects in a counter FIR even after submission of two final reports — Further investigation whether permissible — *First final report in an allegation of forgery of mutation records and grievous hurt by gunshot injury submitting that no case made out — IO reinstituting investigation by seeking advice from Public Prosecutor when a writ order directed fair and impartial investigation — An SLP order (in between the submission of first and second final report) directing completion of investigation — IO seeking further investigation with regard to embezzlement of Rs 13.5 lakhs — IO seeking such further investigation after submission of second final report/charge-sheet — Magistrate granting permission for such further investigation — Legality — In terms of direction of Supreme Court, fact that Magistrate had given permission for further investigation and vital aspect of investigation not having been made, held, it was obligatory on the part of IO to complete the investigation and submit an appropriate report — CrPC, 1973, Ss. 173(8) and 482*

A son *MA* was involved in a dispute with his sister *ME* and mother *S* over a farmhouse. The first FIR for alleged offences under Sections 147, 148, 149, 452, 232, 427 and 506 IPC was lodged by *ME* for alleged raiding of the farmhouse by *MA* and 40 others and attacking *S*. The accused were allegedly arrested on the spot. SLPs (Crl.) Nos. 6061-62 of 2008 arose out of the first FIR (FIR No. 960 of 1999). The second FIR (FIR No. 960-A of 1999) was lodged by *MA* against *ME* and her farm employees alleging grievous hurt by a gunshot injury. *MA* also alleged forgery of documents whereof mutation records of the farmhouse were altered. SLP (Crl.) No. 5419 of 2008 arose out of the second FIR.

Charge-sheet was filed on the first FIR. On the second FIR, a final report was made stating that no case was made out. When a writ order (in WP No. 7230 of 1999) was passed by the High Court directing impartial inquiry, the DSP concerned, after seeking opinion of the Public Prosecutor, reopened the second FIR. Apprehending arrest, *ME* and *S* also moved the writ jurisdiction, whereupon, the High Court disposed of the matter directing fair, honest investigation without coercive steps against the parties. An SLP in this regard was also disposed of directing transfer of investigation to CB CID and continuation of protection to *ME*.

On the first FIR, *MA*'s trial was concluded and he was convicted. Thereafter, during pendency of appeal in the High Court, he was released on bail and his sentence was suspended. On the second FIR, charge-sheet was filed against *S* & *ME* and cognizance was taken. A petition under Section 482 CrPC (CMA No. 620 of 2006) to quash proceedings against them was dismissed but the High Court directed the trial court to consider exemption of personal attendance of *S* in terms of Section 205 CrPC and observed that they deserved protection. This was the impugned order in SLP (Crl.) No. 5419 of 2008.

SLPs (Crl.) Nos. 6061-62 of 2008 related to the issue of further investigation against *ME* and others with regard to embezzlement of Rs 13,50,000. The said further investigation was requested by CB CID after charge-sheet had been filed and Section 482 petition was disposed of. The said further investigation was allowed by the Magistrate and not interfered with by the High Court while exercising jurisdiction under Section 482 CrPC (CMA No. 518 of 2008).

Disposing of the appeals,

Held:

So far as the criminal appeals arising out of Special Leave Petitions (Crl.) Nos. 6061-62 of 2008 and Special Leave Petitions (Crl.) Nos. 6136-37 of 2008 are concerned, there cannot be any doubt whatsoever that the jurisdiction of the High Court under Section 482 is limited. (Para 42)

In Crime Case No. 960-A of 1999, the Supreme Court had directed CB CID to complete the investigation. It was, thus, obligatory on its part to complete the investigation and submit an appropriate report to the Court. Even otherwise the Magistrate has granted such permission. It is, however, not the case of *S*that the Magistrate had accepted the final report. Even in such a case, the Magistrate was bound to give notice to the complainant who could have objected thereto. A protest petition was also maintainable. (Paras 28, 25 and 27)

The investigation in Crime No. 960-A of 1999 runs from one extreme end to the other. Final reports were prepared twice. However, the Deputy Superintendent of Police, CB CID on the second final report so prepared sought to obtain the legal opinion of the Public Prosecutor. Such a course adopted may be irregular but it is not denied or disputed that a vital aspect of the matter of the investigation had not been carried out. It is not the case of the appellants i.e. *S* and *ME* that the opinion given by the Public Prosecutor was incorrect. (Para 25). *Manoj Narain Agrawal* v. *Shashi Agrawal*, (2009) 6 SCC 385: (2009) 2 SCC (Cri) 1096: (2009) 4 All LJ 528.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Kamlapati Trivedi v. State of W.B., (1980) 2 SCC 91: 1980 SCC (Cri) 347; Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; State of A.P. v. A.S. Peter, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427; Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740: 1999 SCC (Cri) 1047, relied on

[10592] — Ss. 452, 323, 504, 506, 420 — Quashment of proceedings — When warranted *— Appellants during their student career in a private MBBS College, were on bad terms with Chairman/MD of the College Trust, college staff and a police personnel (whose daughter was studying there) — In Crime Case No. 412/2005 appellants allegedly entered the house of* ***I*** *(Respondent 3, a teacher of the Medical College) and threatened her with knife and brickbats to kidnap her children and to have abused her — In Crime Case No. 21/2006, appellants were accused of beating up security guard and damaging college properties — FIR in Crime Case No. 412/2005 was lodged under Ss. 452, 323, 504, 506 and 427 IPC — FIR in Crime Case No. 21/2006 was lodged under Ss. 452, 323, 504, 506, 420 IPC — All disputes arose because father of the appellants demanded return of the loan taken by the Chairman/MD — Series of civil writ petitions, criminal proceedings were initiated by the appellants in which allegations of victimisation and torture were made against* ***M****, in his personal capacity and also as Chairman/MD of the College Trust — Considering the tenor of apology tendered by the appellants for their indisciplined conduct, nature of offence alleged, history of allegations and counter-allegations, victimisation and torture of appellants by local police as well as College authorities, their lack of disciplinary conduct as MBBS students, their future career, on facts, held, it is a fit case for exercise of jurisdiction under Art. 142 of the Constitution of India — Criminal proceedings quashed and the appellants asked to tender a written apology — Constitution of India — Art. 142*

Two crime cases, Crime Case No. 412/2005 under Sections 452, 323, 504, 506 and 427 IPC and Crime Case No. 21/2006 under Sections 452, 323, 504, 506 and 420 IPC were lodged against the appellants (*MO* and *MA*), when they were pursuing their career as MBBS students. In Crime Case No. 412/2005, the appellants are alleged to have entered the house of *I* (Respondent 3, a teacher of the Medical College) and threatened her with knife and brickbats to kidnap her children and to have abused her. She was rescued by a security guard and some students. In Crime Case No. 21/2006, the appellants have been accused of beating up security guards and damaging college properties.

N (the father of the appellants: daughter *MO* and son *MA*) is an NRI Professor/Medical Director and practitioner in California. The appellants were born in California and completed their schooling in USA. Indisputably, both the appellants took admission in the MBBS course in the session 1996-1997 in Santosh Medical College and Hospital under the NRI quota against handsome payments of US $50,000 and US $49,700 each in addition to hostel charges and security deposit i.e. Rs 75,000 and Rs 45,000 respectively for one year. In April 2000, *M* (Respondent 2) Chairman/Managing Director of the Medical College took a loan of Rs 25 lakhs on interest at the rate of 11.5% from *N*, father of the appellants. Payment of the loan amount was assured by a handwritten slip. Disputes and differences arose after the father of the appellants demanded repayment of the loan from *M* (Respondent 2). A series of civil writ petitions and criminal proceedings besides contempt proceedings were initiated by the appellants in which allegations of mala fides, acts of victimisation and physical and mental harassment were alleged against *M* in his personal capacity and also as a Chairman/Managing Director of the College Trust.

The appellants alleged that having miserably failed in all attempts to ruin the career of the first appellant, *M* on 4-4-2003 got a false and frivolous report lodged under Sections 504 and 506 IPC through his yes-man and associate, *A* against all the members of the appellants' family whereupon case, Crime No. 286 of 2003 was registered against them. The High Court had stayed further proceedings in this case.

When in the case preferred by *N*, under Section 138 of the NI Act, *M* and others were summoned as accused persons, *M* got infuriated and became more and more vindictive against the appellants and their family members.

On 2-5-2004 and 2-6-2004 the appellants were allegedly assaulted mercilessly by *M*, *AS* (Station Officer, PS Vijay Nagar) and their drivers. *MO* (Appellant 1) was molested and she had been threatened to be kidnapped, raped and even murdered whereas *MA* (Appellant 2) was assaulted with kicks, fists, shoes and sticks. *M* is said to have challenged the order of the Magistrate but he could not succeed. In pursuance of the order of the Chief Judicial Magistrate dated 3-10-2005 and subsequent order of the High Court dated 9-11-2005, FIR bearing Crime No. 425 of 2005 was registered on 28-11-2005 under Sections 147/323/342/352/354/427/504 and 506 IPC at the police station against *M* and other persons named in the complaint.

Owing to constant threats and victimisation by *M* in collusion with the local police, the undertrial appellants (in Crime No. 412/2005 and Crime No. 21/2006) filed Miscellaneous Writ Petition No. 1947 of 2006. The High Court by the impugned order dated 24-8-2006 dismissed the prayer for CBI investigation into the matter in criminal miscellaneous applications bearing Nos. 7792 and 7791 of 2006 filed by the appellants under Section 482 CrPC.

Allowing the appeal,

Held :

Looking to the entire backdrop of the peculiar facts of countless incidents having been faced by the appellants during their primary life as MBBS students and the nature of the offences alleged against them and allegations and counter-allegations in various complaints made by the parties against each other and coupled with the tenor and contents of the apology tendered by the appellants, it is a fit case for exercise of jurisdiction under Article 142 of the Constitution of India. Article 142 of the Constitution of India should be exercised so as to bring the dispute between the parties to an end. As the appellants, at the relevant time, were students, no amount of compensation be directed to be paid. The criminal proceedings and charges said to have been framed by the trial court based upon the criminal cases (Crime No. 412/2005 and Crime No. 21/2006) against the appellants shall also stand quashed. They must, however, file a written apology in the courts where the proceedings are pending. There should be consideration for the future career of the appellants. (Paras 44, 47, 49 and 50)

The entire details of the facts of the present case do indicate that the appellants during their study of MBBS course had some problems with the second respondent; some staff of the College and the then SHO of PS Vijay Nagar, whose daughter was also studying in the same College. The record would reveal that both the appellants being NRI candidates have undergone physical and mental agony and torture during their student career in pursuing the MBBS course. They had spent most of their precious time in litigation in the courts fighting for their genuine and legitimate claims. They may be involved in some indisciplined activities in the College for which they have been facing criminal proceedings for the past about 3 years. Apology letters dated 13-4-2004 and 2-5-2004 stated that *N*, *MO* and *MA* will go to SP, City office at 9.00 a.m. the next day, that they won't go to the mess of Santosh Medical College and won't abuse any employee, and that they apologise for the quarrel that happened on that evening in the mess with *K*. (Paras 43 and 42). *Monica Kumar (Dr.)* v. *State of U.P.*, (2008) 8 SCC 781: (2008) 3 SCC (Cri) 649: AIR 2008 SC 2781: (2008) 67 AIC 106 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 27-5-2008]

[10593] — Ss. 452 and 323 r/w S. 34 — Sentence reduced in view of the peculiar circumstances of the case and very old age (77 years) of the accused — *Constitution of India, Art. 136. Shahzade* v. *State of U.P.*, (1982) 1 SCC 349: 1982 SCC (Cri) 233: AIR 1981 SC 2008(2).

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A. Varadarajan*, JJ. [Date of decision: 28-1-1981]

[10594] — Ss. 452 and 354 — Charge for offence against Y but conviction for offence against X — Permissibility — Prejudice caused to accused, occasioning failure of justice — New trial, after proper framing of charge, directed — *Appellant-accused came into house of P at night, touched/caught hand of her sleeping daughter-in-law S, and when S raised an alarm, he ran away — But, appellant charged with having trespassed into house of P with intent to assault P and having assaulted her by outraging her modesty — However, appellant convicted on ground that though he did not assault or outrage modesty of P, he had outraged modesty of S, also present at time of alleged incident — Held, when appellant defended himself in regard to aforesaid charge and concentrated on proving that said charges were not true vis-à-vis P, he cannot be convicted for having assaulted and outraging modesty of someone else, namely, S — Appellant was clearly misled by error in charge which caused prejudice to appellant, thereby occasioning failure of justice — Therefore, direction for new trial after charging appellant with offence of outraging modesty of S, issued — Hence, conviction of appellant set aside and matter remitted to trial court with aforesaid direction — CrPC, 1973, Ss. 211, 212, 215 & Ills. (e) & (d) thereto and S. 464*

In the instant case, the charge was that the appellant committed trespass into the house of *P* for assaulting *P*, and assaulted the said *P* and outraged her modesty. The accused concentrated his cross-examination with reference to the said charge and elicited answers showing that he did not assault or outrage the modesty of *P*. He did not try to challenge the evidence let in to show that he had tried to outrage the modesty of *S* (*P's daughter-in-law*), *as he was not charged with such an offence. The evidence of PWs 1 and 2* (*P* and *S*) was that the appellant did not touch or tease or abuse *P*. Their evidence was that he touched/caught the hand of *S* and when she raised an alarm he ran away. When the charge was that the accused attempted to commit trespass into the house of *P* with intent to outrage the modesty of *P*, the conclusion of the appellate court and the High Court that there was no failure of justice if he is punished for the offence of having assaulted *S* and outraging her modesty, is opposed to principles of fair play and natural justice embodied in Sections 211, 212, 215 and 464 CrPC. (Para 19)

When the accused is charged with having entered the house of *P* and assaulted the said *P* with intent to outrage her modesty and when the accused defended himself in regard to the said charge and concentrated on proving that the said charges were not true, he cannot be convicted for having assaulted and outraging the modesty of someone else, namely, *S*. The accused did not have any opportunity to meet or defend himself against the charge that he assaulted *S* and outraged her modesty. Nor did he proceed with his defence on the understanding that he was being charged with having committed the offence with reference to *S*. One of the fundamental principles of justice is that an accused should know what is the charge against him so that he can build his defence in regard to that charge. An accused cannot be punished for committing an offence against *Y* when he is charged with having committed the offence against *X* and the entire defence of the accused was with reference to charge of having committed offence against *X*. (Para 20)

Applying the guidance offered by Illustration (*e*) under Section 215 CrPC, as contrasted from Illustration (*d*) under that section, and legal principles evolved by the Supreme Court, the position will be as follows: If *S* alone had been present at the house at the time of the incident and the accused had assaulted and outraged the modesty of the said *S*, but in the charge the name of the victim had been erroneously mentioned, say as *S* or *P* (though there was no person by such name), and the inquiry exclusively referred to the assault and outraging the modesty of *S*, the court could infer that the accused was not misled and the error in the charge was immaterial. On the other hand, if two persons were present in the house at the time of the incident, namely, *P* and *S* and the accused is charged with trespassing into the house of *P*, and assaulting and outraging the modesty of the said *P*, and the witnesses refer only to the assault and outraging the modesty of *S*, the court will have to infer that the accused was prejudiced, if the accused had solely concentrated and focused his defence and entire cross-examination to show that he did not commit the offences against *P*. (Para 22)

The court having charged the accused with the offence of having trespassed into the house of *P* with the intent to assault her and having further charged him for having assaulted the said *P* by outraging her modesty, convicts him on the ground that though he did not assault or outrage the modesty of *P*, he had outraged the modesty of *S*, that would lead to failure of justice. There was a material error in the charge as it violated the requirement of Section 212(1) CrPC, that the charge shall contain particulars as to the person against whom the offence was committed. (Para 23)

There were two women present at the house at the time of the alleged incident, namely, *P* and her daughter-in-law *S*. In view of the specific charge, the accused concentrated on showing that the charge was false. He did not attempt to meet the case made out in the trial that the offence was against *S*. The accused was thus clearly misled by the error in the charge which caused prejudice to the accused thereby occasioning failure of justice. Therefore, there should be a new trial after charging him with the offence of outraging the modesty of *S*. (Para 24)

Hence, the conviction of the accused is set aside and the matter is remitted to the trial court with a direction for a new trial after framing a charge by substituting the words "her daughter-in-law *S*" for the words "abovenamed *P*", in the second part of the charge. (Para 25). *Main Pal* v. *State of Haryana*, (2010) 10 SCC 130: AIR 2010 SC 3292: 2010 Cri LJ 4450: (2010) 94 AIC 9 (SC): (2010) 4 UPLJ 14 (SC).

Bench Strength **2**. Coram: **R.V. Raveendran** and *H.L. Gokhale*, JJ. [Date of decision: 7-9-2010]

State of H.P. v. Gita Ram, (2000) 7 SCC 452: 2000 SCC (Cri) 1390, distinguished on facts

[10595] — Ss. 452, 354, 323, 506 Pt. II r/w S. 34 — Outraging modesty of a tribal woman — Appreciation of evidence — Conviction confirmed — *PW 4 victim, a tribal woman of 25 years giving evidence that accused persons on being enraged by her illicit relationship with PW 9 (a member of higher caste) entered her house, beat, abused, removed/tore off her clothes and paraded her naked in village from her house to a place in front of the shop of PW 3 — PW 9 not supporting actual incident but corroborating her evidence regarding illicit relationship — PW 8 proving medical certificate that there were two contusions on PW 4 — PW 2 proving panchnama of seized articles from the spot i.e. torn clothes and broken bangles of victim — Witnesses turning hostile due to fear and inducement as accused persons were powerful persons in village — Evidence of PW 4 corroborated by medical evidence of PW 8, panchnama evidence of PW 2 and partly corroborated by evidence of PW 9, held, credible — There is no reason to disbelieve PW 2 who proved the spot panchnama — Conviction of appellants by courts below, therefore, upheld*

On the ground that the victim, a tribal girl (PW 4) had illicit relationship with PW 9 belonging to higher caste, four accused persons went to her house at about 5.00 p.m., beat her with fists and kicks, removed her clothes and then paraded her on the road of the village while still beating and abusing her. The Sessions Court convicted them under Sections 452, 354, 323, 506 Part II read with Section 34 IPC and sentenced to suffer RI for six months and to pay a fine of Rs 100. They were also sentenced to suffer RI for one year and to pay a fine of Rs 100 for the offence punishable under Sections 354/34 IPC. They were also sentenced under Sections 323/34 IPC and sentenced to three months' RI and to pay a fine of Rs 100. The appellants were further convicted under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to suffer RI for one year and to pay a fine of Rs 100.

In appeal before the High Court the appellants were acquitted of the offence under Section 3 of the SC/ST Act, but the conviction under the provisions of IPC was confirmed. However, that part of the order regarding fine was set aside and each of the appellant was directed to pay a fine of Rs 5000 only to the victim.

Dismissing the appeal of the accused persons,

Held :

There is no reason to interfere with the judgment of the High Court convicting the appellants under Sections 452, 354, 323, 506 Part II IPC read with Section 34 IPC and imposing fine of Rs 5000 on each accused to be paid to the victim. Rather the sentence imposed was too light considering the gravity of the offence. The victim in the present case is a young woman of 25 years of age belonging to the Bhil tribe which is a Scheduled Tribe (ST) in Maharashtra, who was beaten with fists and kicks and stripped naked by the accused persons after tearing off her blouse and brassiere and then got paraded in naked condition on the road of a village while being beaten and abused by the accused herein. (Paras 8, 5 and 3)

Although many of the witnesses turned hostile, there is no reason to disbelieve the evidence of the PW 4, the victim, herself. (Para 9)

Even though PW 9 did not support the actual incident of the victim being beaten and paraded naked in the village by the accused persons, his evidence at least on the points admitted by him corroborates the evidence of the victim. PW 9 supported the prosecution case to some extent. He has accepted his illicit relations with the victim and admitted that he had a daughter from her and she was pregnant for a second time through him. (Para 9)

The accused are powerful persons in the village inasmuch all the eyewitnesses have turned hostile out of fear or some inducement. (Para 11)

PW 8 proved his medical certificate, Ext. 26 and stated that there were two contusions on the person of the victim. (Para 11)

There is no reason to disbelieve PW 2 who proved the spot panchnama, Ext.12. It was drawn in front of the house of the victim, PW 4. PW 4 showed the entire area of the crime from her house to the place in front of the shop of PW 3. The police seized torn clothes and pieces of bangles. (Para 10)

The mentality of the accused who regard tribal people as inferior or sub-humans is totally unacceptable in modern India. The appellants alleged that the people belonging to the Bhil community live in torn clothes as they do not have proper clothes to wear. (Para 13). *Kailas* v. *State of Maharashtra*, (2011) 1 SCC 793.

Bench Strength **2**. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 5-1-2011]

[10596] — Ss. 452, 451 and 354 — Trespass to seek sexual favours, but not for causing any physical hurt or assault or wrongful restraint — Offence whether under S. 452 or S. 451 — *Appellant-accused convicted under Ss. 354 and 452 by all courts below — In application for compounding of the offences, Supreme Court on finding that the appellant had entered the house to seek sexual favours, but not for causing any physical hurt or assault or wrongful restraint, converting conviction of accused to that under S. 451, and compounding both convictions — CrPC, 1973, S. 320. Moreshwar* v. *State of Maharashtra*, (2005) 11 SCC 429.

Bench Strength **2**. Coram: *Ashok Bhan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 29-4-2005]

— S. 452 r/w S. 34 *See also* Ss. 302, 307 and 452 r/w S. 34

See also Ss. 302/34, 307/34, 394/34 and 452/34

See also Ss. 324 and 452 r/w S. 34

See also Ss. 376(2)(g), 452/34 and 323/34

See also Ss. 392, 397 and 452 r/w S. 34

— S. 452 r/w S. 149 *See also* Ss. 96, 97, 100, 101 and 302, 307, 326, 452 r/w S. 149

See also Ss. 147, 148, 302, 307 and 452 r/w S. 149

[10597] — Ss. 452/149 — Conviction restored — Assailant accused coming to place of incident armed with deadly weapons and attacking complainant party — *Accused 7, 9 and 15 convicted under Ss. 452/149 by trial court and sentenced to three years' RI — High Court in appeal reducing the sentence of Accused 7 to period already undergone (12 months) and acquitting Accused 9 and 15 — Eyewitnesses clearly stating that these accused along with other accused had come to complainant's home in a jeep and attacked them with deadly weapons — No cogent reason to disbelieve them — Hence, conviction and sentence passed by trial court restored* (Paras 46 to 49). *State of Maharashtra* v. *Tulshiram Bhanudas Kamble*, (2007) 14 SCC 627: AIR 2007 SC 3042: 2007 Cri LJ 4319.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 21-8-2007]

Ramappa Halappa Pujar v. State of Karnataka, (2007) 13 SCC 31; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Mohinder Singh v. State of Punjab, (2006) 10 SCC 418: (2006) 3 SCC (Cri) 578; State of U.P. v. Nawab Singh, (2005) 9 SCC 84: 2005 SCC (Cri) 33, relied on

[10598] — Ss. 452/302 and 323 r/w S. 34 — Applicability — Appellant-accused aged about 17 years at the time of occurrence (1-8-1993) — Age of juvenile increased from 16 years (Juvenile Justice Act, 1986) to 18 years by Act of 2000 — Submission by appellant-accused that S. 20 JJ Act was relevant to his case — Tenability — *Held, S. 20 of the JJ Act does not in any way help the appellant — What S. 20 provides is that the proceedings shall continue as if the Act (i.e. the Act of 2000) was not in existence i.e. even if the definition of "juvenile" has undergone a change by fixing the age to be 18 years the proceedings shall continue on the footing that the accused was a juvenile under the 1986 Act — What the appellant contends is to reverse the situation i.e. take the applicable age to be 18 years which is not legally permissible — Act of 2000 has no application in the instant case — Juvenile Justice (Care and Protection of Children) Act, 2000 — S. 20* (Paras 2 and 8 to 10). *Ranjit Singh*

v. *State of Haryana*, (2008) 9 SCC 453: (2008) 3 SCC (Cri) 784: (2008) 70 AIC 110 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 11-9-2008]

Jameel v. State of Maharashtra, (2007) 11 SCC 420: (2008) 1 SCC (Cri) 748, followed

— S. 453 *See also* Ss. 302, 307, 324, 323, 427, 453, 506 Pt. II, S. 147 r/w S. 149 and S. 148

— S. 454 *See also* Ss. 149 and 302/149, 454, 451 and 148

See also Ss. 302, 324, 454 and 342 and 96, 97 and 100

See also Ss. 302/149, 454, 451 and 148

— S. 455 *See also* Ss. 147, 148, 149, 455 and 324

[10599] — Ss. 455 and 149 — Accused variously armed with dangerous weapons entering and attacking a police wireless station after breaking open doors and windows and assaulting a policeman — *Assault being an independent act of an unknown person, all accused cannot be held responsible for the same — All accused shared common object of committing lurking house trespass under S. 455 — They should be sentenced to 7 years' RI. Chonampara Chellappan* v. *State of Kerala*, (1979) 4 SCC 312: 1979 SCC (Cri) 1029: AIR 1979 SC 1761: 1979 Cri LJ 1335.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 30-3-1979]

[10600] — S. 456 — Offence not proved — No explanation for significant omission — *PW 1, informant (brother of the deceased and a law student) did not mention about housebreaking either in FIR lodged three hours after the beating of his deceased brother or in his S. 161 CrPC statement given two days after the incident (although his mother and sister reported that A-4 and A-5 along with a child were present in flat and their luggage was thrown out by said accused) — PW 1 had no explanation for this significant omission — Held, evidence of PW 1 is tainted with certain embellishments — It is difficult to believe that their flat having been allegedly broken into and occupied by A-4 and A-5, it was an insignificant fact worthy of discussion amongst family members. State of Maharashtra* v. *Ahmed Shaikh Babajan*, (2009) 14 SCC 267: (2009) 73 AIC 178 (SC): (2009) 1 ECrN 637 (SC).

Bench Strength 2. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 24-10-2008]

[10601] — S. 456 — Prejudiced and uncorroborated evidence of PWs 5 and 6 (mother and sister of deceased) for offence under S. 456 (accused party beating the deceased resulting in his death) — *Accused party had allegedly given threat to the deceased party to vacate their flat (as per agreed terms and conditions of leave and licence agreement) — On day of incident the deceased was beaten by A-1 and A-3, which subsequently resulted in his death — PWs 5 and 6 in their evidence alleged that when they returned to the flat in the night (from Hyderabad), A-4 and A-5 along with a child were present in the flat and their luggage was thrown out by said accused — PW 3, a neighbour did not support prosecution story that A-4 and A-5 had borrowed hammer and screwdriver from her for housebreaking — PW 1 (brother of deceased and a law student) did not state the fact of housebreaking either in FIR or in S. 161 CrPC statement recorded two days after the incident — On facts, held, order of High Court acquitting all accused of the offence under S. 456 IPC did not suffer from any illegality warranting interference*

The Anand family (the deceased, his brothers, sisters and parents) were staying in the house of the accused under a leave and licence agreement which was to expire on 27-4-1989. About two weeks prior to the date of incident and again on 24 to 26-4-1989, the accused persons (A-1 owner, A-3 estate agent, and A-2) approached PW 4 (the father of the deceased) and demanded delivery of vacant possession of the licensed flat by 27-4-1989 and did not listen to the difficulties explained by PW 4.

On 27-4-1989 at about 7.30 p.m., the deceased was standing in front of the shop of Accused A-3 on the ground floor in the same society, three buildings away from the building in which the deceased resided, waiting for his mother and sister, who were scheduled to return from Hyderabad in the evening. He had the keys of the flat with him. His father (PW 4), who was in the flat till evening later left the house for bringing food for the family, instructing the deceased to wait on the road. PW 1 (a brother of the deceased) also left the house at about 7.00 p.m. for paying obeisance at the gurudwara. While the deceased was standing in front of the shop of Accused A-3, Accused A-1 and A-3 came near him and started beating him. The beating of the deceased was witnessed by his brother, PW 1 who was returning from the gurudwara. He rushed to save his brother, who, by that time had fallen down on the ground and was stifling. The incident drew attention of the public and the two accused were apprehended. PW 2, a police constable (off-duty) and a family friend of the Anands, also happened to be at the spot and he too accosted the two accused. He along with PW 1 took the victim to the clinic of PW 8 (doctor) situated on the ground floor of the same building in which the Anands resided. Finding the victim in a serious condition, PW 8 advised his removal to a bigger hospital. In the meanwhile, he also contacted the police control room. In a short while the police mobile van arrived and the deceased was removed to Cooper Hospital. PW 1 also accompanied him. The deceased was examined by the doctors on duty and was declared brought dead.

High Court by the impugned order affirmed the order passed by the Sessions Judge acquitting Accused A-1 to A-3 of the charge under Section 302 read with Section 34 IPC but the High Court set aside the order of the trial court convicting Accused A-1 to A-3 for offence under Section 456 read with Section 109 IPC. The High Court also set aside the conviction of Respondents 4 and 5 for offences under Section 456 IPC.

Dismissing the appeals,

Held :

The order of the High Court acquitting all the accused of the offence under Section 456 IPC did not suffer from any illegality warranting interference. It would be hazardous to rely solely on the uncorroborated evidence of PWs 5 and 6 (mother and sister of the deceased) to convict the accused under Section 456 IPC. Evidently, having lost their son/brother, allegedly on account of beating by A-1 to A-3, there was every reason for them to be inimical to the accused. They were keen to see that all of them were convicted. In their testimony, they have stated that when they returned to their flat in the night of 27-4-1989, they found the door of the flat open and A-4 and A-5 present there along with a child. When they entered the flat, their luggage was thrown out by the said accused. They have also stated that when a constable came to the flat and enquired about the mother of the deceased, they had shown to him the damaged latch and bolt at the entrance. The constable asked both the accused and PW 6 to follow him and all of them went to the police station. PW 3, who was examined by the prosecution to prove the vital fact that A-4 and A-5 had borrowed the hammer and screwdriver from her, being a neighbour of the complainant had not supported the version of the prosecution, the testimony of the said two witnesses cannot be said to be intrinsically credible. Moreover, having regard to the fact that neither in the FIR nor in the statement of PW 1, recorded two days after the occurrence, he had stated the fact of housebreaking. (Paras 38, 37 and 33)

The term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive. A close relative, as such by virtue of being a close relative cannot be characterised as an "interested" witness. He is a natural witness. His evidence, however, must be scrutinised carefully. (Paras 35 and 36)

The evidence of PW 1 is tainted with certain embellishments. Admittedly in the FIR lodged by PW 1, a law student, more than three hours after the alleged occurrence, there was no complaint of housebreaking and occupation of the flat by A-4 and A-5 when he claims to have met them at the flat and had an altercation. In his cross-examination, he also stated that when his further statement was recorded on 29-4-1989 i.e. two days after the occurrence, even then he did not disclose the fact that A-4 and A-5 had broken open their flat and had occupied it with a child. The informant (PW 1) was not able to give any reasonable explanation for the significant omission on his part. Furthermore, even in the evidence of PW 4, the father of the deceased and PW 1, there is not even a whisper about the forcible occupation of their flat by A-4 and A-5 although admittedly even before lodging the FIR, PW 1, his father and his mother (PW 6) had already met. It is difficult to believe that their flat having been allegedly broken open and occupied by A-4 and A-5, it was an insignificant fact worthy of discussion amongst the family members. (Paras 27 to 29)

The fundamental object of an FIR is that it acts as a safeguard against embellishment, exaggeration and forgetfulness. True, that it is not the requirement of law that every minute detail of the occurrence needs to be recorded in the FIR but it must disclose the commission of an offence. Though it is trite that the FIR does not constitute substantive evidence and can, strictly speaking, be only used as a previous statement for the purpose of either corroborating or contradicting its maker, yet omission of material facts pertaining to the crime is undoubtedly relevant in judging the veracity of prosecution case. The FIR is a report relating to the commission of an offence, given to the police and recorded by it under Section 154 CrPC. Though, recording of an FIR is not a condition precedent to the setting in motion of the criminal investigation yet from the viewpoint of the investigating authorities it conveys to them earliest information regarding the circumstances in which the crime was committed; the names of the culprits and the role played by them as well as the names of the witnesses present at the scene of occurrence, so vital for effective and meaningful investigation. The information about an occurrence can be given by any person knowing about the commission of such an offence and not necessarily by an eyewitness. (Paras 26 and 24). *State of Maharashtra* v. *Ahmed Shaikh Babajan*, (2009) 14 SCC 267: (2009) 73 AIC 178 (SC): (2009) 1 ECrN 637 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 24-10-2008]

Hari Obula Reddy v. State of A.P., (1981) 3 SCC 675: 1981 SCC (Cri) 795; Ashok Kumar Chaudhary v. State of Bihar, (2008) 12 SCC 173: (2009) 1 SCC (Cri) 339; Dalip Singh v. State of Punjab, AIR 1953 SC 364: 1953 Cri LJ 1465: 1954 SCR 145; Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226: (1964) 8 SCR 133; Rizan v. State of Chhattisgarh, (2003) 2 SCC 661: 2003 SCC (Cri) 664; Namdeo v. State of Maharashtra, (2007) 14 SCC 150: (2009) 1 SCC (Cri) 773; King Emperor v. Khwaja Nazir Ahmad, (1944) 71 IA 203: AIR 1945 PC 18; Sk. Hasib v. State of Bihar, (1972) 4 SCC 773; State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805, relied on

— S. 457 *See also* Ss. 71, 380 and 457

See also Ss. 302, 380 and 457

See also Ss. 376, 457 and 380

See also Ss. 380, 120-B, 302, 392, 201, 404, 414, 457 and 460/34

[10602] — S. 457 — Ingredients of offence

In order to support the conviction under S. 457 it is necessary to prove first that there was lurking house trespass by night or house-breaking by night. The second ingredient is that the house trespass or house-breaking was in order to commit an offence punishable with imprisonment. "Lurking house trespass" means that the accused took some active means to conceal their presence. *Nasiruddin* v. *State of Assam*, (1971) 3 SCC 408: 1971 SCC (Cri) 656: AIR 1971 SC 1254: 1971 Cri LJ 1073.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 7-4-1971]

[10603] — Ss. 457 and 354 — Non-compoundable offence — Filing of petition for compounding of — Effect — *Held, effect of compounding can be taken into account while awarding sentence — Compounding of offence involving S. 457 IPC, which is a non-compoundable offence — Considering the said fact, sentence liable to be reduced to period already undergone i.e. three months — CrPC, 1973 — S. 320* (Para 4). *Sanjit Datta* v. *State of Tripura*, (2006) 13 SCC 294: (2007) 3 SCC (Cri) 172.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 7-11-2005]

[10604] — Ss. 457 and 380 — Conviction based on uncorroborated retracted confession, held, cannot stand. *Arjuna Lal Misra* v. *State*, AIR 1953 SC 411: 1953 Cri LJ 1633.

Bench Strength **3**. Coram: **Fazl Ali**[1], **B.K. Mukherjea**[2] and **N. Chandrasekhara Aiyar**[3], JJ. [Date of decision: 30-11-1950]

[10605] — Ss. 457 and 380 — Failure of accused to account for his possession soon after the theft — Presumption

It would depend upon the facts and circumstances of each case whether the court should draw the presumption that a person found in possession of stolen goods soon after the theft and who has not been able to account for his possession is the thief or whether he is the receiver of the goods knowing them to be stolen. Where the stolen articles were recovered within seventeen days of the theft from the possession of the accused, it is proper for a court to draw the presumption that the accused was guilty of the offence under Ss. 457 and 380, Indian Panel Code, particularly when the accused was found in possession of a very large number of stolen articles so soon after the theft. *Ayodhya Singh* v. *State of Rajasthan*, (1972) 3 SCC 885: 1972 SCC (Cri) 786: AIR 1972 SC 2501: (1973) 1 SCR 880: 1972 Cri LJ 1696.

Bench Strength **3**. Coram: *J.M. Shelat*, *I.D. Dua* and **H.R. Khanna**, JJ. [Date of decision: 17-8-1972]

[10606] — Ss. 457 and 380 — Title to seized stolen goods — Dispute as to, between complainant and one of the prosecution witnesses — Appropriate forum and action for — *Appropriate forum and action for, held, is suit in competent civil court and not in criminal proceedings relating to prosecution for the theft — Specific Relief Act, 1963, S. 7 — CPC, 1908 — S. 9 and Or. 20 R. 10. Thamanna Shivalingappa Teli* v. *State of Karnataka*, (2005) 12 SCC 171.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 14-3-2005]

[10607] — Ss. 457, 380, 411, 413 and 414 — Theft of idols — Conviction — Maintainability of revision — Dismissal of S. 319 CrPC petition for proceeding against appellant by Magistrate — Persons who may bring revision against — Person neither the complainant nor having any connection with alleged offence — Long lapse of time — Effect — *In a case of theft of idols, trial court convicted four persons for offences under Ss. 457, 380, 411 and 414 IPC — Magistrate dismissing prosecution's petition under S. 319 for proceeding against appellant since final report of police found no case against appellant — Sessions Court ex parte allowing revision petition filed by a third party two years thereafter for proceeding against appellant and directing Magistrate to take cognizance of offence — Appellant not having any* *information about these subsequent events — High Court dismissing writ petition of appellant thereagainst — Matter remitted to High Court to consider maintainability of revision petition at the instance of third party after such delay, with requirement of opportunity of hearing to appellant and notice to informant — Constitution of India, Arts. 226 and 227 — CrPC, 1973, Ss. 397, 399 and 401* (Paras 11 and 12). *Ram Naresh Prasad* v. *State of Jharkhand*, (2009) 11 SCC 299: (2009) 3 SCC (Cri) 1336: (2009) 77 AIC 221 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-2-2009]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117, impliedly followed

[10608] — Ss. 457/34, 380/34, 10/457 and 380 — Alleged conspiracy including police officer — (Accused 11 to 13 and 15) — *High Court confirms convictions of accused 1 to 3, 6 to 8, 10, 11 and 13 — State appeal against acquittal of accused 12 and 15 to Supreme Court dismissed — As to police officer accused 13 retracted confession of co-accused not reliable — No evidence of conspiracy as to accused 13 — Concurrent findings as to guilt of accused 7 cannot be disturbed in special leave appeal — Clear and overwhelming evidenced as to appellant accused 13 (Probationary S. I. of Police). Baburao Bajirao Patil* v. *State of Maharashtra*, (1970) 3 SCC 911: 1971 SCC (Cri) 155.

Bench Strength 2. Coram: *S.M. Sikri* and **I.D. Dua**, JJ. [Date of decision: 28-9-1970]

— S. 457(1) *See also* Ss. 302/34, 457(1), 398, 120-B and 449

— S. 458 *See also* Ss. 376, 147, 323/149, 342, 458 and 366

See also Ss. 449, 458, 459, 392, 397, 302 and 307

[10609] — Ss. 458 and 393 — Conviction of police personnel in serious offences — Leniency in sentence in such cases, held, not proper — *In these cases, the court will be justified in imposing a deterrent sentence so that it may serve as a warning to others and may restore to some extent the diminishing faith of the public in the police force — Accused police personnel attempting to commit robbery and with that in view committing house trespass in the dead of night armed with firearms — Considering that accused could not commit any other offence as police party promptly arrived at the spot and the fact that accused had been on bail for the last more than six years, High Court reducing the sentence of four years' RI imposed by trial court to period already undergone — Held, High Court was not justified in doing so — Reduction of sentence set aside — Sentence by trial court restored — CrPC, 1973, Ss. 28 and 29* (Paras 6 to 8). *Ajmer Singh* v. *State of Punjab*, (2005) 6 SCC 633: 2005 SCC (Cri) 1481.

Bench Strength 2. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 22-7-2005]

— S. 459 *See also* Ss. 449, 458, 459, 392, 397, 302 and 307

— S. 460 *See also* Ss. 302, 460, 397 and 411

See also Ss. 302 r/w Ss. 34 and 449, 460, 394

See also Ss. 302 r/w Ss. 307 and 460

See also Ss. 302/34, 396, 460 and 404

See also Ss. 302/34 and 460

See also Ss. 376, 460, 325 and 506

[10610] — Ss. 460 and 302 — Applicability — *In case of housebreaking by night by several persons in course of which death caused by one of them, others would also be constructively liable under S. 460 — But offence of housebreaking by night and also murder would attract S. 302*

Under Section 460 IPC constructive liability is imposed on persons jointly concerned in committing house trespass at night, in the course of which death or grievous hurt is caused. The section applies to persons who actually committed house trespass at night and the act of causing death or grievous hurt by any one of the intruders would make others, who did not cause the injury, equally liable. But if a person commits housebreaking by night and also commits murder, his act attracts Section 302 IPC. (Paras 4 and 9). *Abdul Aziz* v. *State of Rajasthan*, (2007) 10 SCC 283: (2007) 3 SCC (Cri) 651: (2007) 54 AIC 15 (SC).

Bench Strength 2. Coram: **S.H. Kapadia** and *B. Sudershan Reddy*, JJ. [Date of decision: 3-5-2007]

Jagdeo v. State of U.P., (1953) 51 All LJ 501, relied on

Singaram, In re, AIR 1954 Mad 152; Sohan Singh Kesar Singh v. State of Punjab, AIR 1964 Punj 130, distinguished

— Ss. 460/34 *See also* Ss. 380, 120-B, 302, 392, 201, 404, 414, 457 and 460/34

See also Ss. 380/34, 460/34 and 302/34

[10611] — Ss. 460/149 and 302 — House trespass/breaking in resulting in murder — Conviction for murder when permissible — Need for charging the accused with murder — *Conviction under S. 460 by trial court but conviction under S. 302 by High Court in appeal against conviction preferred by accused not justified — Appellant along with others entered the deceased's room and assaulted him causing his death — Appellant named in FIR — Appellant charged under Ss. 302, 460 and 149 but was convicted only under S.*

460 by trial court — No appeal preferred by State before High Court seeking appellant's conviction under S. 302 — Instead, in appeal filed by appellant himself against his conviction under S. 460, High Court convicted him under S. 302 without issuing notice for enhancement on ground that trial court inadvertently convicted him only under S. 460 — Held, High Court was wrong in convicting appellant under S. 302 when trial court had convicted him under S. 460, particularly, in absence of any appeal from the State as this would amount to travesty of justice — Hence appellant liable to be convicted under S. 460 and sentenced to 10 years' RI and fine of Rs 500

Under Section 460 IPC constructive liability is imposed on persons jointly concerned in committing house trespass at night, in the course of which death or grievous hurt is caused. The section applies to persons who actually committed house trespass at night and the act of causing death or grievous hurt by any one of the intruders would make others, who did not cause the injury, equally liable. But if a person commits housebreaking by night and also commits murder, his act attracts Section 302 IPC. (Paras 4 and 9). *Abdul Aziz* v. *State of Rajasthan*, (2007) 10 SCC 283: (2007) 3 SCC (Cri) 651: (2007) 54 AIC 15 (SC).

Bench Strength **2**. Coram: **S.H. Kapadia** and *B. Sudershan Reddy*, JJ. [Date of decision: 3-5-2007]

Jagdeo v. State of U.P., (1953) 51 All LJ 501, relied on Singaram, In re, AIR 1954 Mad 152; Sohan Singh Kesar Singh v. State of Punjab, AIR 1964 Punj 130, distinguished

— S. 461 *See also* Ss. 463, 467, 461 and 419 r/w S. 120-B

[10612] — Ss. 461, 379, 403, 342, 166 and 167 — "Acting or purporting to act in the discharge of official duty" under S. 197 CrPC — Meaning of *— Railway officials witnessing a search in the house of another Railway official at the request of the police, and not under the orders of superior Officers — During the search such officials, committing offences under Ss. 461, 379, 403, 342, 166 and 167 — No sanction under S. 197, Criminal Procedure Code necessary — CrPC, 1898 — S. 197*

The accused who were in the employ of the Northern Railway were called by the Deputy Superintendent of Police to witness a search in the house of the complainant also an employee of the Northern Railway and it is alleged that during the search they committed offences under S. 461 read with Ss. 379, 403, 342, 166 and 167 of the Indian Penal Code. The complaint was dismissed by the Magistrate for want of sanction under S. 197, Criminal Procedure Code and the Sessions Judge and the High Court refused to interfere. The accused appealed to the Supreme Court.

Held :

The presence of the accused persons at the time of the search was not under the provisions of Home Office Memorandum or under the orders of their superior officers. The alleged presence of the accused persons in the complainant's house had nothing to do with the performance of their official duties. Neither were the accused persons performing any official duty in going to that house nor doing anything there nor were they purporting to do so.

Even if for the sake of argument it is assumed that the witnessing of search in the complainant's house could be in the performance of their official duties by the accused persons, the principal offence charged viz. theft or misappropriation of properties belonging to the complainant, wrongful confinement could have no direct connection with the act of witnessing the search. Their presence there as witnesses to the search of complainant's house would give them the opportunity of committing the offence complained of. The mere fact that an opportunity to commit an offence is furnished by the official duty is not such a connection of the offence with the performance of such duty as to justify even remotely the view that the acts complained of are within the scope of their official duty. *Dhannjay Ram Sharma* v. *M.S. Uppadaya*, AIR 1960 SC 745: 1960 Cri LJ 1153: (1960) 2 MLJ 98 (SC).

Bench Strength **2**. Coram: **K.C. Das Gupta** and *J.C. Shah*, JJ. [Date of decision: 11-3-1960]

— S. 462 *See also* Ss. 408 and 462

— S. 463 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 409, 463, 468, 477-A and 120-B

See also Ss. 415, 463 and 467

See also Ss. 420, 463 and 405

See also Ss. 420, 463, 465, 468 and 471 r/w S. 120-B

See also Ss. 466, 468, 463, 464, 23 and 24

See also Ss. 467, 471, 463 and 464

See also Ss. 468 and 463

See also Ss. 468, 463 and 465

See also Ss. 471, 463 and 193

[10613] — S. 463 — Forgery — Basic elements of *— Held, are: (1) making of a false document or part of it, and (2) such making should be with such intention viz. (i) to cause damage or injury to (a) the pub-*

lic, or (b) any person; or (ii) to support any claim or title; or (iii) to cause any person to part with property; or (iv) to cause any person to enter into an express or implied contract; or (v) to commit fraud or that fraud may be committed (Para 26). *Sushil Suri* v. *CBI*, (2011) 5 SCC 708.

Bench Strength **2**. Coram : **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision : 6-5-2011]

Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649; Haryana Financial Corpn. v. Jagdamba Oil Mills, (2002) 3 SCC 496, relied on

[10614] — S. 463 — Forgery of a copy falls within the section. *Rama Shankar Lal* v. *State of U.P.*, (1971) 3 SCC 905: 1972 SCC (Cri) 153.

Bench Strength **3**. Coram: *M. Hidayatullah, C.J.* and *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 26-3-1970]

[10615] — S. 463 — In the absence of the forged document for a conclusion as to forgery the evidence must exclude all possibilities of reasonable doubt

It is not meant to be said that in the absence of the document alleged to be forged the Court can in no case hold the offence of forgery to be established, but to claim such a finding in the absence of the document said to be forged, the evidence must in our view exclude all possibility of a reasonable doubt. This is in accord with the general principle of our jurisprudence. *Rama Shankar Lal* v. *State of U.P.*, (1971) 3 SCC 905: 1972 SCC (Cri) 153.

Bench Strength **3**. Coram: *M. Hidayatullah, C.J.* and *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 26-3-1970]

[10616] — S. 463 — Obtaining signature on a blank paper, held, by itself is not a forgery — *It is an offence only when the paper is fabricated into a document contrary to Indian Penal Code or when such document is used as genuine. Sardar Trilok Singh* v. *Satya Deo Tripathi*, (1979) 4 SCC 396: 1979 SCC (Cri) 987: AIR 1979 SC 850: 1979 ALJ 634: 1980 Cri LJ 822.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 11-1-1979]

[10617] — Ss. 463 and 464 — Deceased giving postal certificates as security to Ration Department — Death of deceased — *Accused getting retransfer of certificates in name of deceased and encashing them by signing deceased's name and attesting the same — Accused, held, guilty of offence of forgery — The fact that accused was sole heir of deceased makes no difference*

If a person who has given postal certificates as security to a department by taking them in the name of the said department dies, his heir can get the said amount by following two procedures, namely, (1) after obtaining a succession certificate, he can apply to the department concerned to release the security and then apply to the postal department for getting the certificates cashed, and (2) if the current value of the certificates at the time of the death of the holder does not exceed Rs 5000 he can, after the expiry of 3 months from the date of the death of the holder, satisfy the Postmaster General that he is the sole heir of the holder and after making the relevant declaration recover the said money. In one case he has to incur expenses for obtaining the succession certificate and in the other he has to wait for three months and thereafter produce evidence to the satisfaction of the Postmaster General that he is the sole heir of the deceased holder of the certificates. In the present case, the appellant attested the signature of the deceased on the reverse of the application form for the transfer of the Post Office National Savings Certificates in the name of his father, got fresh certificates issued in the name of his father, signed the name of his father on the back of the three certificates in token of their cancellation, placed his own attestation and stamp of his office thereon and received the money from the Post Office. By this process he got not only the certificates which stood in the name of the Ration Department transferred in the name of his deceased father but also received the money payable to his father.

The appellant had made the false documents with an intention to cause wrongful gain to himself for by adopting the aforesaid device he secured for himself a gain as otherwise he would have had to incur some expense for obtaining a succession certificate. Even on the assumption that he would have received the money after satisfying the rationing authority and the Postmaster General, he secured an advantage by resorting to the said device, as he was relieved of the trouble of satisfying the rationing authority and the postal authority that he was the sole heir of his father and avoided the risk of their refusal, which would have entailed further delay. In that event he had secured an uneconomic advantage: in the former case he had made the false documents dishonestly and in the latter case fraudulently. In either case he committed forgery within the meaning of S. 463 of the Indian Penal Code. *G.S. Bansal* v. *Delhi Admn.*, AIR 1963 SC 1577: (1964) 2 SCR 470: (1963) 2 Cri LJ 439.

Bench Strength **3**. Coram: **K. Subba Rao**, *Raghubar Dayal* and *J.R. Mudholkar*, JJ. [Date of decision: 21-3-1963]

AIR 1963 SC 1572: 1963 (2) Cri LJ 434, distinguished

See also *AIR 1963 SC 666: 1963 (1) Cri LJ 623*

[10618] — Ss. 463 and 464 — Forgery and false document — Ss. 463 and 464, held, to be read together because definition of "false document" as given in S. 464 is a part of "forgery" as defined

in S. 463 — *On facts held, no forgery was committed when credit/debit vouchers were prepared in bank, before banker's cheques were cleared or received*

The Special Judge erred in holding that accused had prepared a false document, which having regard to provisions of law, could not have been done. Offence of forgery deals with making of a false document with specific intentions enumerated in Section 464. Since commission of forgery has not been convincingly established, the accused could not have been convicted of the offence of forgery. Definition of "false document" is a part of definition of "forgery". Both must be read together. (Paras 165 and 166). *Mir Nagvi Askari* v. *CBI*, (2009) 15 SCC 643.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-8-2009]

Vimla (Dr.) v. Delhi Admn., AIR 1963 SC 1572: 1963 Supp (2) SCR 585, relied on

[10619] — Ss. 463, 464, 465 and 468 r/w S. 420 — Allegation that the appellant published a forged book by stating that it was on the manuscript of King Bhagyachandra and thereby deceived the Govt. to get it published and which also induced many members of public to buy the same believing it as genuine — *Complaint not alleging that the appellant had himself written the manuscript and represented it to be that of King Bhagyachandra — Held, allegations made in the complaint, even if true, do not make out the case of forgery — Consequently cheating being a consequential offence also cannot stand — Hence the complaint does not make out a case under Ss. 420, 465 and 468. Guru Bipin Singh* v. *Chongtham Manihar Singh*, (1996) 11 SCC 622: AIR 1997 SC 1448.

Bench Strength **2**. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 11-10-1996]

[10620] — Ss. 463, 464, 465, 470, 471 and 415 — Forgery — Meaning — *Fraud is an essential ingredient of forgery — Forgery and fraud — How to be established*

Forgery is the false making of any written instrument, for the purpose of fraud or deceit. Thus fraud is an essential ingredient of forgery.

Forgery and fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. The Privy Council in *Satish Chandra Chatterji* laid down thus: "Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dextrous knave would escape." This principle will apply not only to courts of law but also to statutory tribunals which, like the Commission, are conferred power to record evidence by applying certain provisions of the Code of Civil Procedure including the power to enforce attendance of the witnesses and are also given the power to receive evidence on affidavits. *Indian Bank* v. *Satyam Fibres (India) (P) Ltd.*, (1996) 5 SCC 550: AIR 1996 SC 2592.

Bench Strength **2**. Coram: *Kuldip Singh* and **S. Saghir Ahmad**, JJ. [Date of decision: 9-8-1996]

[10621] — Ss. 463 to 465 and 471 — Applicability of — Forgery of document committed prior to that document being produced or given in evidence in court proceedings — *Reiterated, S. 195(1)(b)(ii) CrPC would not be attracted in such a case — CrPC, 1973 — S. 195(1)(b)(ii)* (Para 12). *P. Swaroopa Rani* v. *M. Hari Narayana*, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79: AIR 2008 SC 1884: (2008) 65 AIC 258 (SC): (2008) 3 CHN 95 (SC): (2008) 106 Cut LT 539.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 4-3-2008]

Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

[10622] — Ss. 463 and 465 — Forgery — Essentials to constitute offence of — Making of any false document, held, is a sine qua non therefor — *What is necessary is that the document must have been executed with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made — In present case, respondent co-sharer in joint property, lodging FIR against appellant co-sharers by levelling allegation against them that they executed a deed of sale in favour of a third party stating that they had one-third share in the joint property although they were not entitled thereto — Held, if somebody was aggrieved by false assertions made in sale deed, it would be the vendees and not the co-sharers — Further, appellants were not alleged to be guilty of creating any false document — Thus, offence as to forgery not made out — Hence, criminal proceedings against appellants quashed — CrPC, 1973, S. 482* (Paras 18 to 20). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[10623] — Ss. 463, 465 and 120-B — On facts, offence not established and conviction set aside. *Hanumant Govind Nargundkar* v. *State of M.P.*, AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129.

Bench Strength 3. Coram: **M.C. Mahajan**, *S.R. Das* and *N.H. Bhagwati*, JJ. [Date of decision: 23-9-1952]

[10624] — Ss. 463, 465 and 466 — Document bearing certain date — In fact brought into existence on later date — *Forgery established*

Where the documents bore certain date but were in fact brought into existence on a later date, held, in the circumstances of the case, that the accused was guilty of the offences under Ss. 465 and 466 of the Indian Penal Code. *Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1954 SC 322: 1954 SCR 1098: 1954 Cri LJ 910, 918, 92.

Bench Strength 3. Coram: **N.H. Bhagwati**, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-3-1954]

[10625] — Ss. 463 and 466 — Forgery — Overwriting or pasting or interpolation or change in digits by Chief Minister in file — *File not leaving office — No one secured undue favour or advantage by the overwriting — Held, offence not made out. Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength 5. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[10626] — Ss. 463 (forgery) and 467 (forgery of valuable security) — Whether offences made out in the facts and circumstances of case — *Dates "6-5-2002" and "7-5-2002" alleged to have changed to "16-5-2002" and "17-5-2002" by interpolating "1" in certified copy of revenue records and tampered document alleged to have been used in civil suits relating to property — Held, alleged interpolation of "1" could not cause damage or injury to public or anybody — It did not support any claim to property — It also did not cause any person to part with property — It did not show any intention to commit fraud — Offence under S. 463 was not made out — Further held, in the facts and circumstances of the case, even offence under S. 467 could also not be alleged against appellant* (Paras 29 and 30). *Parminder Kaur* v. *State of U.P.*, (2010) 1 SCC 322.

Bench Strength 2. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 26-10-2009]

[10627] — Ss. 463, 467, 461, 419 r/w S. 120-B — Conditional release on bail — *Offence under Ss. 463, 467, 461, 419 r/w S. 120-B IPC — Accused in custody for about 1 year — Charge-sheet filed — Having regard to the fact that the trial may take long time, Supreme Court releasing accused on bail imposing certain conditions on him due to the alleged links he had with international terrorists — CrPC, 1973 — S. 439. Mehmood Mohd. Sayeed* v. *State of Maharashtra*, (2002) 10 SCC 677: 2004 SCC (Cri) 1144: AIR 2002 SC 482.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 16-2-2001]

[10628] — Ss. 463, 467, 468, 24 and 25 — Liability in absence of injury to the deceased person — Expression "defraud" involves two elements, namely, deceit and injury to person deceived — Absence of injury to deceived — Accused liable to be acquitted

The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether moveable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

V purchased a motor car with her own money in the name of her minor daughter, had the insurance policy transferred in the name of her minor daughter by signing her name and she also received compensation for the claims made by her in regard to the two accidents to the car. The claims were true claims and she received the money by signing in the claims forms and also in the receipts as *N*.

Held :

Certainly *V* was guilty of deceit for though her name was *V* she signed in all the relevant papers as *N* and made the insurance company believe that her name was *N* but the said deceit did not either secure to her advantage or cause any non-economic loss or injury, nor is there any evidence to prove the same. The fact that *V* said that the owner of the car who sold it to her suggested that the taking of the sale of the car in the name of *N* would be useful for income tax purposes is not of any relevance in the present case, for one reason, the said owner did not say so in his evidence and for the other, it was not indicated in the charge or in the evidence. In the charge framed, she was alleged to have defrauded the insurance company and the only evidence given was that if it was disclosed that *N* was a minor, the insurance company might not have paid the money. But the entire transaction was that of *V* and it was only put through in the name of her minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company incurred loss in any sense of the term. Therefore it must be held that the accused was not guilty of the offence under Ss. 467 and 468. *Vimla (Dr.)* v. *Delhi Admn.*, AIR 1963 SC 1572: 1963 Supp (2) SCR 585: (1963) 2 Cri LJ 434.

Bench Strength 4. Coram: *Syed Jafer Imam*, **K. Subba Rao**, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 29-11-1962]

Compare this with case under Ss. 420 & 415, 1963 (1) Cri LJ 623: AIR 1963 SC 666. This case was explained and distinguished in AIR 1963 SC 1577: 1963 (2) Cri LJ 439

[10629] — Ss. 463, 467, 468 and 471 — Forgery — Ingredients of — Test to determine — "Intent to commit fraud" — Meaning — *Making of false document — Dishonestly or fraudulently putting signature on a document or making false description, when amounts to forgery — Market practice, even if prevailing, if wrong, cannot take the place of statutory or regulatory function and cannot, therefore, be a defence for such act*

Per majority (Agrawal and Pasayat, JJ.)

In order to constitute forgery, the first essential is that the accused should have made a false document. The false document must be made with an intent to cause damage or injury to the public or to any class of public or to any community. The questions are (*i*) is the document false, (*ii*) is it made by the accused, and (*iii*) is it made with an intent to defraud. If at all the questions are answered in the affirmative, the accused is guilty. (Paras 371 and 373)

The expression "intent to defraud" implies conduct coupled with an intention to deceive or thereby to cause injury. In other words, defraud involves two conceptions, namely, the deceit and injury to the person deceived, that is infringement of some legal right possessed by him but not necessarily deprivation of property. The term "forgery" as used in the statute is used in its ordinary and popular acceptation. (Para 372)

In order to constitute an offence of forgery the documents must be made dishonestly or fraudulently. But dishonest or fraudulent are not tautological. Fraudulent does not imply the deprivation of property or an element of injury. In order to be fraudulent, there must be some advantage on the one side with a corresponding loss on the other. Every forgery postulates a false document either in whole or in part, however small. (Para 374)

The intent to commit forgery involves an intent to cause injury. A person makes a false document who dishonestly or fraudulently signs with an intent or cause to believe that the document was signed by a person whom he knows it was not signed. A false description makes a document of forgery when it is found that the accused by giving such false description intended to make out or wanted it to believe that it was not he that was executing the document but another person. (Paras 375 and 376)

An accused person cannot take shelter behind what they have described as "market practices". Such practices even if existing, cannot take the place of statutory and regulatory functions. There is no public interest involved in such practices and they cannot be a substitute for compliance with the regulatory or statutory prescriptions. An attempt was made to show that there was subsequent disapproval of the market practices; at the point of time when the transactions took place there was no embargo. It is the stand of the defence that the practices were a part of accepted norms. These explanations are not plausible. A practice even if was prevailing, if wrong, is not to be approved. The subsequent clarifications do not in any way put seal of approval on the practices adopted in the past, on the other hand it condemns it. (Para 377)

Section 467 relates to forgery of such documents as valuable securities and of other documents mentioned. Section 468 deals with forgery for the purpose of cheating. The offence is complete as soon as there was forgery with a particular intent. Section 471 deals with using as genuine a forged document. For the purpose of convicting an accused under Section 467 read with Section 471 IPC, it has to be shown that an accused either knew or has reason to believe that the document was forged. (Paras 367 to 369)

When the factual background highlighted is considered in the light of the various provisions, it is clear that the offences under the Indian Penal Code alleged have been established against the accused persons. Accused 1, 3 and 5 were therefore, rightly convicted. (Para 378). *Ram Narayan Popli* v. *CBI*, (2003) 3 SCC 641: 2003 SCC (Cri) 869: AIR 2003 SC 2748.

Bench Strength 3. Coram: **M.B. Shah**[1], *B.N. Agrawal*[2] and **Arijit Pasayat**[2], JJ. [Date of decision: 14-1-2003]

[10630] — Ss. 463, 471, 475 and 476 — Interpretation of S. 195(1)(b)(ii) CrPC, considered — Allegation of commission of forgery in respect of document produced/given in evidence in a proceeding in court — Initiation of proceeding under S. 340 CrPC — Sustainability — *On facts, following* Iqbal Singh case, *(2005) 4 SCC 370, held, High Court rightly placed reliance on* Sachida Nand case, *(1998) 2 SCC 493 and held that initiation of proceeding under S. 340 CrPC was without* *jurisdiction and accordingly allowed the writ appeal — Present appeal, therefore, held, was without merit — CrPC, 1973 — Ss. 340 and 195(1)(b)(ii)*

Challenge in this appeal was to the judgment of Division Bench of the High Court by which the judgment of the Single Judge was set aside and the writ appeal was allowed.

Matter related to tenancy of a building by lease agreement where lease deed enabled tenant, Respondent 1, to make alterations in it. Accordingly, tenant effected some alterations in the building for which he received an order from the Municipality directing him to demolish the structure, citing it to be unauthorised. Tenant approached Government thereagainst which directed him to submit application to local authority seeking regularisation of additional structure made by him.

Appellant's contention in writ was that there was no lease agreement and construction was unauthorised which could not be legalised on other grounds. Tenant then filed counter-affidavit annexing photocopy of lease agreement. Contention of appellant thereafter was that purported lease agreement was a forged document for which she had sought opinion of handwriting expert. Fabrication of lease agreement was denied by tenant.

The Single Judge of High Court relied on the opinion given by the handwriting expert and prima facie came to the conclusion that the lease agreement was fabricated and hence there was a reasonable likelihood to establish the offences punishable under Sections 463, 471, 475 and 476 IPC. The Single Judge directed Registrar of the Court to make a complaint for the purpose in writing and send it to the Magistrate of the First Class having jurisdiction. Against this order the writ appeal was filed which was allowed. Hence the present appeal.

Dismissing the appeal,

Held :

It is to be noted that in view of the conflict of language between two decisions of the Supreme Court, each rendered by a Bench of three learned Judges in *Sachida Nand case* and *Surjit Singh case* regarding interpretation of Section 195(1)(*b*)(*ii*) CrPC, the matter was placed before a five-Judge Bench in *Iqbal Singh Marwah* v. *Meenakshi Marwah*. After referring to the provisions contained in Sections 190, 195(1)(*b*)(*ii*) and 340 CrPC it was held that the decision in *Sachida Nand case* was correctly decided and the view taken is the correct view. (Para 11)

The Division Bench of High Court was, therefore, right in placing reliance on *Sachida Nand case* and holding that stage for initiation of the proceeding, if any, under Section 340 CrPC had not come, and therefore, initiation of the proceeding under Section 340 CrPC was without jurisdiction. The appeal is, therefore, without merit. (Paras 12, 8 and 13). *Rugmini Ammal* v. *V. Narayana Reddiar*, (2007) 12 SCC 611: (2008) 3 SCC (Cri) 309: AIR 2008 SC 895: (2008) 61 AIC 46 (SC): 2008 Cri LJ 1405.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-12-2007]

Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660, affirmed

[10631] — Ss. 463, 471, 475 and 476 — Private complaint — Bar under S. 195(1)(b)(ii) CrPC that no court shall take cognizance of any offence described in S. 463 IPC, or punishable under S. 471, S. 475 or S. 476 IPC, committed in respect of a document produced or given in evidence in a proceeding in the court, except on complaint in writing of the court concerned — Private complaint in such matter — Maintainability — *Held, said bar not attracted, as offence committed by respondent-accused in collusion with Area Lekhpal was not in relation to court proceedings — It was behind the back of appellant and as soon as he came to know about the illegal designs of accused, he lodged a private complaint under S. 156(3), which was maintainable — Magistrate directed to proceed with criminal complaint — CrPC, 1973, Ss. 195(1) (b)(ii), 156(3) and 482*

The appellant purchased land from one *M* (vendor) and pursuant to the execution of sale deed in his favour, he was handed over possession. Respondent-accused (Respondents 2 to 4 herein) contended that land in question was recorded in their names. On inquiries made by both appellant and vendor in Tahsildar's court, they came to know that accused, in collusion with the Area Lekhpal, got their names mutated on the basis of Area Lekhpal's report. Area Lekhpal had given a totally untrue statement, and by showing an alive person, appellant's vendor as dead had got the names of the accused mutated. Appellant filed an application before SDM to set aside such mutation order, which was allowed and appeal of respondent-accused thereagainst dismissed. Thus, matter relating to mutation proceedings came to an end.

However, the appellant initiated criminal proceedings against respondent-accused by filing application/complaint under Section 156(3) CrPC, alleging the aforesaid facts. The said application/complaint of the appellant was allowed and police registered the FIR and started investigation. Ultimately, after further litigation, police completed the investigation and the investigating officer submitted the charge-sheet for commission of alleged offences under Sections 420, 467, 468, 471 and 120-B IPC and criminal case was registered against the respondents and cognizance taken against them. Respondent-accused then filed petition under Section 482 CrPC before the High Court for quashing the charge-sheet and taking cognizance thereof, which was allowed.

The High Court held that the application under Section 156(3) CrPC was barred in view of the provisions of Section 195 CrPC. However, appellant complainant was given liberty to move an application before the court concerned for taking action against the accused persons in accordance with the provisions of Section 340 CrPC.

Allowing the appeal,

Held :

Section 195(1)(*b*)(*ii*) CrPC contemplates a situation where offences enumerated therein are committed with respect to a document, subsequent to its production or giving in evidence in a proceeding in any court. (Para 23)

The impugned order was passed by the High Court on total non-application of law with regard to provision contained in Section 195 CrPC, which cannot be sustained in law. It proceeded on absolutely wrong facts and incorrect principles of law were applied. It completely lost sight of the fact that the offence committed by the accused in collusion with the Area Lekhpal was not in relation to court proceedings. It was in any case behind the back of the appellant and as soon as he came to know with regard to the illegal designs of the accused he lodged a complaint under Section 156(3) CrPC. (Paras 16 and 22)

The High Court further committed a gross error in resorting to Section 340 CrPC as provisions of the said section can be invoked only when it is established that offence of forgery had already been committed. (Para 24)

The accused had miserably failed for grant of any relief under Section 482 CrPC. The limit of exercising jurisdiction conferred on the High Court under Section 482 CrPC is well defined and by no stretch of imagination, it could be said that petition filed by the accused under Section 482 CrPC had fulfilled the requirement as contemplated in this section. (Para 25)

Hence, the impugned order cannot be sustained. The same is, accordingly, set aside and quashed. As a necessary consequence thereof, the Magistrate is directed to proceed with the criminal complaint filed by the appellant against respondent-accused in accordance with law and on merits. (Para 26). *Mahesh Chand Sharma* v. *State of U.P.*, (2009) 15 SCC 519: (2009) 82 AIC 227 (SC).

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 28-8-2009]

Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

[10632] — Ss. 463, 471, 475 and 476 — S. 340 CrPC — When invocable — *Held, provisions of S. 340 can be invoked by the court only when it is established that offence of forgery had already been committed (in respect of document produced or given in evidence in the proceedings in that court) — CrPC, 1973, S. 340. Mahesh Chand Sharma* v. *State of U.P.*, (2009) 15 SCC 519: (2009) 82 AIC 227 (SC).

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 28-8-2009]

Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

— S. 464 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 167 and 464

See also Ss. 463 and 464

See also Ss. 463, 464, 465 and 468 r/w S. 420

See also Ss. 463, 464, 465, 470, 471 and 415

See also Ss. 463 to 465 and 471

See also Ss. 466, 468, 463, 464, 23 and 24

See also Ss. 467 and 464

See also Ss. 467, 471, 463 and 464

[10633] — S. 464 — "Dishonestly"

The words "dishonestly" and "fraudulently" are used in S. 464. The appellant did not intend to cause wrongful gain to one person or wrongful loss to another person when he brought the diploma, whether forged or not, into Court. He was ordered to do so. He may have intended to deceive the Court, even as he intended that he was forensic expert (which perhaps he was not) and that he held a diploma from a recognised institution. He did not act dishonestly. *S. Dutt (Dr.)* v. *State of U.P.*, AIR 1966 SC 523: (1966) 1 SCR 493: 1966 Cri LJ 459, 461-65.

Bench Strength **3**. Coram: *K.N. Wanchoo*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 18-8-1965]

[10634] — S. 464 — Expressions 'dishonestly' and 'fraudulently' — Must be given different meanings

In S. 464 two adverbs, "dishonestly" and "fraudulently" are used alternatively indicating thereby that one excludes the other. That means they are not tautological and must be given different meanings. *Vimla (Dr.)* v. *Delhi Admn.*, AIR 1963 SC 1572: 1963 Supp (2) SCR 585: (1963) 2 Cri LJ 434.

Bench Strength **4**. Coram: *Syed Jafer Imam*, **K. Subba Rao**, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 29-11-1962]

[10635] — S. 464 — Non-framing of a charge would not vitiate the conviction if no prejudice is caused to accused

On interpretation of Section 464 CrPC it was observed in *Kammari case*, (1999) 2 SCC 522 that non-framing of a charge would not vitiate the conviction if no prejudice is caused thereby to the accused. Procedural law is the handmaid of justice and the Code of Criminal Procedure is no exception thereto. Its incorporation in the statute-book has been to subserve the ends of justice and non-observance of the technicalities does not and cannot frustrate the concept of justice since technicality alone would not outweigh the course of justice. In the event, however, there being prejudice leading to a failure of justice, it cannot but be treated to be an illegality, which is otherwise incurable in nature. (Paras 27 and 28). *Lallan Rai* v. *State of Bihar*, (2003) 1 SCC 268: 2003 SCC (Cri) 301: AIR 2003 SC 333.

Bench Strength **2**. Coram: **U.C. Banerjee** and *B.N. Agrawal*, JJ. [Date of decision: 14-11-2002]

Kammari Brahmaiah v. Public Prosecutor, High Court of A.P., (1999) 2 SCC 522: 1999 SCC (Cri) 281; Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291; Narinder Singh v. State of Punjab, (2000) 4 SCC 603: 2000 SCC (Cri) 855, relied on

[10636] — Ss. 464, 24, 25, 29 and 29-A — False document — What constitutes — *Held, a person is said to have made a false document, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered with a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses — Further held, in the first category of false documents, it is not sufficient that the document has been made/executed dishonestly or fraudulently — There is the further requirement that the document should have been made with the intention of causing it to be believed that such document was made/executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed* (Paras 14 to 17)

Accused 1 had executed a sale deed in favour of Accused 2, claiming that the property being sold belonged to Accused 1. Second respondent filed a criminal complaint that the title to the property sold, belonged to the second respondent and therefore Accused 1 had committed offences under Sections 467 and 471 IPC. Accused 1' plea was that the property was mutated in his name, he was having its possession and was also paying land revenue for it.

The issue before the Supreme Court was whether Accused 1 had committed an act of forgery even if the facts alleged by the second respondent were accepted as true. Trial court and High Court dismissed Accused 1' plea for quashing of criminal complaint. Reversing this decision and partly allowing the appeal, the Supreme Court, held as above. *Mohd. Ibrahim* v. *State of Bihar*, (2009) 8 SCC 751: (2009) 3 SCC (Cri) 929.

Bench Strength **2**. Coram: **R.V. Raveendran** and *R.M. Lodha*, JJ. [Date of decision: 4-9-2009]

[10637] — Ss. 464, 423, 420 r/w S. 34 — Quashing of FIR and investigation — Propriety — Factors to be considered — *Private complaint made to Magistrate alleging that general power of attorney issued in favour of first respondent was misused by him, hence appellant complainant had cancelled the same — Despite that Respondent 1 had executed a registered sale deed in favour of Respondent 2 — Magistrate handing over the complaint for investigation, on basis of which FIR lodged — However, said FIR quashed by High Court holding that it was a case of civil profile and none of the ingredients that constitute the offences punishable under Ss. 464, 423 and 420 r/w S. 34 IPC were discernible from the said allegations — Held, it is settled law that an FIR and the consequent investigation cannot be quashed unless there is no offence spelt out from the same — FIR is to be taken on its face value for adjudging the same — No question of considering the merits of the allegations contained in FIR at that stage or testing the veracity of allegations would arise — In the instant case, investigation was in progress and police had also not reported back to the Magistrate the result of their investigation — In such circumstances, FIR could have been quashed only and only if there appeared to be no offence spelt out therein — High Court at the stage of investigation could not have examined the nature of transaction or whether any offence was actually committed by the accused persons or not — Only enquiry that could have been undertaken was to see as to whether the complaint or FIR did contain allegations of any offence — High Court erred in quashing the FIR — CrPC, 1973 — Ss. 482, 154, 156(3) and 157* (Paras 3, 4, 7 and 8). *T. Vengama Naidu* v. *T. Dora Swamy Naidu*, (2007) 12 SCC 93: (2008) 2 SCC (Cri) 231: (2007) 52 AIC 65 (SC).

Bench Strength 2. Coram: *P.K. Balasubramanyan* and **V.S. Sirpurkar**, JJ. [Date of decision: 27-2-2007]

[10638] — Ss. 464, 467 and 468 — Presenting forged will before Patwari and mutation proceedings commenced on the strength of such will — *Requirement of S. 195(1)(c), Criminal Procedure Code, 1898 not attracted*

The allegation of the complainant was that the appellants forged a will in the name of *K* and thereafter produced it either before the Patwari or the Tehsildar in the mutation proceedings commenced by them on the strength of the will. The forgery therefore was alleged to have been committed by the appellants not after they became parties to the mutation proceedings but prior to the commencement of those proceedings. Section 195(1)(*c*) can therefore have no application at least in regard to the offences under Ss. 464, 467 and 468, Penal Code. *Mohan Lal* v. *State of Rajasthan*, (1974) 3 SCC 628: 1974 SCC (Cri) 118: AIR 1974 SC 299: 1974 Cri LJ 350.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 21-11-1973]

[10639] — S. 464 (making a false document), Secondly and S. 471 (using as genuine a false document) — Applicability — *Held, to attract S. 464 Secondly, there has to be alteration of document dishonestly and fraudulently, for some gain or with such objective on the part of accused — Merely changing a document does not make it a false document — Dates "6-5-2002" and "7-5-2002" alleged to have been changed to "16-5-2002" and "17-5-2002" by interpolating "1" in certified copy of revenue records — Held on facts, interpolation did not save limitation in civil suits alleged to have been filed by appellant — She did not gain anything out of alleged interpolation — The document therefore did not become false under S. 464, Secondly — Consequently, offence under S. 471 was also not made out* (Paras 33 and 34). *Parminder Kaur* v. *State of U.P.*, (2010) 1 SCC 322.

Bench Strength 2. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 26-10-2009]

— S. 465 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 30, 467, 465 and 471

See also Ss. 120-A and 465

See also Ss. 120-B, 302 and 465, 467 and 468

See also Ss. 120-B, 409, 420, 465, 468, 471, 477-A, 101 and 34

See also Ss. 120-B and 465

See also Ss. 120-B, 465, 466 and 500

See also Ss. 120-B, 465, 467, 468, 471 and 420

See also S. 120-B r/w 326, 342, 417, 465, 473, 506 and 307

See also S. 120-B r/w Ss. 467, 471, 420, 406, 409, 465, 162, 163, 167, 201 and 109

See also Ss. 177, 181, 193, 406, 465 and 474 r/w S. 34

See also Ss. 193, 196, 465 and 471

See also Ss. 205, 419, 465, 467 and 471

See also Ss. 323, 382, 420, 465, 468, 471, 120-B, 506 and 34

See also Ss. 406, 420, 423, 465, 477, 468, 471, 120-B, 124 and 34

See also Ss. 406, 420, 465, 467, 468 and 120-B

See also Ss. 406, 420, 465, 468 and 120-B

See also Ss. 419, 420, 465, 468, 469, 471, 472 and 474 r/w S. 34

See also Ss. 420, 421, 466, 468, 471, 465 and 120-B

See also Ss. 420, 463, 465, 468 and 471 r/w S. 120-B

See also Ss. 420, 465, 466, 467, 468 and 471

See also Ss. 420, 486, 465 and 467

See also Ss. 463, 464, 465 and 468 r/w S. 420

See also Ss. 463, 464, 465, 470, 471 and 415

See also Ss. 463 to 465 and 471

See also Ss. 463 and 465

See also Ss. 463, 465 and 120-B

See also Ss. 463, 465 and 466

See also Ss. 467, 465, 471 and 120-A

See also Ss. 468, 420, 120-B, 417 and 465

See also Ss. 468, 463 and 465

See also Ss. 468, 465 and 471

See also Ss. 471 and 465

[10640] — S. 465 — Whether S. 465 pro tanto repealed by S. 146(p) of the Maharashtra Cooperative Societies Act, 1960 — If prosecution bad for want of sanction

In order to attract Ss. 463 and 464, IPC, there must be making of a false document with the intention mentioned in the section, whereas S. 146 of the

Maharashtra Act does not make any such intention an ingredient of the offences. It is true that certain acts may fall within both the sections but that is no ground to hold that S. 465, IPC, is *pro tanto* repealed by S. 146(*p)* of the Maharashtra Act. In considering such problem the court must consider the true meaning and effect of the two Acts and unless there is repugnancy or inconsistency between the two or that the two cannot stand together, they must be treated cumulative.

It is clear from a perusal of S. 146(*p)* of the Maharashtra Act and Ss. 463 and 464, IPC, that they are two distinct offences which are capable of being committed with different intentions by different sets of persons and it could not be contemplated that the Legislature of the State of Maharashtra intended to repeal *pro tanto* the provisions of S. 465, IPC, by enactment of S. 146 of the Maharashtra Cooperative Societies Act, 1960. No sanction is necessary with reference to an offence under S. 146(*p)* under any provision of the Criminal Procedure Code. *Rama Rao* v. *Narayan*, (1969) 1 SCC 167: AIR 1969 SC 724: 1969 Cri LJ 1064.

Bench Strength **2**. Coram: **J.C. Shah** and *A.N. Grover*, JJ. [Date of decision: 20-12-1968]

[10641] — Ss. 465, 467, 468, 471 and 120-B — Quashing of criminal proceedings — Warrantedness — Pendency of civil procedings — Effect *— When trial court found that the complainant had made out a prima facie case against the accused persons, of forgery of a document (a deed of dissolution of partnership firm), held, High Court was not justified in quashing the criminal proceedings merely on the ground that the same document was under scrutiny by it in a civil proceeding initiated by the same complainant — CrPC, 1973 — S. 482*

The appellant filed a complaint before the Magistrate alleging that the respondent-accused persons had brought into existence a deed of dissolution of a partnership firm by forging signatures of the partners, including the signature of the appellant for their personal gain and to the detriment of the partners of the firm. The Magistrate recorded the statement of the witnesses for the complainant, perused the record including opinion of a handwriting expert and his deposition and found that the appellant had made out a prima facie case under Sections 465, 467, 468, 471 and 120-B IPC against all the accused persons and therefore, issued summons for their presence. Instead of appearing before the trial Magistrate and contesting the case, the respondents approached the High Court by filing a petition under Section 482 CrPC praying for quashing of the proceedings initiated and process issued against them. The High Court quashed the proceedings observing:

"Consideration is and should be whether any criminal proceeding instituted before a court subordinate to this Court should be allowed to continue when the very foundation of the criminal case, namely, forgery of document is under scrutiny by this Court in a civil proceeding instituted by same person i.e. the complainant in the criminal case. In my considered view it would not be proper to allow the criminal proceeding to continue when the validity of the document (deed of dissolution) is being tested in a civil proceeding before this Court."

Allowing the appeal and setting aside the impugned order passed by the High Court and restoring the order of the Magistrate with the direction to proceed with the trial of the case in accordance with the provisions of law and decide the same on merits,

Held :

The High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. There is no substance in the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings. The nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt". The revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction. (Paras 17, 9, 15 and 7). *Kamaladevi Agarwal* v. *State of W.B.*, (2002) 1 SCC 555: 2002 SCC (Cri) 200: AIR 2001 SC 3846.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 17-10-2001]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Hazari Lal Gupta v. Rameshwar Prasad, (1972) 1 SCC 452: 1972 SCC (Cri) 208; State of Karnataka v. L. Muniswamy, *(1977) 2 SCC 699: 1977 SCC (Cri) 404; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615; Lalmuni Devi v. State of Bihar, (2001) 2 SCC 17: 2001 SCC (Cri) 275; M. Krishnan v. Vijay Singh, (2001) 8 SCC 645: 2002 SCC (Cri) 19; M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019, relied on*

Manju Gupta v. Lt. Col. M.S. Paintal, (1982) 2 SCC 412: 1982 SCC (Cri) 459; Sardool Singh v. Nasib Kaur, 1987 Supp SCC 146: 1987 SCC (Cri) 672; Karamchand Ganga Pershad v. Union of India, (1970) 3 SCC 694, distinguished

Shiv Kishan Agarwal v. State of W.B., (2001) 1 Cal LJ 480 (Cal HC), reversed

See also K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87 in this regard

[10642] — Ss. 465, 468, 471 and 420 r/w S. 120-B — On facts held, High Court erred in quashing the criminal proceedings — *CrPC, 1973 — S. 482*

On receipt of a complaint, a charge-sheet was submitted by the police against the respondents alleging commission of offences punishable under Sections 465, 468, 471 and 420 r/w Section 120-B IPC. It was alleged that a sub-lease to act as Excise Contractor of Koratagere was obtained by Respondent 1 by submitting fake bank guarantees, confirmation and extension letters and by impersonation with fraudulent intention. The accused-Respondents 1 and 2 filed application before the High Court under Section 482 CrPC. They inter alia contended that the allegations made have not been borne out by the materials/evidence collected during investigation and continuance of proceedings against them would be against the ends of justice. A Single Judge of the High Court, on analysis of the background facts held that involvement of the excise officials could not be ruled out and when they had been indicated to be witnesses, likelihood of prejudice could not be ruled out. It was also noted that there was no "definite evidence" to show that Accused 1 and 2 were directly involved. Finally, it was observed that there was no material to hold that the accused persons had committed theft of "letter heads" from the bank and/or they had committed forgery for the purpose of cheating or have used genuine forged documents or had cheated the Government. Finally, it was observed that there was no evidence to infer common intention to commit such offences. Hence he quashed the criminal proceedings. Allowing the appeal by the State,

Held:

The order of the Single Judge of the High Court cannot be maintained and therefore, the same is set aside. (Para 10). *State of Karnataka* v. *M. Devendrappa*, (2002) 3 SCC 89: 2002 SCC (Cri) 539: AIR 2002 SC 671: 2002 Cri LJ 998: (2002) 2 CHN (Supp) 21.

Bench Strength **3**. Coram: *M.B. Shah, B.N. Agrawal* and **Arijit Pasayat**, JJ. [Date of decision: 16-1-2002]

[10643] — Ss. 465/34 — Quashing of criminal complaint — Propriety of quashing complaint against some of the accused when complaint made specific allegations against all — *Complaint filed by appellant alleging that Chairman & MD (A-1), Principal Manager (Finance) and Company Secretary (A-2) Joint Secretary and Manager (Finance) (A-3) of a company together committed offence under Ss. 465 and 466 r/w S. 34 IPC by filing a forged certificate in court in a pending proceeding between them and the appellant — Magistrate coming to the conclusion that prima facie the offence as alleged was disclosed against all the three accused and accordingly issuing summons — Writ petition filed before High Court for quashing the proceedings — High Court taking the view that it was incumbent on the part of the complainant to plead the role of each accused in the making of the document and accordingly holding that A-2 was involved in the forgery but the allegations contained in the complaint were not sufficient to implicate A-1 and A-3 and as such quashing the proceedings initiated against them — Held, High Court erred in quashing the proceedings initiated against A-1 and A-3 when in the complaint it was specifically alleged that all the three accused had together forged the document which was presented in Court — CrPC, 1973, S. 482 — Constitution of India, Art. 226. Tarun K. Shah* v. *C.R. Alimchandani*, (2001) 9 SCC 728.

Bench Strength **2**. Coram: *B.N. Kirpal* and *D.P. Mohapatra*, JJ. [Date of decision: 18-7-2000]

C.R. Alimchandani v. J.K. Shah, 1999 Cri LJ 2416 (Bom), reversed

[10644] — Ss. 465/471 or Ss. 139/196 — Credentials of an expert examined in a court challenged — *Expert filing his diplomas and certificates for examination by the Court under its orders — Allegation that the documents filed were forged — Court refusing to file a complaint under S. 195 CrPC — Government expert filing a complaint against the expert under Ss. 465/471 IPC — Held, facts disclosed an offence under Ss. 139/196 IPC and not under Ss. 465/471 IPC — Expert could not be prosecuted in the absence of a complaint by Court under S. 195 CrPC — CrPC, 1898 — S. 195. S. Dutt (Dr.)* v. *State of U.P.*, AIR 1966 SC 523: (1966) 1 SCR 493: 1966 Cri LJ 459, 61, 64.

Bench Strength **3**. Coram: *K.N. Wanchoo*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 18-8-1965]

— S. 466 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 52, 420, 406, 466, 468 and 471

See also Ss. 120-B, 384, 388, 342, 341, 193, 201, 218, 466 amd 420

See also Ss. 120-B, 465, 466 and 500

See also Ss. 120-B, 466 and 467

See also Ss. 420, 421, 466, 468, 471, 465 and 120-B

See also Ss. 420, 465, 466, 467, 468 and 471

See also Ss. 463, 465 and 466

See also Ss. 463 and 466

See also Ss. 471, 466 and 468 and 120-B

[10645] — S. 466 — Held, offence under S. 466 is covered by the expression "offences described in S. 463" — *CrPC, 1898 — S. 195(1)(c)*

Section 466 is an aggravated form of forgery in that the forgery should relate to a document specified in the section. One of the documents specified is a document purporting to be a record or proceeding of or in a court of justice. Section 466, is therefore an offence as described in S. 463 which is committed in relation to a record or proceeding of or in a court of justice. In S. 195(1)(*c*) the words used are "of any offence described in S. 463 or punishable under S. 471, S. 475 or S. 476 of the same Code". Thus, S. 466, Indian Penal Code is covered by cl. (*b*) or (*c*) of S. 195(1). *S.L. Goswami (Dr.)* v. *High Court of M.P.*, (1979) 1 SCC 373: 1979 SCC (Cri) 311: AIR 1979 SC 437: 1979 Cri LJ 193.

Bench Strength 3. Coram: **P.S. Kailasam**, *D.A. Desai* and *A.D. Koshal*, JJ. [Date of decision: 23-11-1978]

[10646] — S. 466 — Whether on facts and in the circumstances of the case, a prima facie offence constituted under — *Pasting an antedated order over a previous order in the file by Chief Minister — Whether prima facie forgery established — Prevention of Corruption Act, 1947 — S. 5(1)(d)*

Respondent 3 started a cooperative Bank in the State of Bihar and became its chairman. The audit report revealed various irregularities in the affairs of the Bank whereupon the Cooperative Audit Department as well as the Law Department recommended legal action against the directors of the Bank. Meanwhile, respondent 2, who was a colleague of respondent 3, became the Chief Minister of Bihar. He called for the concerned file and on May 16, 1975 ordered for taking strict steps for realisation of the loans, failing which for starting surcharge proceedings and to restore normal conditions in the Bank after convening annual general meeting and holding election. However, subsequently he made a fresh order bearing a back date viz. May 14, 1975 for restoring normal condition in in the Bank after holding annual general meeting. This order was pasted over the earlier order in the file, such practice being prevalent in the Chief Minister's Secretariat.

In 1977 the Congress (I) Party was voted out and the Janata Party came into power in Bihar. Thereafter an enquiry into the affairs of the Bank was held and a report submitted recommending institution of criminal cases against respondent 2 and others. Accordingly, a Senior Advocate (Shri A.K. Datta) was appointed as a Special Public Prosecutor and after obtaining the requisite sanction from the Governor a charge-sheet was filed in 1979 by the State of Bihar against the respondents for offences under Ss. 420/466/471/109/120-B, IPC and Ss. 5(1)(*a*), 5(1)(*b*) & 5(1)(*d*) read with S. 5(2) of the Prevention of Corruption Act. It was inter alia alleged that respondent 2 in the capacity of a Minister or the Chief Minister at the material time by corrupt or illegal means or by otherwise abusing his position as a public servant, in conspiracy with the other accused and with the view to protect respondent 3 in particular, sought to subvert criminal prosecution and surcharge proceedings against himself and conferred on himself and them pecuniary advantage to the detriment of the Bank, its members, depositors and creditors and thereby committed the aforesaid offences

Held :

Per Baharul Islam, J.

By pasting an antedated order over the previous order, respondent 2 cannot be said to have shielded respondent 3 and others from realising the dues from the accused persons including respondent 3 or from initiating surcharge proceedings against them. If respondent 2 found that his first order regarding surcharge was unwarranted by law (by virtue of S. 40 of the Bihar Cooperative Societies Act, 1935 which gives power only to the Registrar to initiate surcharge proceedings), his cancellation of the first order was proper. Moreover, bona fide scoring out the order retaining the last part, would constitute no offence by respondent 2. Pasting an order by a piece of paper containing another order prima facie appears suspicious, but pasting is the common practice in the Chief Minister's Secretariat. Antedating simpliciter is no offence. If two interpretations are possible, one indicating criminal intention and the other innocent, the interpretation beneficial to the accused must be accepted.

One of the co-accused made two consecutive confessional statements. In the first statement he did not implicate respondent 2 but in his second statement made after his re-arrest he implicated respondent 2. When the second statement was made he was not a co-accused in the case involving respondent 2 and others as at that time that case had not been registered. The second confessional statement thus inspires no confidence; it was the statement of an accomplice turned approver, and is worthless.

From the facts and circumstances of the case it also appears that the criminal case against respondent 2 was the result of political vendetta.

In the circumstances of the case, therefore, the suggestion that there was a prima facie case for trial by the Special Judge and the case should be remanded to him for trial cannot be accepted.

Moreover, the above suggestion did not arise out of the points formulated by the appellant's counsel at the start of his argument, nor did it arise out of the appellant's petition opposing withdrawal. This question of fact has not been sought to be brought to the notice of the Supreme Court during the course of argument by counsel of the appellant in this appeal. A question of fact that needs investigation cannot be allowed to be raised for the first time in an appeal by special leave under Art. 136.

Per Misra, J. (concurring)

On the material on record it cannot be said that a prima facie case under S. 5(1)(*d*) of the Prevention of Corruption Act and of forgery under S. 466, IPC are made out.

Per Tulzapurkar, J. (dissenting)

It is not necessary that the fraudulent intent should materialise; it is enough if act of antedating is done with the fraudulent intent. In the present case the undisputed documentary evidence comprising the Audit Reports, the relevant notings in the concerned file and the two orders of respondent 2 clearly make out a prima facie case of the commission of two common law offences of criminal misconduct [S. 5(1)(*d*) of Prevention of Corruption Act] and forgery (S. 466, IPC) by respondent 2 without needing any further material to establish the same. The ingredients of the former can be said to be prima facie satisfied in that by passing the two orders respondent 2 by corrupt or illegal means or by otherwise abusing his position as the Chief Minister subverted the criminal prosecution and surcharge proceedings against respondent 3 and others and had thereby at any rate obtained for them pecuniary advantage to the detriment of the Bank, its members, depositors and creditors. This is apart from the aspect as to whether while doing so he obtained pecuniary advantage for himself or not, for which further material by way of confessional statement of the approvers would be required to be considered or appreciated but ignoring such further material the ingredients of S. 5(1)(*d*) get satisfied *prima facie* as indicated above. As regards the latter though respondent 2 had the authority and power to pass the second order in substitution of the first, by antedating the second order with fraudulent intent the ingredients of forgery again is *prima facie* satisfied. The antedating in the circumstances would be with oblique intent to nullify any possible action that could have or might have been taken pursuant to the first order, that being the most natural consequence flowing from it which he must in law be presumed to have intended.

The impugned withdrawal was neither justified on merits nor in law and was illegal. *Sheonandan Paswan* v. *State of Bihar*, (1983) 1 SCC 438: 1983 SCC (Cri) 224: AIR 1983 SC 194: 1983 Cri LJ 348.

Bench Strength **3**. Coram: **V.D. Tulzapurkar**[1], **Baharul Islam**[2] and **R.B. Misra**[3], JJ. [Date of decision: 16-12-1982]

[10647] — Ss. 466, 419/109 and 471/109 — Person preparing forged passport — *Since his aim was to enable somebody to make use of them as genuine passport the offence under S. 471 r/w S. 109 was also committed — That he was acquitted under S. 419 r/w S. 109 would not disturb the conviction under S. 471 r/w S. 109*

But since on facts the direct and circumstantial evidence was insufficient to establish a charge under S. 466, the conviction under Ss. 466 and 471 read with S. 109 is set aside.

Whosoever made the endorsements extending the passports to countries to which the passport-holders were not entitled to travel, could not have made the endorsements innocently. When the endorsements were made, the passports must have borne either the photograph of the genuine passport-holder or the impersonator. In either case, the endorsements had been made with a view to help the person having his photograph on the passport to travel to countries to which he was not entitled to travel. The endorsements were obviously made dishonestly and fraudulently and, therefore, the offence under S. 741 read with S. 109, IPC must be deemed to have been committed. *Mahendra Singh* v. *State of Rajasthan*, (1972) 4 SCC 715: AIR 1971 SC 2593: 1972 Cri LJ 34.

Bench Strength **2**. Coram: *A.N. Ray* and **D.G. Palekar**, JJ. [Date of decision: 26-10-1971]

[10648] — Ss. 466, 468, 463, 464, 23 and 24 — "Forged document" — Fabrication of forged bail order by stenographer of the Judge —

Forged bail order proved to be in the handwriting of the accused — Merely because signature in such bail order not put by the accused it cannot be said that the same was not a "document" and thereby not attracting S. 464 — Expression "gaining wrongfully" and "losing wrongfully" not confined only to acquisition or actual deprivation of property — Hence, preparation of forged bail order attracts S. 466 — Accused held liable to be convicted under Ss. 466 and 468 — However, in view of the fact that 27 years had elapsed and the trial Judge himself had granted benefit of probation to the accused and there being no bad antecedents, order of the trial Judge granting benefit of S. 4 of U.P. First Offenders Probation Act affirmed

The High Court committed gross error in recording the conclusion that the bail order in question cannot be said to be a "document" since the accused did not put the signature under the bail order. Under Section 464, a person is said to make a false document who dishonestly or fraudulently makes, signs, seals or executes a document or *part of a document*. The reasoning of the High Court, therefore, that the bail order without the signature cannot be said to be a document thereby not attracting the provisions of Section 464 is wholly unsustainable.

It would be seen from Section 466 IPC that whoever forges a document, purporting to be a record or proceeding of or in a court of justice commits the offence. The bail order in question undoubtedly purports to be a proceeding in a court of justice and the question, therefore, is whether the accused can be said to have forged the said document. "Forgery" has been defined in Section 463 IPC and the expression "making a false document" is defined in Section 464 IPC. In view of the conclusion of the courts below that the accused did write the bail order in his own handwriting, even though the learned Judge did not pass any bail order, the conclusion is irresistible that the accused made a false document, as a result of which a person not entitled to be released on bail could make himself free from custody. The question, therefore, arises whether under such circumstances it can be held that the accused made a false document either dishonestly or fraudulently. The expression "wrongful" in Section 23 IPC means prejudicially affecting a party in some legal right. The words "gaining wrongfully" or "losing wrongfully" need not be confined only to the acquisition or to the actual deprivation of property. In this view of the matter if by virtue of preparing a false document purporting it to be a document of a court of justice and by virtue of such document a person who is not entitled to be released on bail could be released then, undoubtedly damage or injury has been caused to the public at large and, therefore, there is no reason why under such circumstances the accused who is the author of such forged document cannot be said to have committed offence under Section 466 IPC. Then again under Section 464 whoever dishonestly or fraudulently makes a document or part of a document can be said to have made a false document. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss and it will include any harm whatever caused to any person in body, mind, reputation or such others. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Where, therefore, a document is prepared with the intention to deceive and by means of deceit, an advantage is obtained then there is a fraud and judged from this standpoint, the preparation of a forged bail order by the utilisation of which the person concerned obtained an advantage of being released deceiving the courts and the society at large cannot but be said to have made the document fraudulently, thereby attracting Section 466 IPC. *State of U.P.* v. *Ranjit Singh*, (1999) 2 SCC 617: 1999 SCC (Cri) 293: AIR 1999 SC 1201: 1999 All LJ 970: 1999 Cri LJ 1830.

Bench Strength **3**. Coram: **G.B. Pattanaik,** *M.B. Shah* and *R.C. Lahoti*, JJ. [Date of decision: 19-2-1999]

Mahesh Chandra Prasad v. Emperor, AIR 1943 Pat 393: ILR 22 Pat 292, approved

[10649] — Ss. 466, 468, 471, 477-A and 120-B — Prevention of Corruption Act, 1947 — S. 5(1)(d) — Conspiracy to commit embezzlement and misappropriation of govt. fund by govt. officers — Disbursement of wages — *Disbursing officers allegedly omitting to mention full addresses of the labourers on payment vouchers with intent to make it impossible to trace them — Report of the Superintending Engineer who made spot enquiries showing that much less work had been done than the details of work mentioned in the record — Held on facts, chain of circumstantial evidence not complete — Simply on the basis of the reports of the Superintending Engineer the case of embezzlement by falsifying the records not made out — Conviction set aside*

Simply on the basis of the reports of the Superintending Engineer that less work than what was stated in the records was done, the case of embezzlement by deliberately falsifying the records is not established. Until and unless by cogent and unimpeachable evidence about the factum of non-payment to labourers of the amount drawn in their names can be established, the case of embezzlement by the government officers and misappropriation of government fund cannot be sustained. The Superintending Engineer may be a responsible officer but it would not be safe to simply rely on his assessment of the work done and for basing the conviction, other convincing corroborative evidences about the quantum of work done is necessary. In the facts of the case, it will not be just and proper to accept the said report and deposition of the Superintending Engineer to be conclusive about the quantum of work. (Para 13)

Unless and until the factum of non-payment to the workers is established, overpayment to the workers on account of less work done cannot be held to be sufficient evidence to convict the accused for the offences alleged against them. Even if it is assumed that the local officers who were entrusted with the task of payment to the labourers were careless and did not actually ascertain the quantum of work executed by the labourers but made payments to the labourers on the basis of work as indicated in the bills, such local officers may be held guilty of dereliction of duty but they cannot be held to be guilty for the offences alleged against them. In the instant case, the chain of circumstantial evidence is far from being complete and the conviction, has been based more on surmise and conjecture than on the basis of convincing and unimpeachable evidences. Therefore, the conviction of the appellants is liable to be set aside. (Para 13). *Inderjit Singh* v. *State of Punjab*, 1995 Supp (3) SCC 289: 1995 SCC (Cri) 837.

Bench Strength 2. Coram: **G.N. Ray** and *Faizan Uddin*, JJ. [Date of decision: 13-7-1995]

[10650] — Ss. 466, 468, 471 r/w S. 120-B and Prevention of Corruption Act, 1947 — S. 5(1)(d) — Sentence — *Accused L an employee of factory acting under the directions of his superiors and accused T also a small officer in hierarchy — Offences committed during the year 1958-59 — Both the accused very much aged now — Sentence of accused L reduced from one year's RI to six months' RI and sentence of accused T reduced from two years' RI to one year's RI. Mahadev Bapuji Mahajan* v. *State of Maharashtra*, 1994 Supp (3) SCC 748: AIR 1994 SC 1549: 1994 Cri LJ 1389.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 14-9-1993]

[10651] — Ss. 466 and 471 — Modification of conditions of bail — Effect, if any, on the liability of the surety — *Alteration of conditions other than that of ensuring the attendance of the accused in the court whenever required, held, does not absolve the surety from his liability in terms of the bond — If the surety is not agreeable to the modified conditions, he must apply to the court under S. 444(1) CrPC to discharge him — Hence, in case of forfeiture of the bond due to default of the accused in appearing before the court, the surety, unless already discharged by the court, held, can be proceeded against by the court under S. 446 CrPC —Registration of Foreigners Act, 1939 — Passport Act, 1967 — CrPC, 1973 — Ss. 441, 446 and 444(1)*

The appellants stood sureties for bailing out a foreign national who was under indictment for the offences mentioned in Sections 466 and 471 of the IPC besides a few other offences under the Registration of Foreigners Act, 1939 and the Passport Act, 1967. The conditions of bail were, inter alia, as follows:

"(*i*) The accused should furnish a personal bond of Rs 25,000 and to furnish two local sureties for the same amount.

* * *

(*iv*) The accused should not leave Bangalore city without the prior permission from the Bangalore City Police Commissioner, till the trial is completed."

After the release, at the instance of the accused, the Magistrate relaxed condition (*iv*) of the bond and permitted the accused to reside in Mysore. Thereafter, the accused slipped out of India. Consequently, the Magistrate forfeited the bail bonds and required the sureties to pay the amount of bail bonds. The sureties' appeal was dismissed by the Sessions Court and their second appeal was dismissed on merits by the High Court. The Supreme Court found the second appeal to be not maintainable but since the High Court had dismissed the same on merits, the Supreme Court treated the High Court's order as a revisional one and proceeded to hear the appeal on merits. The appellant sureties contended that with the relaxation of condition (*iv*) of the bond without notice to them, they stood absolved of their liability under the bond. Rejecting this contention,

Held :

The contention of the appellants is not sustainable. The most essential element of the bail order is for ensuring the attendance of the accused in the court whenever required. In fact, that is the hub of the order and the other conditions are only subsidiary thereto. So long as that core postulate remains unchanged a surety cannot take advantage of any subsequent modification effected in respect of any other conditions. If a surety is not agreeable to abide by the modified conditions he must apply to the court under Section 444(1) CrPC to discharge him. Until the surety is discharged he is bound by the bond and any modification or even deletion of a condition of the order cannot absolve him from his liability in respect of the unaltered conditions. If there is forfeiture of the bond executed by the surety due to the default of the accused in making appearance before the court it is open to the court concerned to resort to the steps contemplated in Section 446 CrPC as against the sureties, besides the accused himself. (Para 12). *Mohd. Kunju* v. *State of Karnataka*, (1999) 8 SCC 660: AIR 2000 SC 6.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 29-10-1999]

State of Bihar v. M. Homi, AIR 1955 SC 478: (1955) 2 SCR 78, distinguished

[10652] — Ss. 466 and 471 — Remission in penalty — In the peculiar circumstances of the case, granted — *Foreign national under indictment under Ss. 466 and 471 IPC and a few other offences under Registration of Foreigners Act and Passport Act released on bail and thereafter absconding abroad secretly — Sureties in terms of the bond were liable to pay Rs 25,000 each — In such circumstances, since the offences, though not trivial, were not very serious either, the court had not required the accused to surrender his passport and there was no connivance on the part of the sureties, Supreme Court granting remission to them and directing each surety to pay instead Rs 5000 as penalty — Registration of Foreigners Act, 1939 — Passport Act, 1967 — CrPC, 1973 — S. 446(3)* (Paras 15 and 16). *Mohd. Kunju* v. *State of Karnataka*, (1999) 8 SCC 660: AIR 2000 SC 6.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 29-10-1999]

Madhu Limaye v. Metropolitan Magistrate, 1984 Supp SCC 699: 1985 SCC (Cri) 148, followed

— Ss. 466/471 *See also* Ss. 420, 486, 467 and 466/471

— S. 467 *See also* S. 1 and S. 120-B r/w Ss. 420, 467 and 471

See also Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 30, 467, 465 and 471

See also Ss. 120-B, 109 and 408, 409, 467 and 471

See also Ss. 120-B, 302 and 465, 467 and 468

See also Ss. 120-B, 409, 467 and 471 r/w S. 120

See also Ss. 120-B, 419, 420, 467, 468 and 471

See also Ss. 120-B, 420, 467, 468 and 471

See also Ss. 120-B, 465, 467, 468, 471 and 420

See also Ss. 120-B, 466 and 467

See also Ss. 120-B, 467, 468, 471, 491, 420, 381 and 204

See also Ss. 120-B, 467 and 468 r/w S. 34

See also S. 120-B r/w Ss. 218, 379, 467, 468, 471 and 419

See also S. 120-B r/w Ss. 409, 467, 471, 477-A and 218

See also S. 120-B r/w Ss. 420, 409, 467 and 471

See also S. 120-B r/w Ss. 420, 467, 468 and 471

See also S. 120-B r/w Ss. 420, 467 and 471

See also S. 120-B r/w Ss. 467, 471, 420, 406, 409, 465, 162, 163, 167, 201 and 109

See also Ss. 182, 211, 193, 467, 471 and 385

See also Ss. 205, 419, 465, 467 and 471

See also Ss. 405, 406, 408, 409, 420, 467, 468, 471 and 120-B

See also Ss. 406, 409, 420, 467, 471 and 120-B

See also Ss. 406, 420, 465, 467, 468 and 120-B

See also Ss. 406, 420, 467 and 120-B

See also Ss. 406, 420, 467, 468 and 120-B

See also Ss. 406 and 467

See also Ss. 406, 467 r/w Ss. 34 and 120-B

See also Ss. 407, 467 and 477-A

See also Ss. 408, 467, 471 and 477-A

See also Ss. 409, 420, 467, 468 and 471

See also Ss. 409, 420, 467, 468, 471/465 and 477-A r/w S. 120-B

See also Ss. 409, 420, 467 and 477-A

See also Ss. 409, 420, 467 and 477-A r/w S. 120-B

See also Ss. 409 and 467

See also Ss. 409, 467 and 471

See also Ss. 409, 467, 471 and 411

See also Ss. 409, 467, 471 and 477-A

See also Ss. 409, 467, 471, 477-A and 120-B

See also Ss. 409, 467 and 477-A

See also Ss. 415, 463 and 467

See also Ss. 419, 420, 467 and 468

See also Ss. 419, 467, 420 and 120-B

See also Ss. 420, 406, 409, 120-B, 467, 468 and 471

See also Ss. 420, 406, 409, 407, 120-B, 467, 468 and 471

See also Ss. 420, 465, 466, 467, 468 and 471

See also Ss. 420 and 467

See also Ss. 420, 467 and 468

See also Ss. 420, 467, 468 and 120-B

See also Ss. 420, 467, 468 and 469

See also Ss. 420, 467, 468 and 471

See also Ss. 420, 467, 468, 471 and 120-B

See also Ss. 420, 467, 471, 323, 506-B and 120-B

See also Ss. 420, 467, 471 and 474

See also Ss. 420, 471, 474, 467, 468, 417 and 511

See also Ss. 420, 486, 465 and 467

See also Ss. 420, 486, 467 and 466/471

See also Ss. 463 and 467

See also Ss. 463, 467, 461 and 419 r/w S. 120-B

See also Ss. 463, 467, 468, 24 and 25

See also Ss. 463, 467, 468 and 471

See also Ss. 464, 467 and 468

See also Ss. 465, 467, 468, 471 and 120-B

[10653] — S. 467 — Charge under — Finding of High Court based on uncorroborated evidence of accomplice — *Conviction set aside. R.R. Chari* v. *State of U.P.*, AIR 1962 SC 1573: (1963) 1 SCR 121: (1962) 2 Cri LJ 510: ILR (1962) 2 All 904.

Bench Strength **2**. Coram: **P.B. Gajendragadkar** and *K.N. Wanchoo*, JJ. [Date of decision: 28-3-1962]

[10654] — S. 467 — Charge vague having failed to state the circumstances under which the offence committed — *Accused acquitted. Hasan Ali* v. *State of M.P.*, (1983) 2 SCC 66: 1983 SCC (Cri) 340: AIR 1983 SC 352(2): 1983 Cri LJ 691(2).

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 2-2-1983]

[10655] — S. 467 — Conviction for forging, on facts held, proper — *Offence committed out of sheer economic necessity — Sentence of six months justified. Krishan Lal* v. *State of Delhi*, (1976) 1 SCC 655: 1976 SCC (Cri) 146: AIR 1976 SC 1139: 1976 Cri LJ 854.

Bench Strength **3**. Coram: *M.H. Beg*, **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 27-8-1975]

[10656] — S. 467 — False document — Genuine document becoming false — *Accused taking delivery of goods on strength of indemnity bond after filing a declaration that railway receipts were lost — Subsequently the accused obtained certain amount from a bank on the strength of the railway receipts — Held, railway receipts became false and fabricated documents*

Of course, the railway receipts were genuine documents at the time they were made when the goods were handed over to the railway, but once the consignee, or his assignee, took delivery of those goods on the strength of an indemnity bond issued because of a declaration that the receipts were lost, the receipts lost their efficacy; therefore, when they were put forward as still good for the purpose for which they were issued and an endorsement was added to them making them over to the bank, they became, from that moment, false and fabricated documents. *State of Bihar* v. *Shyam Lal Tebriwal*, Cri. A. No. 152 of 1955.

Bench Strength **4**. Coram: **S.R. Das, C.J.** and *T.L. Venkatarama Aiyar, A.K. Sarkar* and *Vivian Bose*, JJ. [Date of decision: 16-4-1958]

[10657] — Ss. 467 and 114 — Conviction of one accused under S. 467 r/w S. 114 and of the other under S. 467 confirmed — *No interference with the sentence also called for having regard to sufficient reasons given for taking a lenient view — Constitution of India — Article 136. State of Karnataka* v. *Hemareddy*, (1981) 2 SCC 185: 1981 SCC (Cri) 395: AIR 1981 SC 1417: (1981) 2 SCR 695: 1981 Cri LJ 1019.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **A. Varadarajan**, JJ. [Date of decision: 27-1-1981]

[10658] — Ss. 467, 302, 380 and 420 — Identification of accused — Proof — Charges of murder by poisoning in a hotel and theft of passport and travellers' cheques of the deceased, cheating and forgery — *Prosecution case based on evidence of hotel employees and handwriting expert — Hotel employees identifying the accused-foreigner before court after a lapse of more than 5 years though they had only a brief occasion to see the accused when he had come to stay in the hotel and that too in the usual course of business — Evidence of the hotel employees not disclosing any special reason for them to retain the image of the foreigner for such long period — Accused shown to two of the hotel employees (Manager and waiter) while he was in court lock-up — Evidence of handwriting expert produced to corroborate testimony of the PWs regarding identification of accused — Handwriting expert basing his conclusion about identity of the* *accused who had written the questioned documents by comparing the same with the sample writing (which, in his opinion, appeared to be disguised) merely on the ground that there was some similarity in some of the letters and figures occurring in the sample handwritings here and there and similar letters and figures appearing in the questioned documents — On these findings High Court taking the view that it would be unsafe to act upon such opinion of expert unless corroborated by reliable evidence — However, testimony of PWs regarding identity of the accused found to be unreliable — In absence of corroboration prosecution held to have failed to prove beyond reasonable doubts identity of the accused — Held on facts, findings of High Court cannot be said to be patently wrong or perverse so as to entitle the Supreme Court to disturb the same — That being so further it is not necessary to go into finding of High Court that prosecution also failed to prove that the deceased was poisoned to death — Constitution of India, Art. 136 — Evidence Act, 1872 — Ss. 9 and 45. State of U.P.* v. *Charles Gurmukh Sobhraj*, (1996) 9 SCC 472: 1996 SCC (Cri) 1065: AIR 1996 SC 3473.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 6-8-1996]

[10659] — Ss. 467 and 406 — Summonses to accused only for trial under S. 406 — *Fact that in complaint S. 467 which is exclusively triable by Court of Session is mentioned is of no consequence. Chhadamilal Jain* v. *State of U.P.*, AIR 1960 SC 41: (1960) 1 SCR 736: 1960 Cri LJ 145.

Bench Strength **4**. Coram: *Syed Jafer Imam, J.L. Kapur, A.K. Sarkar* and **K.N. Wanchoo**, JJ. [Date of decision: 14-9-1959]

[10660] — Ss. 467 and 409 — Sentence — Punishment for offences under — *May be reduced by the Supreme Court in an appropriate case. Mangleshwari Prasad* v. *State of Bihar*, AIR 1954 SC 715: 1954 Cri LJ 1797.

Bench Strength **3**. Coram: *B.K. Mukherjea, Vivian Bose* and **N.H. Bhagwati**, JJ. [Date of decision: 22-1-1954]

[10661] — Ss. 467 and 417 r/w S. 109 — *Appellant a Lambardar inducing sub-registrar to wrongly register document by falsely and intentionally identifying another person as the person named in the document as the one executing the document — Plea of bona fide mistake rejected — Conviction upheld — Interference not justified — Registration Act, 1908, Ss. 34 and 35. Molar* v. *State of Haryana*, (1973) 2 SCC 430: 1973 SCC (Cri) 826: AIR 1973 SC 1413: 1973 Cri LJ 1124.

Bench Strength **2**. Coram: **K.K. Mathew** and *I.D. Dua*, JJ. [Date of decision: 26-4-1973]

[10662] — Ss. 467 and 464 — Payment of forged cheque in due course — Bank if complicit — *Cheque presented in bank for payment — Drawer having sufficient funds in the bank to cover the payment — On visual examination no infirmity found in the cheque — But no further scrutiny made by using modern devices such as ultraviolet ray lamp, same being not available in the branch though the branch was located at the outskirts of a metropolitan city where cases of forgery were higher — Payment made by the bank not shown to have been made otherwise than in good faith — Forgery detected later on — Held, bank not liable on ground of negligence merely because of its failure to scrutinise the cheque in ultraviolet ray lamp — Negotiable Instruments Act, 1881 — Ss. 10, 31 & 89. Bank of Maharashtra* v. *Automotive Engineering Co.*, (1993) 2 SCC 97: 1993 SCC (Cri) 461.

Bench Strength **2**. Coram: *B.P. Jeevan Reddy* and **G.N. Ray**, JJ. [Date of decision: 8-12-1992]

[10663] — Ss. 467, 465, 471 and 120-A — Appellant, a police officer, along with others, charged with bringing into existence a forged sale document ostensibly between an absentee landlord and his caretaker and then on the basis of that document getting a sale deed from the caretaker in favour of one of his co-accused and then getting his co-accused to sell a portion of the said land in his favour — *Co-accused turning approver and deposing against the appellant — Both the trial court and the High Court accepting the testimony of the approver and convicting the appellant — On facts held, that there was no reason to disbelieve the evidence of the approver, more so when intrinsically his evidence was trustworthy — In this view of the matter his conviction upheld — High Court had imposed on the appellant, the sentence of imprisonment till the rising of the court — Inevitably that sentence cannot further be lowered. Prahlad Singh* v. *State*, 1997 SCC (Cri) 405.

Bench Strength **2**. Coram: *M.M. Punchhi* and *Sujata V. Manohar*, JJ. [Date of decision: 7-2-1995]

[10664] — Ss. 467, 468, 420 and 120-B — Criminal proceedings when to be dropped or quashed — Appellants, senior officers of Bank charged under Ss. 467, 468, 420 and 120-B IPC — Appellants applying under S. 239 CrPC to trial Magistrate for being discharged on the ground that no case was made out against them — Rejection of appellant's petitions under Ss. 239 and 482 CrPC, by trial Magistrate and High Court respectively — *Held, questions regarding the sufficiency or reliability of the evidence to proceed further are not required to be considered by* *the trial court under S. 239 and High Court under S. 482 — However, if upon the admitted facts and documents relied upon by the complainant or prosecution, without sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed — Setting aside impugned orders appellants discharged in terms of S. 239 CrPC — CrPC, 1973 — Ss. 239 and 482*

The inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be exercised to quash proceedings, in appropriate cases either to prevent the abuse of process of any court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusions under the Code of Criminal Procedure and the High Court should be reluctant to interfere with the proceedings at an interlocutory stage. However, there may be cases where the inherent jurisdiction to quash proceedings can and should be exercised. Where there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, the High Court should not be reluctant to exercise the inherent jurisdiction. Similarly where the allegations in the FIR or the complaint, even if they are taken at their face value do not constitute the offence alleged, or without appreciating the evidence but only merely by looking at the complaint or the FIR or the accompanying documents, the offence alleged is not disclosed, the person proceeded against in such a frivolous criminal litigation has to be saved. (Para 3)

The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. (Para 4)

On facts on a perusal of FIR, the final report under Section 173 of the Code of Criminal Procedure and all other documents accompanying it, no case is made out against any of the appellants and the pendency of the proceedings against them before the Magistrate is an abuse of the process of court. The appeal is allowed and the order of the High Court dated 8-4-1997 and Magistrate dated 6-7-1996 are quashed and the appellants discharged in terms of Section 239 of the Code of Criminal Procedure. (Para 6). *K. Ramakrishna* v. *State of Bihar*, (2000) 8 SCC 547: 2001 SCC (Cri) 27: AIR 2000 SC 3330.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **R.P. Sethi**, JJ. [Date of decision: 22-9-2000]

Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, relied upon

[10665] — Ss. 467, 468 and 469 — Forgery of valuable security, will, etc. — *Held, only because the appellants are said to have transferred a portion of the property without having complete ownership over it by itself does not satisfy the ingredients of Ss. 467, 468 and 469 IPC* (Para 16)

The appellants were members of a Managing Committee of a school. Allegedly, the land in question was said to have been transferred to one *K* by the Tahsildar in the year 1977-1978. He filed a suit being Civil Suit No. 309 against his daughter-in-law wherein a decree acknowledging a transfer in favour of the latter was passed. The appellants are said to have made a representation before the authority concerned in relation to the functioning of the School after passing of the aforementioned decree came to their knowledge. It is stated that a report dated 14-1-1983 was submitted by the then Tahsildar (Sales), Ludhiana showing the School to be an existing one whereafter the name of the appellants had been recorded in the record-of-rights.

The appellants filed a suit in the year 1990 praying for a decree for possession which was decreed. An order of mutation was thereafter passed in their favour which, however, was cancelled. The appellants sold a part of the land to M/s Everest Girls School. Allegedly sale proceeds therefrom had been spent on construction of sixteen rooms in the existing school. The vendees of the said premises i.e. M/s Everest Girls School were threatened with dispossession by the supporters of Respondents 3 and 5. The appellants filed a civil suit in the Court of Civil Judge wherein an order of status quo was passed restraining respondent-defendants from interfering with possession and construction being raised by the appellant-plaintiffs.

An FIR was lodged by the respondents for the alleged commission of the offences punishable under Sections 420/465/467/468/471 and 120-B of the Penal Code. The application filed by the appellants for quashing the said FIR was dismissed by impugned judgment. Hence, the present appeal.

Allowing the appeal, the Supreme Court held as above. *Ramesh Dutt* v. *State of Punjab*, (2009) 15 SCC 429: (2009) 81 AIC 183 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 21-7-2009]

Devendra v. State of U.P., (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461, relied on

[10666] — Ss. 467, 468 and 471 — Criminal appeal — New plea — *Offences under Ss. 467, 468 and 471 IPC — Contention regarding absence of essential ingredients of — Raised before the Supreme Court for the first time — Hence, not entertained* (Para 23). *State of H.P.* v. *M.P. Gupta*, (2004) 2 SCC 349: 2004 SCC (Cri) 539: AIR 2004 SC 730.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 9-12-2003]

[10667] — Ss. 467, 468 and 471 — Quashing of prosecution — High Court cannot advert to case diary, or rely upon letter addressed by parties to officer-in-charge of police station and quash the prosecution on ground that parties had settled their dispute — *Offences under Ss. 467, 468 and 471 IPC are not compoundable — Respondent ready to transfer the amount in question to bank — Hence, it would not be expedient to allow the prosecution to continue — Direction made to the bank not to disburse the said amount except under orders of court of competent jurisdiction — CrPC, 1973 — Ss. 482 and 320. Karpoori Thakur* v. *Baikunth Nath Dey*, 1990 Supp SCC 136: 1990 SCC (Cri) 642.

Bench Strength 2. Coram: *A.P. Sen* and *E.S. Venkataramiah*, JJ. [Date of decision: 12-1-1988]

[10668] — Ss. 467, 468, 471, 420, 409 and 218 — Bail — Interim bail pending disposal of bail application — Grant of — Principles to be followed — Absence of provision for anticipatory bail — Effect — *In State of U.P. where State Amendment had omitted S. 438, held, judgment of Allahabad High Court in* Amarawati case, *2005 Cri LJ 755 (All), to be followed by all courts in letter and spirit — Copy of instant judgment directed to be sent to Registrar General of Allahabad High Court for onward circulation to Judges of High Court and all District Judges in the State — In present case, considering that charge-sheet had been filed and cognizance had been taken, High Court's refusal to quash FIR filed against appellant for committing offences under Ss. 467, 468, 471, 420, 409 and 218 IPC, not interfered with — Directions, however, issued to trial court to grant interim bail to appellant pending final disposal of his bail application if so applied for and deemed fit — CrPC, 1973, Ss. 436, 437, 438, 439 and 482* (Paras 7 to 10). *Lal Kamlendra Pratap Singh* v. *State of U.P.*, (2009) 4 SCC 437: (2009) 2 SCC (Cri) 330.

Bench Strength 2. Coram: *Markandey Katju* and *V.S. Sirpurkar*, JJ. [Date of decision: 23-3-2009]

Amarawati v. State of U.P., 2005 Cri LJ 755 (All), approved and directed to be followed in letter and spirit

[10669] — Ss. 467, 468, 471, 472 and 477-A r/w S. 34 — Commission of forgery in respect of a document produced or given in evidence in a proceeding in any court — Bar under S. 195(1)(b)(ii) CrPC that no court shall take cognizance of any such offence except on the complaint in writing of the court concerned — Scope and applicability — *Forgery committed before the document was filed in court — Held, provisions of S. 195(1)(b)(ii) CrPC not applicable in such a case — Hence, High Court was not justified in quashing the prosecution launched under Ss. 467, 468, 471, 472 and 477-A r/w S. 34 IPC on the ground that the complaint was barred under S. 195(1)(b)(ii) CrPC —* Iqbal Singh Marwah, *(2005) 4 SCC 370, followed — CrPC, 1973 — Ss. 195(1)(b)(ii) and 482* (Paras 3 and 4). *K. Vengadachalam* v. *K.C. Palanisamy*, (2005) 7 SCC 352: 2005 SCC (Cri) 1673.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 8-8-2005]

Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, followed

[10670] — Ss. 467, 468, 471, 491, 420, 381 and 204 r/w S. 120-B — Conviction under — Legality — *Bank employee removing from the Bank a blank draft form, another person forging the Bank Agent's signature on the form and a third person opening an account in the name of a fictitious person and encashing the bank draft — Conviction of all the three persons under the said provisions upheld. Aniceto Lobo* v. *State (Goa, Daman and Diu)*, 1993 Supp (3) SCC 311: 1993 SCC (Cri) 1002: AIR 1994 SC 1613.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 12-5-1993]

[10671] — Ss. 467, 468, 471, 491, 420, 381 and 204 r/w S. 120-B — Sentence under — Bank employee and co-conspirators forging a bank draft for Rs 11,500 and getting it encashed — *Occurrence being 24-year-old and the bank employee having lost his job, sentence of each accused on each count reduced from two years' RI to six months' RI — However, sentence of fine of Rs 1000 in each case and in default further RI for three months, upheld. Aniceto Lobo* v. *State (Goa, Daman and Diu)*, 1993 Supp (3) SCC 311: 1993 SCC (Cri) 1002: AIR 1994 SC 1613.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 12-5-1993]

[10672] — Ss. 467 and 471 — Appeal against acquittal by trial Court of charge of forgery of thumb impression in a will — No direct evidence available — Circumstantial evidence conflicting and the circumstances clearly explainable and

not very relevant — *Trial Court therefore, finding it unsafe to convict the accused — High Court, held, not justified in reversing the acquittal order without giving any cogent reasons for disbelieving the trial Court's findings — CrPC, 1973 — Ss. 378 & 386. Arjan Singh* v. *Hazara Singh*, (1980) 1 SCC 613: 1980 SCC (Cri) 309: AIR 1979 SC 1236: 1979 Cri LJ 1029.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 14-2-1979]

[10673] — Ss. 467 and 471 — Appellant tried for giving forged cheque — *Handwriting expert deposing that body of cheque was in appellant's handwriting but was not certain about the signature — Held, it cannot be said that the appellant forged the cheque. Mohanlal Anand* v. *State (Delhi Admn.)*, (1975) 4 SCC 252: 1975 SCC (Cri) 510: AIR 1975 SC 1842: 1975 Cri LJ 1645.

Bench Strength **2**. Coram: **A. Alagiriswami** and *N.L. Untwalia*, JJ. [Date of decision: 10-3-1975]

[10674] — Ss. 467 and 471 — Bar under S. 195(1)(b)(ii) CrPC, on taking cognizance of certain offences — Applicability — *Whether applicable to a private complaint for an offence under Ss. 467 and 471 IPC committed in respect of a document forged prior to filing thereof in the court — In view of conflicting views expressed by Supreme Court in earlier decisions some of which were delivered by three-Judge Benches, matter referred by two-Judge Bench to a larger Bench — CrPC, 1973 — S. 195(1)(b)(ii)* (Para 4). *Balasubramaniam* v. *State*, (2002) 7 SCC 649: 2002 SCC (Cri) 1812.

Bench Strength **2**. Coram: *U.C. Banerjee* and *N. Santosh Hegde*, JJ. [Date of decision: 6-9-2001]

[10675] — Ss. 467 and 471 — Charge of forgery of thumb-impression in a will — *Even if circumstances throw some suspicion which may weigh with the civil court in deciding upon the validity or genuineness of the will, that would not take the place of proof in order to convict the accused of a criminal charge. Arjan Singh* v. *Hazara Singh*, (1980) 1 SCC 613: 1980 SCC (Cri) 309: AIR 1979 SC 1236: 1979 Cri LJ 1029.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 14-2-1979]

[10676] — Ss. 467 and 471 — Forgery in lottery ticket — *Prosecution to establish that the ticket was a forged document, that the accused participated in any manner in the act of forgery and that he had requisite mens rea when he presented it before the concerned officer to claim prize — It is, however, immaterial for S. 471 if at any subsequent point of time he comes to know of its forged character — In absence of conclusive proof in respect of these ingredients, conviction under, held, cannot be sustained. Chatt Ram* v. *State of Haryana*, (1980) 1 SCC 460: 1980 SCC (Cri) 243: AIR 1979 SC 1890: 1979 Cri LJ 1411: (1980) 17 ACC 17.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 8-8-1979]

[10677] — Ss. 467 and 471 — Inference as to fraudulent motive or dishonest intention in case of forgery or use of forged document as genuine — *Burden on accused to prove innocence. Ram Narain* v. *State of Punjab*, AIR 1955 SC 322: 1955 Cri LJ 871.

Bench Strength **3**. Coram: *S.R. Das*, **N.H. Bhagwati** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 11-2-1955]

[10678] — Ss. 467 and 471 — Sentence — Forgery and embezzlement — *Accused sentenced to 4½ years' R.I. under S. 467 r/w S. 471, and acquitted for offence of embezzlement — In appeal High Court maintained the sentence and imposed an additional fine equal to the amount for which he was charged for embezzlement — Held, High Court was not justified in imposing fine*

The sentence of 4½ years' rigorous imprisonment which was imposed upon the appellant was a deterrent sentence deliberately so imposed upon him by the trial court. There was no justification whatsoever for imposing an additional sentence of fine of Rs 11,579-8-0 or in default further rigorous imprisonment for a period of a year and a half. The embezzlement charge which was levelled against the appellant in regard to this sum of Rs 11,579-8-0 having ultimately failed the High Court should not have imposed this additional fine on the appellant. *Ram Narain* v. *State of Punjab*, AIR 1955 SC 322: 1955 Cri LJ 871.

Bench Strength **3**. Coram: *S.R. Das*, **N.H. Bhagwati** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 11-2-1955]

[10679] — Ss. 467, 471 and 120-B — Detaching of used stamps from old files and reusing them in other cases — *Aiding or abetment of — Held, does not involve any process of forgery or use of forged, document. State of U.P.* v. *Suresh Chandra Shrivastava*, (1984) 3 SCC 92: 1984 SCC (Cri) 415: AIR 1984 SC 1108: 1984 Cri LJ 926.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**, *A. Varadarajan* and *Ranganath Misra*, JJ. [Date of decision: 3-5-1984]

[10680] — Ss. 467, 471, 463 and 464 — Forgery of a document purporting to be a valuable security (S. 467) — Using of forged document as genuine (S. 471) — Ingredients of the said

offences — *Held, basic ingredient of both the offences is that there should be "forgery" as defined in S. 463 and forgery in turn depends upon creation of a "false document" as defined in S. 464 — If there is no "false document" as defined in S. 464, offences under Ss. 467 and 471 are not made out — Further held, mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences under Ss. 467 and 471 even if title to property did not vest in the executant — This was for the reason that no "false document" as defined in S. 464, was created* (Paras 16 and 17)

Accused 1 had executed a sale deed in favour of Accused 2, claiming that the property being sold belonged to Accused 1. Second respondent filed a criminal complaint that the title to the property sold, belonged to the second respondent and therefore Accused 1 had committed offences under Sections 467 and 471 IPC. Accused 1' plea was that the property was mutated in his name, he was having its possession and was also paying land revenue for it.

The issue before the Supreme Court was whether Accused 1 had committed an act of forgery even if the facts alleged by the second respondent were accepted as true. Trial court and High Court dismissed Accused 1' plea for quashing of criminal complaint. Reversing this decision and partly allowing the appeal, the Supreme Court, held as above. *Mohd. Ibrahim* v. *State of Bihar*, (2009) 8 SCC 751: (2009) 3 SCC (Cri) 929.

Bench Strength **2**. Coram: **R.V. Raveendran** and *R.M. Lodha*, JJ. [Date of decision: 4-9-2009]

[10681] — Ss. 467, 471 and 477-A — Expert to be relied upon only if Court fully satisfied that he is reliable and truthful — Hence unsafe to base conviction on opinion of an expert disbelieved on most material points — *Conviction on the opinion of a handwriting expert, on facts, for offences under Ss. 467, 471 and 477-A, IPC and S. 5(2) of Prevention of Corruption Act was improper — Also possibility of any other associate being involved not excluded by the prosecution — Handwriting expert — Evidence Act, 1872 — S. 45*

In order to rely on the evidence of an expert the Court must be fully satisfied that he is a truthful witness and also a reliable witness fully adept in the art of identification of handwriting in order to opine whether the alleged handwriting has been made by a particular person or not. As the evidence of the expert has been disbelieved by the High Court on the most material points, it is wholly unsafe to base the conviction of the appellant merely on the testimony of such an expert. *Kanchansingh Dholaksingh Thakur* v. *State of Gujarat*, (1979) 4 SCC 599: 1980 SCC (Cri) 143: AIR 1979 SC 1011: 1979 Cri LJ 889: 1979 MLJ (Cri) 589.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 9-2-1979]

[10682] — Ss. 467 and 477-A — Distinction — *Charge under S. 467 for making false or imaginary entries in transport permits with intent to defraud Government of its revenues — Permits not amounting to falsification of accounts — Nevertheless there was contravention of latter part of S. 477-A*

The charge framed under S. 467 of the Indian Penal Code mentioned about making entries of false or imaginary sale notes and other false entries in the transport permits with intent to defraud Government of its revenues and even if there be some doubt as to whether the permits amounted to falsification of accounts there was a case to be tried on the question whether the entries made therein were false and thereby the latter part of S. 477-A IPC was contravened. *G.D. Sharma* v. *State of U.P.*, AIR 1960 SC 400: 1960 Cri LJ 541, 543.

Bench Strength **4**. Coram: **Syed Jafer Imam**, *J.L. Kapur*, *A.K. Sarkar* and *K.N. Wanchoo*, JJ. [Date of decision: 1-9-1959]

[10683] — Ss. 467 and 477-A — Sentence — Reduced to the period already undergone in view of long lapse of time (23 years). *Balaram Swain* v. *State of Orissa*, 1991 Supp (1) SCC 510: 1991 SCC (Cri) 707: AIR 1991 SC 279: (1991) 28 ACC 9.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 13-11-1990]

— S. 467 r/w S. 34 *See also* Ss. 406, 467 r/w Ss. 34 and 120-B

— S. 467 r/w S. 109 *See also* Ss. 409, 467 r/w S. 109

[10684] — S. 467 r/w S. 109 — Accused getting signatures of account holder forged on withdrawal forms and drawing money from that account by presenting them in bank — *Held, liable to be convicted under S. 467 r/w S. 109 even in absence of evidence showing as to who forged the signatures — Sentence of 9 months' RI confirmed. Bank of India* v. *Yeturi Maredi Shanker Rao*, (1987) 1 SCC 577: 1987 SCC (Cri) 228: AIR 1987 SC 821: 1987 Cri LJ 722.

Bench Strength **2**. Coram: **G.L. Oza** and *M.M. Dutt*, JJ. [Date of decision: 28-1-1987]

— S. 467 r/w S. 120-B *See also* Ss. 406, 467 r/w Ss. 34 and 120-B

— S. 467 r/w S. 471 *See also* Ss. 120-B r/w Ss. 420 and 477-A and Ss. 467 r/w 471

— Ss. 467/471 *See also* Ss. 34, 467/471 and 204

— S. 468 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 52, 420, 406, 466, 468 and 471

See also Ss. 120-A, 120-B, 420, 468, 471 and 4

See also Ss. 120-B, 107, 109, 420, 468 and 471

See also Ss. 120-B, 302 and 465, 467 and 468

See also Ss. 120-B, 409, 420, 465, 468, 471, 477-A, 101 and 34

See also Ss. 120-B, 419, 420, 467, 468, 471

See also Ss. 120-B, 420, 467, 468 and 471

See also Ss. 120-B, 420 and 468

See also Ss. 120-B, 420, 468, 471 and 506

See also Ss. 120-B, 420, 468, 477-A r/w S. 34

See also Ss. 120-B, 420, 468, 477-A r/w S. 34 and S. 5(2) r/w S. 5(1)(d) of Prevention of Corruption Act, 1947

See also Ss. 120-B, 465, 467, 468, 471 and 420

See also Ss. 120-B, 467, 468, 471, 491, 420, 381 and 204

See also Ss. 120-B, 468 and 477-A

See also S. 120-B r/w Ss. 218, 379, 467, 468, 471 and 419

See also S. 120-B r/w Ss. 420, 467, 468 and 471

See also S. 120-B r/w 420 and 468

See also Ss. 120-B/420, 468 and 471

See also Ss. 193, 209, 406, 468, 471 and 120-B

See also Ss. 200, 406, 420, 468, 471 and 120-B

See also Ss. 302, 302/149, 302/120-B, 307/120-B, 307/149, 120-B, 143, 147, 148, 149, 392, 392/120-B, 392/149, 397/120-B, 397/149, 379, 379/149, 379/120-B, 468, 468/120-B, 468/149, 471, 471/120-B and 471/149

See also Ss. 323, 382, 420, 465, 468, 471, 120-B, 506 and 34

See also Ss. 379, 468, 471, 420 and 506 Pt. II

See also Ss. 405, 406, 408, 409, 420, 467, 468, 471 and 120-B

See also Ss. 405, 420, 468 and 471

See also Ss. 406, 420, 423, 465, 477, 468, 471, 120-B, 124 and 34

See also Ss. 406, 420, 465, 467, 468 and 120-B

See also Ss. 406, 420, 465, 468 and 120-B

See also Ss. 406, 420, 467, 468 and 120-B

See also Ss. 406, 420, 468, 471, 504, 506, 382 and 120-B

See also Ss. 408, 468 and 477-A

See also Ss. 409, 420, 467, 468 and 471

See also Ss. 409, 420, 467, 468, 471/465 and 477-A r/w S. 120-B

See also Ss. 409, 463, 468, 477-A and 120-B

See also Ss. 409 and 468

See also Ss. 419, 420, 465, 468, 469, 471, 472, 474 r/w S. 34

See also Ss. 419, 420, 467 and 468

See also Ss. 419, 420, 468 and 471

See also Ss. 419 & 420 r/w Ss. 109, 120-B & 468 and S. 13(1)(d) r/w S. 13(2), PC Act, 1988

See also Ss. 420, 406, 409, 120-B, 467, 468 and 471

See also Ss. 420, 406, 409, 407, 120-B, 467, 468 and 471

See also Ss. 420, 421, 466, 468, 471, 465 and 120-B

See also Ss. 420, 463, 465, 468, 471 r/w S. 120-B

See also Ss. 420, 463, 468 and 471 r/w S. 120-B

See also Ss. 420, 465, 466, 467, 468 and 471

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See also Ss. 420, 468 and 127

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See also Ss. 420, 468, 471 and 120-B

See also Ss. 420, 468 and 471 r/w S. 120-B

See also Ss. 420, 471, 474, 467, 468, 417 and 511

See also Ss. 420, 477-A, 468, 109 and 409

See also Ss. 420/511, 420/120-B, 468 and 477-A

See also Ss. 463, 467, 468, 24 and 25
See also Ss. 463, 467, 468 and 471
See also Ss. 464, 467 and 468
See also Ss. 465, 467, 468, 471 and 120-B
See also Ss. 465, 468, 471, 209, 406
See also Ss. 465, 468, 471 and 420 r/w S. 120-B
See also Ss. 466, 468, 463, 464, 23 and 24
See also Ss. 466, 468, 471, 477-A and 120-B
See also Ss. 466, 468, 471 r/w 120-B and Prevention of Corruption Act, 1947
See also Ss. 467, 468, 420 and 120-B
See also Ss. 467, 468 and 469
See also Ss. 467, 468 and 471
See also Ss. 467, 468, 471, 420, 409 and 218
See also Ss. 467, 468, 471, 472 and 477-A r/w S. 34
See also Ss. 467, 468, 471, 491, 420, 381 and 204 r/w S. 120-B
See also Ss. 471, 466 and 468 and 120-B

[10685] — Ss. 468 and 120-B — Sentence — Delay — Criminal conspiracy by government servants to obtain illegal gratification by preparing bogus medical bills — *Laying of trap and recovery of tainted money established — No plausible explanation put forward by the appellant except the general denial — Conviction upheld — However, in view of long lapse of time (about 20 years) sentence of one year's R.I. reduced to six months' R.I. Narain Lal Nirala* v. *State of Rajasthan*, 1994 SCC (Cri) 1404: AIR 1994 SC 118.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 22-4-1993]

[10686] — Ss. 468, 411 and 420 — Handwriting expert — Opinion of, cannot be sole basis of conviction — Corroboration is necessary — *Conviction under, Ss. 468, 411 and 420, held, not proper — Evidence Act, 1872 — S. 45*

Expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. This type of evidence, being opinion evidence, is by its very nature, weak and infirm and cannot of itself form the basis for a conviction. *Magan Bihari Lal* v. *State of Punjab*, (1977) 2 SCC 210: 1977 SCC (Cri) 313: AIR 1977 SC 1091: 1977 Cri LJ 711: (1977) 2 SCR 1007.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 15-2-1977]

[10687] — Ss. 468, 420 and 120-B — Limitation — Computation of — *Where the accused was charged with major offences but was convicted only for minor offences, the period of limitation, held, has to be determined with reference to the offences the accused was charged with and not with reference to the charges he was convicted under — Prevention of Corruption Act, 1947, S. 5(2) — CrPC, 1973 — S. 468(3) (as added in 1978), (1) & (2)*

The two respondents herein were challaned for offences under Sections 468, 420, 120-B IPC and Section 5(2) of the Prevention of Corruption Act, 1947, allegedly committed in the year 1983. The charge-sheet was submitted in November 1987 and cognizance was taken in December 1987. The Special Judge acquitted them of the charges under Sections 468 and 420 IPC and Section 5(2) of the Prevention of Corruption Act but convicted them under Sections 417 and 465 read with Section 109 IPC. The H.P. High Court held that the cognizance of the offences under Sections 417 and 465 IPC taken by the Special Judge on 31-12-1987 was barred by limitation. The High Court further held that Section 473 although empowered court to condone the delay for cogent reasons, the Special Judge had not exercised that power as no such reasons had been recorded. The High Court added that therefore Section 473 could not be pressed into service. Allowing the State's appeal,

Held :

The language of Section 473(3) (as added in 1978) makes it imperative that the limitation provided for taking cognizance in Section 468 is in respect of the *offence charged* and not in respect of *offence finally proved*. Therefore, when the respondents were charged under Section 468 read with Section 120-B, for which the imposable punishment is seven years and Section 5(2) of the Prevention of Corruption Act, 1947, which is punishable with imprisonment for a term which may extend to seven years and for such offences no period of limitation having been provided for in Section 468, the cognizance taken by the learned Special Judge cannot be said to be barred by limitation. (Para 5). *State of H.P.* v. *Tara Dutt*, (2000) 1 SCC 230: 2000 SCC (Cri) 125: AIR 2000 SC 297: 2000 Cri LJ 485.

Bench Strength **3**. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *M.B. Shah*, JJ. [Date of decision: 19-11-1999]

State of Punjab v. Sarwan Singh, (1981) 3 SCC 34: 1981 SCC (Cri) 625, explained and distinguished

Tara Dutt v. State of H.P., (1998) 3 Crimes 523 (HP), reversed

[10688] — Ss. 468, 420, 120-B, 417 and 465 — Provision in S. 473 CrPC for taking cognizance after expiry of limitation period — Applicability — *Where the accused was charged with offences under Ss. 468, 420 and 120-B IPC but was convicted under Ss. 417 and 465 IPC, held, S. 473 was not attracted — CrPC, 1973 — Ss. 473 and 468. State of H.P.* v. *Tara Dutt*, (2000) 1 SCC 230: 2000 SCC (Cri) 125: AIR 2000 SC 297: 2000 Cri LJ 485.

Bench Strength **3**. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *M.B. Shah*, JJ. [Date of decision: 19-11-1999]

Tara Dutt v. State of H.P., (1998) 3 Crimes 523 (HP), reversed

[10689] — Ss. 468 (forgery for purpose of cheating) and 463 — S. 468, held, is an aggravated form of forgery under S. 463 (Para 31). *Parminder Kaur* v. *State of U.P.*, (2010) 1 SCC 322.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 26-10-2009]

[10690] — Ss. 468, 463 and 465 — Forgery — A-7 alleged to have submitted false verification report in respect of residence of A-3, required for a passport — *Held, in absence of any evidence to show that A-7 prepared false document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, ingredients of S. 463 are not satisfied — Hence, conviction of A-7 under S. 465 unsustainable — Passports Act, 1967, Ss. 12 and 3*

A-3 was alleged to have obtained a fake passport by submitting false documents with the help of A-4 to A-9, which was used by her to travel to Lisbon, Portugal. She had to face the prosecution and suffer conviction and sentence in Portugal.

The trial court found her guilty of the offences punishable under Sections 120-B, 419 and 420 IPC, A-5 was found guilty of the offences under Section 120-B, Section 419 read with Section 109, Section 420 read with Section 109, Section 468 IPC and Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act, A-7 guilty of the offence under Section 468 IPC, while A-8 was held guilty of the offences under Sections 120-B, 420, Section 419 read with Section 109 IPC, Section 420 read with Section 109 IPC and under Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act. In appeal filed thereagainst, the High Court while confirming conviction of A-3, reduced the sentence of RI on all counts while maintaining the fine imposed. The conviction of A-5 and A-8 was also upheld but sentence imposed was reduced. As far as A-7 is concerned his conviction was altered from Section 468 IPC to Section 465 IPC and sentence of RI for 6 months and fine of Rs 500 with default stipulation was imposed. Hence, instant appeals by the appellant-accused. *Monica Bedi* v. *State of A.P.*, (2011) 1 SCC 284.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-11-2010]

[10691] — Ss. 468, 465 and 471 — Forgery of surety bonds — *Advocate's clerk forging endorsements regarding identification and attestation of sureties as well as signature of another advocate on surety bonds and obtaining release of the accused on that basis — Trial court convicting him under Ss. 465 and 471 and sentencing him for 1 years' imprisonment — High Court maintaining the conviction and sentence though taking the view that the offence in fact covered by S. 468 instead of S. 465 — Held, High court justified in maintaining the conviction — Offence being serious one release on probation of good conduct under S. 360 Criminal Procedure Code on ground of young age and no previous conviction not warranted — But having regard to circumstances of the case, sentence reduced to nine months' imprisonment already undergone — CrPC, 1973, S. 360. Sharvan Kumar* v. *State of U.P.*, (1985) 3 SCC 658: 1985 SCC (Cri) 437: AIR 1985 SC 1663.

Bench Strength **2**. Coram: **R.S. Pathak** and *A.N. Sen*, JJ. [Date of decision: 29-7-1985]

[10692] — Ss. 468 and 471 — Limitation for taking cognizance of an offence — Effect, if any, of statutory departmental rule creating a bar against institution of judicial proceedings against a retired government employee after a specified time — *Respondent resisting trial against him for misappropriation, bribery, etc. on the ground that he was protected by a departmental rule which provided that: "No judicial proceedings, if not instituted while the government servant was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution." — Held, the departmental rule was in the context of right of the Government to withhold or withdraw pension — It did not affect criminal trial under CrPC or the Prevention of Corruption Act — Prevention of Corruption Act, 1947, Ss. 5(1)(c)(d) r/w S. 5(2) — Maharashtra Civil Services (Pension) Rules, 1982, Rr. 27 and 26 — CrPC, 1973 — Ss. 468(2), 470(3) and 4. State of Maharashtra* v. *Keshav Ramchandra Pangare*, (1999) 9 SCC 479: 2000 SCC (L&S) 175: 2000 SCC (Cri) 247: AIR 1999 SC 3846.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 1-11-1999]

State of Punjab v. Kailash Nath, (1989) 1 SCC 321: 1989 SCC (Cri) 128; Prabhakar Govind Sawant v. State of Maharashtra, 1991 Mah LJ 1051, relied on

Keshav Ramchandra Pangare v. State of Maharashtra, 1999 Lab IC 371 (Bom), reversed

[**Ed.**: Date of commission of the offences by respondent are not indicated in the judgment but it appears that it was more than four years before institution of criminal proceedings against him. That is why, the respondent pressed into service Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.]

[10693] — Ss. 468, 471 and 420 — Quashing of FIR — Complaint regarding offences under W.B. Sales Tax Act as well as under IPC — FIR registered in accordance with CrPC — Quashed by High Court on ground that investigation on the basis of complaint had to be conducted under the Sales Tax Act — Applicability of S. 4(2) CrPC — *Quashing of FIR whether justified — Abuse of process of court — All offences under IPC as well as under any other law have to be investigated, inquired into, tried or otherwise dealt with in accordance with the provisions of CrPC — But in case of offence under the other law, the investigation, inquiry etc. shall be subject to any specific or contrary provisions contained in the enactment under which the offence is investigated, inquired into, tried or otherwise dealt with — S. 7 of the State Sales Tax Act does not enjoin that the investigation has to be conducted only by the Bureau of Investigation constituted thereunder in respect of alleged tax evasion or connected malpractices — Offence under S. 88(6) of the State Sales Tax Act is supplemental to any other penalty provided by law for the time being in force — Where during the course of a discreet investigation Bureau of Investigation finding that apart from offences under S. 88(1), (6), (7) of the State Sales Tax Act those under IPC were also involved against the respondent, held, Bureau was justified in passing over the investigation to regular police — When pursuant thereto police registered FIR, High Court was not justified in quashing the FIR on the ground that under the Act only the Bureau could conduct the investigation and police had no such power — W.B. Sales Tax Act, 1994, Ss. 88(1), (6) & (7) and 7 — CrPC, 1973 — Ss. 4 & 482*

When the Bureau of Investigation formed by the Government of West Bengal under the Sales Tax Act, got secret information about the fraud played by the respondent they conducted some discreet investigation and then it was revealed to them that the respondent had committed forgery and impersonation to defraud the Government of a huge sales tax amount. A complaint was presented by the Assistant Commissioner of Commercial Taxes to the Deputy Superintendent of Police who was then attached to the Bureau of Investigation. The said Deputy Superintendent, in turn, forwarded the complaint to the officer in charge of the police station, with a request to "start a case under Sections 403, 409, 465, 468, 471, 419, 420 read with Section 120-B of the Indian Penal Code and Sections 88(1)(*b*), (6) and (7) of the Sales Tax Act, 1994 treating the complaint as FIR". Pursuant thereto the Station House Officer of the police station registered the FIR. The respondent, getting scent of the same moved the City Civil Court, Calcutta for anticipatory bail but that was rejected. He then moved the High Court invoking its revisional and inherent jurisdiction for quashing the FIR and on such motion being made further investigation was stayed by the High Court. Finally the FIR was quashed. The High Court expressed the opinion that under the Sales Tax Act only a Bureau of Investigation constituted by the State Government can conduct the investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith, and hence no police officer can investigate into the offences under the Indian Penal Code or any other Act read with offences committed under Section 88 of the Sales Tax Act. Allowing the State's appeal,

Held :

So far as the offences under the Indian Penal Code are concerned sub-section (1) of Section 4 CrPC mandates that they can be investigated into and tried according to the provisions of the Code. As regards sub-section (2) of Section 4 which concern offences "under any other law", it is again the rule that such offences shall also be investigated and tried according to the provisions of the Code itself, but with a rider that such investigation or trial shall be subject to the regulation regarding "the manner or place of" such investigation or trial prescribed in any enactment for the time being in force. (Para 11)

The offence under sub-section (6) of Section 88 of the W.B. Sales Tax Act is specifically created as supplemental to any other penalty provided by any law for the time being in force. This means, offences falling under the Indian Penal Code and committed by a person while committing the offence contemplated in sub-section (6) cannot get displaced for the sole reason that the accused has committed the offence falling under sub-section (6) of Section 88. Section 7 of the Act makes it clear that creation of a Bureau of Investigation is for the purpose of discharging the function envisaged in sub-section (3) which, of course, includes investigation also. But there is nothing in Section 7 that such investigation can be carried on "*only*" by the Bureau and not any other investigating agency. It is open to the Bureau to get the assistance of any other legally-constituted investigating agency for effectively inquiring into all the ramifications of the offence. As in this case if offences falling under the Indian Penal Code or any other enactment are also detected during the course of investigation conducted by the Bureau there is no inhibition to pass over the investigation to the regular police. (Paras 16 and 17)

That apart, how could the FIR be quashed if the investigating agency should have been different? By lodging FIR alone no investigation is conducted by the police. It is the first step towards starting investigation by the police. If the High Court was of the opinion that investigation had to be conducted by the Bureau then also there was no need to quash the FIR. As offences under the Indian Penal Code are also involved, efficacious investigation can be conducted by entrusting it to the police investigating agency. The inherent powers of the High Court as recognised in Section 482 of the Code are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice". The High Court overlooked the reality that by quashing the FIR it did not achieve any one of the above factors. On the contrary, the result of quashing the FIR had rendered the allegations of offences made against a person to remain consigned in stupor perennially. Hence, instead of achieving the ends of criminal justice, the impugned order would achieve the reverse of it. (Para 19). *State of W.B.* v. *Narayan K. Patodia*, (2000) 4 SCC 447: 2000 SCC (Cri) 812: AIR 2000 SC 1405: 2000 Cri LJ 1811: (2000) 120 STC 370.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 6-4-2000]

Mirza Iqbal Hussain v. State of U.P., (1982) 3 SCC 516: 1983 SCC (Cri) 111; A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277; Gangula Ashok v. State of A.P., (2000) 2 SCC 504, relied on

[10694] — Ss. 468, 471, 470 and 120-B — Applicability of S. 195 CrPC — Question whether it applies to documents forged/fabricated prior to their being produced in court — *Held, that question arises only after the court takes cognizance — At the stage of investigation S. 195 has no application — Hence, on facts, the Supreme Court was not concerned with the said question — CrPC, 1973 — S. 195*

It is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. (Para 8). *M. Narayandas* v. *State of Karnataka*, (2003) 11 SCC 251: 2004 SCC (Cri) 118.

Bench Strength **2**. Coram: **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision: 19-9-2003]

[10695] — Ss. 468 and 477-A — Prohibition of a subsequent trial for the same offence — *One trial for several offences under Ss. 409, 468 and 477-A, IPC and S. 5(2) of Prevention of Corruption Act, 1947 — Accused having been acquitted for offences under Ss. 468 and 477-A, IPC, convicted for the offence under S. 409, IPC and no formal order for conviction or acquittal passed under S. 5(2) of Prevention of Corruption Act, 1947 for lack of jurisdiction — Contention being that since on the same facts the trial Judge found that the accused could not be found guilty under S. 5(2) of Prevention of Corruption Act, 1947, it was tantamount to any acquittal for that offence and therefore conviction under S. 4 of IPC was bdrred by S. 403(c), CrPC — CrPC, 1898 — S. 403(1)*

S. 403(1) has no application to the facts of the case, where there was only one trial for several offences, of some of which the accused person was acquitted while being convicted of one. *State of M.P.* v. *Veereshwar Rao Agnihotri*, AIR 1957 SC 592: 1957 SCR 868: 1957 Cri LJ 892.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *Syed Jafer Imam, S.K. Das*, **P. Govinda Menon** and *A.K. Sarkar*, JJ. [Date of decision: 5-4-1957]

— S. 468 r/w S. 34 *See also* Ss. 120-B, 467, 468 r/w 34

— S. 468 r/w S. 420 *See also* Ss. 463, 464, 465 and 468 r/w S. 420

— Ss. 468/120-B *See also* Ss. 302, 302/149, 302/120-B, 307/120-B, 307/149, 120-B, 143, 147, 148, 149, 392, 392/120-B, 392/149, 397/120-B, 397/149, 379, 379/149, 379/120-B, 468, 468/120-B, 468/149, 471, 471/120-B and 471/149

— Ss. 468/149 *See also* Ss. 302, 302/149, 302/120-B, 307/120-B, 307/149, 120-B, 143, 147, 148, 149, 392, 392/120-B, 392/149, 397/120-B, 397/149, 379, 379/149, 379/120-B, 468, 468/120-B, 468/149, 471, 471/120-B and 471/149

— S. 469 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 81, 87, 88, 89, 91, 92, 93, 100, 104, 106, 415, 469 and 499

See also Ss. 120-B, 195, 469 and 471
See also Ss. 342, 389, 469, 471 and 120-B
See also Ss. 419, 420, 465, 468, 469, 471, 472, 474 r/w S. 34
See also Ss. 420, 467, 468 and 469
See also Ss. 467, 468 and 469
— S. 470 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496
See also Ss. 463, 464, 465, 470, 471 and 415
See also Ss. 468, 471, 470 and 120-B
— S. 471 *See also* Ss. 1 and S. 120-B r/w Ss. 420, 467 and 471
See also Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496
See also Ss. 30, 467, 465 and 471
See also Ss. 52, 420, 406, 466, 468 and 471
See also Ss. 120-A, 120-B, 420, 468, 471 and 4
See also Ss. 120-B, 107, 109, 420, 468 and 471
See also Ss. 120-B, 109 and 408, 409, 467 and 471
See also Ss. 120-B, 120-A, 409 and 471
See also Ss. 120-B, 195, 469 and 471
See also Ss. 120-B, 409, 420, 465, 468, 471, 477-A, 101 and 34
See also Ss. 120-B, 419, 420, 467, 468, 471
See also Ss. 120-B, 420, 467, 468 and 471
See also Ss. 120-B, 420, 468, 471 and 506
See also Ss. 120-B, 420 and 471
See also Ss. 120-B, 465, 467, 468, 471 and 420
See also Ss. 120-B, 467, 468, 471, 491, 420, 381 and 204
See also Ss. 120-B and 471
See also S. 120-B r/w Ss. 218, 379, 467, 468, 471 and 419
See also S. 120-B r/w Ss. 409, 467, 471, 477-A and 218
See also S. 120-B r/w Ss. 420, 409, 467 and 471
See also S. 120-B r/w Ss. 420, 467, 468 and 471
See also S. 120-B r/w Ss. 420, 467 and 471
See also S. 120-B r/w Ss. 467, 471, 420, 406, 409, 465, 162, 163, 167, 201 and 109
See also Ss. 120-B/420, 468 and 471
See also Ss. 182, 211, 193, 467, 471 and 385
See also Ss. 193, 196, 465 and 471
See also Ss. 193, 209, 406, 468, 471 and 120-B
See also Ss. 200, 406, 420, 468, 471 and 120-B
See also Ss. 205, 419, 465, 467 and 471
See also Ss. 302, 302/149, 302/120-B, 307/120-B, 307/149, 120-B, 143, 147, 148, 149, 392, 392/120-B, 392/149, 397/120-B, 397/149, 379, 379/149, 379/120-B, 468, 468/120-B, 468/149, 471, 471/120-B and 471/149
See also Ss. 323, 382, 420, 465, 468, 471, 120-B, 506 and 34
See also Ss. 342, 389, 469, 471 and 120-B
See also Ss. 379, 468, 471, 420 and 506 Pt. II
See also Ss. 405, 406, 408, 409, 420, 467, 468, 471 and 120-B
See also Ss. 405, 420, 468 and 471
See also Ss. 406, 409, 420, 439, 471, 473 and 120-B
See also Ss. 406, 409, 420, 467, 471 and 120-B
See also Ss. 406, 420, 423, 465, 477, 468. 471, 120-B, 124 and 34
See also Ss. 406, 420, 468, 471, 504, 506. 382 and 120-B
See also Ss. 408, 467, 471 and 477-A
See also Ss. 409, 420, 467, 468 and 471
See also Ss. 409, 467 and 471
See also Ss. 409, 467, 471 and 411
See also Ss. 409, 467, 471 and 477-A
See also Ss. 409, 467, 471, 477-A and 120-B
See also Ss. 418, 471 and 477-A
See also Ss. 419, 420, 465, 468, 469, 471, 472 and 474 r/w S. 34
See also Ss. 419, 420, 468 and 471
See also Ss. 420, 406. 409. 120-B. 467. 468 and 471
See also Ss. 420, 406. 409. 407. 120-B. 467. 468 and 471
See also Ss. 420, 421, 466. 468. 471. 465 and 120-B
See also Ss. 420, 463, 465. 468 and 471 r/w S. 120-B
See also Ss. 420. 465. 466. 467. 468 and 471
See also Ss. 420. 467. 468 and 471
See also Ss. 420. 467. 468. 471 and 120-B

See also Ss. 420, 467, 471, 323, 506-B and 120-B

See also Ss. 420, 467, 471 and 474

See also Ss. 420, 468 and 471

See also Ss. 420, 468, 471 and 120-B

See also Ss. 420, 468 and 471 r/w S. 120-B

See also Ss. 420 and 471

See also Ss. 420, 471, 474, 467, 468, 417 and 511

See also Ss. 463, 464, 465, 470, 471 and 415

See also Ss. 463 to 465 and 471

See also Ss. 463, 467, 468 and 471

See also Ss. 463, 471, 475 and 476

See also Ss. 464 Secondly and S. 471

See also Ss. 465, 467, 468, 471 and 120-B

See also Ss. 465, 468, 471, 209 and 406

See also Ss. 465, 468, 471 and 420 r/w S. 120-B

See also Ss. 466, 468, 471, 477-A and 120-B

See also Ss. 466 and 471

See also Ss. 467, 465, 471 and 120-A

See also Ss. 467, 468 and 471

See also Ss. 467, 468, 471, 420, 409 and 218

See also Ss. 467, 468, 471, 472 and 477-A r/w S. 34

See also Ss. 467, 468, 471, 491, 420, 381 and 204 r/w S. 120-B

See also Ss. 467 and 471

See also Ss. 467, 471 and 120-B

See also Ss. 467, 471, 463 and 464

See also Ss. 467, 471 and 477-A

See also Ss. 468, 465 and 471

See also Ss. 468 and 471

See also Ss. 468, 471, 409, 420 and 120-B

See also Ss. 468, 471 and 420

See also Ss. 468, 471, 470 and 120-B

See also Ss. 475 and 471

[10696] — S. 471 — Scope — Using attested copy of forged document — *Accused is nevertheless guilty under the section*

What S. 471 requires is the use as genuine of any document which is known or believed to be a forged document; it does not lay down that such use can only occur when the original itself is produced, for the section does not require the production of the original. Section 471, does not require the production of the original forged document. Where it is possible to produce an attested copy of the forged document and that attested copy will serve the purpose of the original forged document there would be use of the original forged document as genuine, though through the attested copy. Where an attested copy of a forged document was produced by the accused before a court there was use of the document, which was known or believed to be a forged document within the meaning of S. 471. *Budhu Ram* v. *State of Rajasthan*, (1963) 3 SCR 376: (1963) 2 Cri LJ 698, 701.

Bench Strength **3**. Coram: *B.P. Sinha, C.J.* and **K.N. Wanchoo** and *J.C. Shah*, JJ. [Date of decision: 24-7-1962]

[10697] — S. 471 — Scope and applicability of S. 195(1)(c) CrPC — Forged document produced before the Sales Tax Officer — *Sales Tax Officer is not a Court under S. 195(1)(c) — No complaint under the section is necessary for prosecution under S. 471 IPC*

No doubt the Sales Tax Officers have certain powers which are similar to the powers exercised by court but still they are not courts as understood in S. 195 of the Criminal Procedure Code. A Sales Tax Officer is not a Court within the meaning of S. 195 of the Criminal Procedure Code and therefore it was not necessary for a Sales Tax Officer to make a complaint and the proceedings without such a complaint are not without jurisdiction. *Jagannath Prasad* v. *State of U.P.*, AIR 1963 SC 416: (1963) 2 SCR 850: (1963) 1 Cri LJ 330, 333: (1963) 14 STC 536.

Bench Strength **3**. Coram: **J.L. Kapur**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 3-5-1962]

[10698] — S. 471 — Accused presenting withdrawal forms in bank knowing them to be containing forged signatures of the original account holder and drawing money from that account — *Held, liable to be convicted under S. 471 — Sentence of 9 months' RI confirmed. Bank of India* v. *Yeturi Maredi Shanker Rao*, (1987) 1 SCC 577: 1987 SCC (Cri) 228: AIR 1987 SC 821: 1987 Cri LJ 722.

Bench Strength **2**. Coram: **G.L. Oza** and *M.M. Dutt*, JJ. [Date of decision: 28-1-1987]

[10699] — S. 471 — Charges of criminal breach of trust and forgery having failed, held, on facts the conviction under S. 471 also could not be sustained — *Falsity of explanation of accused as to possession of the forged cheque held cannot be used adversely against him — Prosecution failed to show that either the accused knew or had reason to believe that the cheque was a forged document. Abdul Karim Madan Sahab* v. *State of Mysore*, (1979) 4 SCC 595: 1980 SCC (Cri) 140: AIR 1979 SC 1506: 1979 Cri LJ 1123.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 20-2-1979]

[10700] — S. 471 — Effect of S. 476, CrPC — Expression of opinion by Court

The offence covered by S. 471, IPC, from its very nature must be committed in the proceeding itself by a party thereto. With respect to such an offence expression of opinion by the court as to the expediency of prosecution would serve a useful purpose. *Patel Laljibhai Somabhai* v. *State of Gujarat*, (1971) 2 SCC 376: 1971 SCC (Cri) 548: AIR 1971 SC 1935: 1971 Cri LJ 1437.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and *P. Jaganmohan Reddy* and **I.D. Dua**, JJ. [Date of decision: 7-5-1971]

[10701] — S. 471 — Offence committed by a party to any proceeding in a court — *Accused filing a copy of a forged document in a court — Prosecution under S. 471 IPC — S. 195(1)(c) CrPC does not apply — Complaint by the Court is not necessary — CrPC, 1898 — S. 195(1)(c)*

From a plain grammatical construction of S. 195(1)(*c*) it is clear that a complaint by the Court is required where the offence is of forging or of using as genuine any document which is known or believed to be a forged document when such document is produced or given in evidence in court. It is clear therefore that it is only when the forged document is produced in court that a complaint by the Court is required. Where, however, what is produced before the Court is not the forged document itself, but its copy, S. 195(1)(*c*) will not apply on its terms. *Budhu Ram* v. *State of Rajasthan*, (1963) 3 SCR 376: (1963) 2 Cri LJ 698.

Bench Strength **3**. Coram: *B.P. Sinha, C.J.* and **K.N. Wanchoo** and *J.C. Shah*, JJ. [Date of decision: 24-7-1962]

Sanmukhsingh v. King, AIR 1950 PC 31: 77 IA 7: 51 Cri LJ 651 and AIR 1925 Oudh 413: 26 Cri LJ 929, approved

[10702] — S. 471 — Sanction for prosecution — Applicable rules — *Government of India (Allocation of Business) Rules, 1961, made under (as amended by Notification No. SG 2494, dated August 3, 1965 by introducing Entry 32-A under heading "Ministry of Home Affairs") — Held, Rules made in supersession of all previous rules and orders — Office memorandum dated October 6, 1948, not shown to have remained in operation after coming into force of the Rules — Hence, sanction for prosecution of an employee of Geological Survey of India in connection with a criminal case under S. 5(1)(c) r/w S. 5(2) of Prevention of Corruption Act, 1947 (2 of 1947) and S. 471, IPC registered against him and investigated by Special Police Establishment, Jaipur should be granted either by Ministry of Education or by Department of Personnel (Karmik Vibhag) and not by Ministry of Home Affairs, Government of India — Constitution of India — Art. 77(3). State of Rajasthan* v. *Dr. A.K. Datta*, (1980) 4 SCC 459: 1980 SCC (Cri) 990: AIR 1981 SC 20: 1980 Cri LJ 1278.

Bench Strength **2**. Coram: **A.C. Gupta** and *O. Chinnappa Reddy*, JJ. [Date of decision: 10-10-1980]

[10703] — S. 471 — Sentence where no loss suffered — *Accused on detection withdrawing forged bank guarantee bond and paying the amount — Held, proper sentence would be to reduce 1 year's RI to that already undergone and fine be raised from Rs 1000 to Rs 5000. Manilal Girdharilal Shah* v. *State of Gujarat*, (1979) 4 SCC 716: 1980 SCC (Cri) 156: AIR 1979 SC 1343: 1979 Cri LJ 1117.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 31-1-1979]

[10704] — S. 471 — Using forged documents — Accused producing forged documents before Sales Tax Officer to get exclusion from turnover — *Forged documents were filed because he had to produce best evidence, held, not a valid defence*

When a fact has to be proved before a court or a tribunal and the court or the tribunal calls upon the person who is relying upon a fact to prove it by best evidence it cannot be a defence as to the offence of forgery if that best evidence which, in this case, was the invoices turn out to be forged documents. A person who produced those documents cannot be heard to say that he was required to prove his case by the best evidence and because he was so required he produced forged documents. *Jagannath Prasad* v. *State of U.P.*, AIR 1963 SC 416: (1963) 2 SCR 850: (1963) 1 Cri LJ 330, 333: (1963) 14 STC 536.

Bench Strength **3**. Coram: **J.L. Kapur**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 3-5-1962]

[10705] — S. 471 — Whether document forged or copy of forged document not material

Whether the original sale deed was first forged and then copy made of the forged document or the copy was a false document, makes little difference. The appellants in this case knew that the document they used did not represent the original sale deed. In other words it was either forged or a forged copy was prepared. In either event they were using as genuine a forged document knowing it to be forged. The conviction under S. 471. IPC, must therefore, be upheld. *Rama Shankar Lal* v. *State of U.P.*, (1971) 3 SCC 905: 1972 SCC (Cri) 153.

Bench Strength **3**. Coram: *M. Hidayatullah, C.J.* and *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 26-3-1970]

[10706] — Ss. 471 and 26 — Expression "knows or has reason to believe" occurring in S. 471 — *Meaning of "knowledge" and "reason to believe",* *explained — Further held, the said two requirements under S. 471 are to be deduced from various circumstances in the case*

Under IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". Here (in a case relating to Section 471 IPC), the Court is concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. (Para 9)

In substance, what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such as creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case. (Para 10). *A.S. Krishnan* v. *State of Kerala*, (2004) 11 SCC 576: AIR 2004 SC 3229: 2004 Cri LJ 2833.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

Joti Parshad v. State of Haryana, 1993 Supp (2) SCC 497: 1993 SCC (Cri) 691, relied on

[10707] — Ss. 471 and 420 — Forgery of document and user thereof as genuine — *Appellant, his wife and his brother tried for offences under Ss. 120-B, 420, 467, 468 and 471 — CJM acquitting all the accused — But High Court while maintaining acquittal of appellant's wife and brother convicting appellant under Ss. 471 and 420 — Held, having acquitted the other two accused, appellant could not be convicted under Ss. 471 and 420 singularly and substantively on the basis of weak evidence and vacillating views when originally he was charged for such offences with the aid of S. 120-B — When the High Court was not sure as to who and which of the accused had committed the forgery, it erred in attributing necessary mens rea for the user of forged document as genuine to the appellant alone. V. Sujatha* v. *State of Kerala*, 1994 Supp (3) SCC 436: 1994 SCC (Cri) 1786.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 19-9-1994]

[10708] — Ss. 471 and 420 — Forgery of document and user thereof as genuine — Case based on photostat copy of the document though original document was available with Customs Department but not produced at the trial — *Held, case not sustainable. V. Sujatha* v. *State of Kerala*, 1994 Supp (3) SCC 436: 1994 SCC (Cri) 1786.

Bench Strength **2**. Coram: **M.M. Punchhi** and *K. Jayachandra Reddy*, JJ. [Date of decision: 19-9-1994]

[10709] — Ss. 471 and 420 — Sentence — Extenuating circumstance — Old case — *Line helper in Electricity Board submitting false LTC Bill — Sentenced to 6 months' RI — Case of 1983 — Appellant having already undergone 3 months' RI, sentence reduced accordingly. Manjur Faiju Inamdar* v. *State of Maharashtra*, 1993 SCC (Cri) 1019: AIR 1993 SC 2322: (1993) 2 GLH 203: 1993 Cri LJ 2832: (1993) 2 Crimes 982.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *N.P. Singh*, JJ. [Date of decision: 14-7-1993]

[10710] — Ss. 471, 420 and 198 — Conviction and sentence under — *Appellant using a duplicate certificate of marks-sheet with changes as true certificate, knowing it to be false in material particular and thereby getting admission to polytechnic course — Held, conviction justified — However, looking to the nature of the offence and the fact that the appellant's past and present records have been good and the fact that he has already lost his career and is now married, his sentence reduced to that already undergone. Tulsibhai Jivabhai Changani* v. *State of Gujarat*, (2001) 1 SCC 719: 2001 SCC (Cri) 267: 2001 Cri LJ 741.

Bench Strength **2**. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 12-12-2000]

[10711] — Ss. 471 and 420 r/w S. 34 — Sentence under — Leniency — When not warranted — A-1 (a student) using forged marksheet to obtain admission in a medical college — *His father, who was a doctor, involved in whole operation — High Court already reduced custodial sentence to three months each for the said offences — Held, such crimes deserve deterrent punishment — Undue sympathy would result in miscarriage of justice — Hence, plea relating to sentence or extending the benefits of the Probation of Offenders Act, held, had no substance — Probation of Offenders Act, 1958, S. 4*

The trial court convicted the appellants (A-1 and his father A-2) and awarded sentence of imprisonment for one year and two years in respect of the offences under Sections 471 and 420 IPC respectively. The High Court upheld the conviction, but reduced the custodial sentence to three months in respect of both the offences separately. Before the Supreme Court, the accused contended that the incident took place more than quarter of a century back when A-1 was a student and aged about 17 years, and this was a fit case for extending the benefit under the Probation of Offenders Act, 1958.

Held:

The High Court has already taken a liberal view so far as A-2 (father of A-1) is concerned. In a case when students use forged marksheets to obtain admission thereby depriving eligible candidates to get seats and that too to a medical course and a doctor is involved in the whole operation, uncalled-for leniency or undue sympathy will be misplaced and actually result in miscarriage of justice. Such types of crimes deserve as a matter of fact, deterrent punishment in the larger interests of society. If at all, the case calls for severe punishment. There is no substance in the plea relating to sentence or extending the benefits of the Probation Act. (Para 13). *A.S. Krishnan* v. *State of Kerala*, (2004) 11 SCC 576: AIR 2004 SC 3229: 2004 Cri LJ 2833.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

[10712] — Ss. 471 and 420 r/w S. 34 — Using as genuine a forged document — Proof — Held, prosecution to establish that accused knew or had reason to believe that the document was a forged one — *Use of forged marksheet by A-1 for getting his admission in a medical college — A-1 and his father A-2 (a doctor) alleged to have entered into a conspiracy along with A-4 (Assistant Registrar, Examination Wing) and A-3 (associate of A-2) for forging pre-degree marksheet of A-1 — Marksheet received by A-1 after secnd-year examination showing marks in three optional subjects as 387 out of 450, but the one forwarded to medical college indicating the same as 420 out of 450 — No change in first-year marks even after revaluation — Total maximum marks in optional subjects in second year, 180 — But, on the basis of forged marksheet, marks obtained coming to 190 — Held, this impossible difference would have attracted notice of A-1 and A-2 — Even if cent per cent marks of 180 obtained, total in optional subjects (first year + second year) would be 410 and not 420 — Further, the forged marksheet purported to have been prepared after revaluation indicating the date on which results for first year were published — Held, both A-1 and A-2 knew and had reason to believe that the marksheet was a forged one — Their conviction upheld*

According to the prosecution, A-1 (Appellant 1), who was the son of a doctor i.e. A-2 (Appellant 2), got admission in a medical college on the basis of a forged marksheet relating to pre-degree examinations conducted by the Kerala University. The said appellants faced trial with two others i.e. A-3 (an associate of A-2) and A-4 (Assistant Registrar, Examination Wing, Kerala University). The mark list received by A-1 after the second-year (final-year) examination indicated the marks obtained in optional subjects viz. Physics, Chemistry and Biology as 127/150, 131/150 and 129/150 respectively. Thus, A-1 obtained 387 marks out of 450 in the optional subjects. As A-1 and A-2 were aware that the marks secured by A-1 were insufficient to get an admission in any medical college for the first-year MBBS course in Kerala on merit, they entered into a criminal conspiracy along with A-3 and A-4 for forging a mark list showing higher marks. A-4 prepared a forged marksheet (Ext. D-4) showing marks obtained in Physics, Chemistry and Biology as 142/150, 140/150 and 138/150 respectively. A-1 and A-2 thereafter prepared an application form for admission to a medical college during the year 1980-81 with their signatures by incorporating the marks found in Ext. D-4, the forged mark list, fully knowing the forged nature of Ext. D-4 and forwarded such application together with the attested true copy, Ext. P-27 of Ext. D-4 to the medical college, Thiruvananthapuram with the fraudulent intention to make the authorities concerned to believe that the marks shown in the application were the real marks obtained by A-1 and thereby cheated the Selection Committee and obtained admission for the first-year MBBS course on merit basis. The appellants with the intention of causing disappearance of the evidence of commission of the crime destroyed the true genuine mark list. The trial court held the appellants A-1 and A-2 guilty of offences punishable under Sections 471, 420, 120-B and 201 read with Section 34 IPC. A-3 and A-4 were acquitted. By the impugned judgment the High Court found that the conviction was in order so far as the offences relatable to Sections 471, 420 read with Section 34 were concerned, but set aside the conviction in respect of offences punishable under Sections 120-B and 201 IPC. A-1 and A-2 challenged the said judgment of the High Court by filing the instant appeal.

Before the Supreme Court, the accused submitted that after the acquittal of A-3 and A-4 who were primarily alleged to be responsible for the forgery, conviction could not be maintained so far as the appellants were concerned. When the documents were handed over by A-4, there was no scope for either A-2 or A-1 entertaining any doubt, because the source from which the document came was that of Assistant Registrar who was authorised to issue the certificate. The document could not be said to be a forged one and when charges of forgery were not established, there was no question of a forged document being there. Unless the part allegedly played by A-4 was established, there could not be a forged document. It was contended that even if the document was forged, A-1 could not be said to have knowledge or to have used it fraudulently or dishonestly. There must be a reason to believe that it was a forged one. It was further argued that no knowledge could be attributed to A-1 when the forgery or alleged conspiracy was not established. Unless there was conspiracy or common intention, Section 34 would have no application.

Dismissing the appeal,

Held :

It was clearly conceded before the High Court that D-4 was a forged document. What was urged before the High Court was that even if it is forged, the appellants had not used it deliberately or intentionally as a forged document. A comparison of the marksheet filed by A-1 with the marks register shows great variance. (Para 6)

There are three optional subjects viz. Physics, Chemistry and Biology. Each optional subject consists of Paper I, Paper II and practical. The examination for Paper I is conducted in the first year. Paper-II is written in the second year of the course. There is no provision for seeking revaluation for practical examination and it is only restricted to theory papers. Unless one knows the marks secured in a particular examination, the question of seeking revaluation does not arise. Though a claim was made that the result of revaluation was not known so far as first year is concerned, the evidence on record clearly proves to the contrary. In the communication relating to results of revaluation it had been clearly indicated that there was no change in the marks. Obviously, the marks shown in excess of the actual in Ext. D-4 can be related to Paper II. The excess marks are 33 i.e. 15, 9 and 9 in Physics, Chemistry and Biology respectively. As per Ext. D-4 (forged marksheet), the marks indicated are 142, 140 and 138 for the aforesaid three subjects. The High Court has taken pains to analyse that for the second year in respect of Paper II the maximum marks are 60 in the aforesaid three subjects. If by way of illustration, Physics marks are taken, originally before revaluation the marks secured by A-1 was 55 and if excess 15 marks are added to it, as the allegedly forged document shows the total comes to 70 marks. If the total marks for a paper are 60, there cannot be even a shadow of doubt that A-1 could not have secured 70 marks. Similar is the case of Biology, where the marks would be 61 against a total maximum marks of 60. Of course in Chemistry 59 marks are shown as against maximum 60 marks. If a student gets cent per cent marks in Paper II in each subject the total would come to 180, whereas on the basis of D-4 it comes to 190. This impossible difference would have attracted notice of A-1 and A-2. The High Court also concluded that in the first year for Paper I the total marks secured by A-1 was 92 and practical marks were 138. Even if it is conceded that A-1 secured cent per cent marks in Paper II the total marks would have come to 92 + 138 + 180 which would make a total of 410, and not 420 as Ext. D-4 shows. (Para 6)

That apart, if the results in respect of the first-year degree course were published on 30-6-1980, Ext. D-4 which is purported to have been drawn up after revaluation could not have indicated a date seal of 30-6-1980. (Para 7)

Thus, The factual position leaves no manner of doubt that the accused-appellants had not only the knowledge, but also had reason to believe that the document was a forged one before they used it. (Paras 6, 7 and 11). *A.S. Krishnan* v. *State of Kerala*, (2004) 11 SCC 576: AIR 2004 SC 3229: 2004 Cri LJ 2833.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

A.S. Krishnan v. State of Kerala, 1998 Cri LJ 207 (Ker), affirmed

[10713] — Ss. 471, 463 and 193 — Offence falling under S. 471 — Not covered by S. 471-A(1) CrPC 1898 — ***S. 479-A(1) CrPC may be resorted to only in case which falls within first para of S. 193 IPC***

Section 479-A(1) has a limited operation: it applies only to the prosecution of a witness appearing before the Court, who has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. The sub-section may be resorted to only in a case which falls within the first paragraph of S. 193 of the Indian Penal Code and allied Ss. 194 and 195 — when it is committed by a witness appearing before the Court. An offence punishable under S. 471 Indian Penal Code being one of fraudulently or dishonestly using as genuine any document which the accused knows or has reason to believe to be a forged document, does not fall within the category contemplated by S. 479(1) of the Code of Criminal Procedure and therefore the authority of the Court to act under S. 476 of the Code is not impaired by sub-section (6) of S. 479-A.

It is true that some of the ingredients of the act of fabricating false evidence which is penalised under S. 193 Indian Penal Code and of making a false document and thereby committing forgery within the meaning of Ss. 463 and 464 Indian Penal Code are common. A person by making a false entry in any book or record or by making any document containing a false statement may, if the prescribed conditions of S. 463 are fulfilled, commit an offence of forgery. But the important ingredient which constitutes fabrication of false evidence within the meaning of S. 192 Indian Penal Code beside causing a circumstance to exist or making a false document — to use a compendious expression — is the intention that the circumstance so caused to exist or the false document made may appear in evidence in a judicial proceeding, or before a public servant or before an arbitrator, and lead to the forming of an erroneous opinion touching any point material to the result of the proceeding. The offences of forgery and of fabricating false evidence for the purpose of using it in a judicial proceeding are therefore distinct, and within the description of fabricating false evidence for the purpose specified in S. 479-A, Criminal Procedure Code, the offence of forgery is not included. In any event the offence penalised under S. 471, Indian Penal Code can never be covered by sub-section (1) of S. 479-A. Therefore for taking proceeding against a person who is found to have used a false document dishonestly or fraudulently in any judicial proceeding resort may only be had to S. 476, CrPC. *Babu Lal* v. *State of U.P.*, AIR 1964 SC 725: (1964) 4 SCR 957: (1964) 1 Cri LJ 555, 557.

Bench Strength **5**. Coram: *P.B. Gajendragadkar*, *K. Subba Rao*, *K.N. Wanchoo*, **J.C. Shah** and *Raghubar Dayal*, JJ. [Date of decision: 18-9-1963]

See also 1964 (1) Cri LJ 489: (1964) 3 SCR 980 and AIR 1963 SC 816: 1963 (1) Cri LJ 803

[10714] — Ss. 471 and 465 — Using as genuine a forged document — Applicability of S. 471 — Essential ingredients — *Held, S. 471 is intended to apply to persons other than forger himself, but the forger is not excluded from the operation of the section — Not essential that the person charged for forgery of the document must of necessity be convicted before the person using the forged document can be convicted — Acquittal of person allegedly responsible for the forgery, therefore, inconsequential for conviction under S. 471*

The essential ingredients of Section 471 are: (*i*) fraudulent or dishonest use of document as genuine, and (*ii*) knowledge or reasonable belief on the part of person using the document that it is a forged one. The act need not be both dishonest and fraudulent. The use of document as contemplated by Section 471 must be a voluntary one. (Para 8)

Section 471 is intended to apply to persons other than the forger himself, but the forger himself is not excluded from the operation of the section. To attract Section 471 it is not necessary that the person held guilty under the provision must have forged the document himself or that the person independently charged for forgery of the document must of necessity be convicted before the person using the forged document, knowing it to be a forged one can be convicted, as long as the fact that the document used stood established or proved to be a forged one. The act or acts which constitute the commission of the offence of forgery are quite different from the act of making use of a forged document. (Para 8). *A.S. Krishnan* v. *State of Kerala*, (2004) 11 SCC 576: AIR 2004 SC 3229: 2004 Cri LJ 2833.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

[10715] — Ss. 471, 466, 468 and 120-B — Using as genuine a forged document (marksheet in this case) — Conspiracy — *Acquittal of some of the co-accused from the charge of — Held, cannot affect the accusations under S. 471 against the main accused* (Para 12). *A.S. Krishnan* v. *State of Kerala*, (2004) 11 SCC 576: AIR 2004 SC 3229: 2004 Cri LJ 2833.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-3-2004]

Madan Lal v. State of Punjab, AIR 1967 SC 1590: 1967 Cri LJ 1401, followed

[10716] — Ss. 471 and 474 — Appellant's truck in the custody of the driver checked and a forged permit seized from the driver — Appellant also present at the time of seizure — *Conviction under Ss. 471 and 474 valid*

When the truck was checked the driver and the appellant who was the owner of the truck were in two separate trucks, the truck of the appellant following the truck of the driver. At the time of checking the appellant also arrived and the forged permit was seized from the driver in the presence of the owner. It was contended that since the permit was seized from the driver the appellant was not liable.

Held :

It is unlikely that the driver would be interested to alter the figures though he might have also known that the document was forged. As both the driver and the appellant were present when the Inspector seized the forged permit the responsibility cannot be shaken off by the appellant on the pretext that the driver handed over the permit and therefore he had nothing to do with it. The truck was being plied by him between Indore and Nasik and it was he who was required under the Motor Vehicles Act to see that the truck was not used without a valid permit. The appellant must be held to have used the forged permit and also to have had it in his possession from Indore to Nasik with the intention to use it. The conviction in these circumstances must be held to be correct on both the counts and the trial to be within jurisdiction. *Gajjan Singh* v. *State of M.P.*, AIR 1965 SC 1921: (1965) 2 Cri LJ 822, 823.

Bench Strength **3**. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 7-5-1965]

— **S. 471 r/w S. 120** *See also* Ss. 120-B, 409, 467 and 471 r/w S. 120

— **S. 471 r/w S. 120-B** *See also* Ss. 420, 463, 465, 468 and 471 r/w S. 120

See also Ss. 420, 463, 468 and 471 r/w S. 120-B

See also Ss. 420, 468 and 471 r/w S. 120-B

See also Ss. 466, 468, 471 r/w S. 120-B

— **Ss. 471/34** *See also* Ss. 420/34 and 471/34

— **Ss. 471/109** *See also* Ss. 466 and 471/109

— **Ss. 471/120-B** *See also* Ss. 302, 302/149, 302/120-B, 307/120-B, 307/149, 120-B, 143, 147, 148, 149, 392, 392/120-B, 392/149, 397/120-B, 397/149, 379, 379/149, 379/120-B, 468, 468/120-B, 468/149, 471, 471/120-B and 471/149

— **Ss. 471/149** *See also* Ss. 302, 302/149, 302/120-B, 307/120-B, 307/149, 120-B, 143, 147, 148, 149, 392, 392/120-B, 392/149, 397/120-B, 397/149, 379, 379/149, 379/120-B, 468, 468/120-B, 468/149, 471, 471/120-B and 471/149

— **Ss. 471/465** *See also* Ss. 409, 420, 467, 468, 471/465 and 477-A r/w S. 120-B

See also Ss. 417 and 471/465

— **S. 472** *See also* Ss. 419, 420, 465, 468, 469, 471, 472 and 474 r/w S. 34

See also Ss. 467, 468, 471, 472 and 477-A r/w S. 34

— **S. 473** *See also* Ss. 120-B r/w 326, 342, 417, 465, 473, 506 and 307

See also Ss. 406, 409, 420, 439, 471, 473 and 120-B

— **S. 474** *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 420, 467, 471 and 474

See also Ss. 420, 471, 474, 467, 468, 417 and 511

See also Ss. 471 and 474

— **S. 474 r/w S. 34** *See also* Ss. 177, 181, 193, 406, 465 and 474 r/w S. 34

See also Ss. 419, 420, 465, 468, 469, 471, 472 and 474 r/w S. 34

— **S. 475** *See also* Ss. 167 and 475

See also Ss. 463, 471, 475 and 476

[10717] — Ss. 475 and 471 — CrPC, 1898, S. 195(1)(c) — Bar to take cognizance for an offence under S. 475

Transfer applications for transfer of certain cases pending before the appellant were filed and allegations had been made against him. But this alone will not make the appellant a party to those proceedings. He was functioning as a Magistrate and he had no personal interest in the outcome of the transfer applications. No doubt when allegations of prejudice have been made against the appellant, it was his duty as a subordinate court and as an officer against whom allegations have been made to offer explanation in his report sent to by his superior or appellate authority. Therefore, cl. (*c*) of S. 195 again does not bar the jurisdiction of the Magistrate to take cognizance of the offence under S. 471 of the Penal Code.

Although S. 471 of the Penal Code is included in cl. (*c*) of S. 195(1), but for cl. (*c*) to operate as a bar to take cognizance for an offence under S. 475, it is essential that the offence must be alleged to have been committed 'by a party to any proceedings in any court'. *Govind Mehta* v. *State of Bihar*, (1971) 3 SCC 329: 1971 SCC (Cri) 608: AIR 1971 SC 1708: 1971 Cri LJ 1266.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 7-5-1971]

— **S. 476** *See also* Ss. 463, 475 and 476

— **S. 477** *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 406, 420, 423, 465, 477, 468, 471, 120-B, 124 and 34

— S. 477 r/w S. 120-B *See also* S. 120-B, S. 420 r/w S. 120-B, S. 477 r/w S. 120-B and S. 5(1)(d) r/w S. 5(2), PC Act, 1947 r/w S. 120-B IPC

— S. 477-A *See also* Ss. 120-A, 120-B, 403 and 477-A

See also Ss. 120-B, 409, 420, 465, 468, 471, 477-A, 101 and 34

See also Ss. 120-B, 409 and 477-A

See also Ss. 120-B, 468 and 477-A

See also Ss. 120-B, 477-A and 409

See also S. 120-B r/w Ss. 409, 467, 471, 477-A and 218

See also S. 120-B r/w S. 420 and S. 477-A

See also S. 120-B r/w Ss. 420 and 477-A and Ss. 467 r/w 471

See also Ss. 161 and 477-A

See also Ss. 201 and 477-A

See also Ss. 406, 477-A and 420 r/w S. 120-B

See also Ss. 407, 467 and 477-A

See also Ss. 408, 467, 471 and 477-A

See also Ss. 408, 468 and 477-A

See also Ss. 408 and 477-A

See also Ss. 409, 420, 467 and 477-A

See also Ss. 409, 420, 467, 477-A r/w S. 120-B

See also Ss. 409, 463, 468, 477-A and 120-B

See also Ss. 409, 467, 471 and 477-A

See also Ss. 409, 467, 471, 477-A and 120-B

See also Ss. 409, 467 and 477-A

See also Ss. 409 and 477-A

See also Ss. 409, 477-A and 120-B

See also Ss. 418, 471 and 477-A

See also Ss. 420 and 477-A

See also Ss. 420, 477-A, 468, 109 and 409

See also Ss. 420/511, 420/120-B, 468 and 477-A

See also Ss. 436 and 477-A

See also Ss. 466, 468, 471, 477-A and 120-B

See also Ss. 467, 471 and 477-A

See also Ss. 467 and 477-A

See also Ss. 468 and 477-A

[10718] — S. 477-A — Applicability of S. 195(1)(c) CrPC, 1898 — Offence to be committed by party to a proceeding after he becomes such party — *Material document neither produced nor given in evidence in the proceeding — S. 195(1)(c) CrPC inapplicable — On facts, trial under Ss. 418, 471 and 477-A, IPC could be proceeded with before the High Court under its original criminal jurisdiction — Companies Act, 1956, Ss. 397 and 398 — CrPC, 1898 — S. 195(1)(c). Legal Remembrancer of Govt. of W.B.* v. *Haridas Mundra*, (1976) 1 SCC 555: 1976 SCC (Cri) 67: AIR 1976 SC 2225: (1976) 2 SCR 933: 1976 Cri LJ 1732.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *P.K. Goswami* and *N.L. Untwalia*, JJ. [Date of decision: 9-12-1975]

[10719] — S. 477-A — Concealment of an already committed fraud is a fraud

If the intention with which a false document is made is to conceal a fraudulent or dishonest act which had been previously committed, the intention could not be other than an intention to commit fraud. The concealment of an already committed fraud is a fraud.

Where, therefore, there is an intention to obtain an advantage by deceit there is fraud and if a document is fabricated with such intent, it is forgery. A man who deliberately makes a false document in order to conceal a fraud already committed by him is undoubtedly acting with intent to commit fraud, as by making the false document he intends the party concerned to believe that no fraud had been committed. It requires no argument to demonstrate that steps taken and devices adopted with a view to prevent persons already defrauded from ascertaining that fraud had been perpetrated on them, and thus to enable the person who practised the fraud to retain the illicit gain which he secured by the fraud, amount to the commission of a fraud. An act that is calculated to conceal fraud already committed and to make the party defrauded believe that no fraud had been committed is a fraudulent act and the person responsible for the act acts fraudulently within the meaning of S. 25 of the Code. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1877: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 5-4-1962]

Emp. v. Ragho Ram, 55 All 783, 788: AIR 1933 All 525: 34 Cri LJ 1056, approved

[10720] — S. 477-A — Falsification of book papers etc. to commit breach of trust — *Not necessarily be connected with commission of breach of trust as long as falsification is to cover up a criminal breach of trust. R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1878: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 5-4-1962]

[10721] — S. 477-A — FIR — Evidentiary value — *FIR by itself, held, not a substantive piece of evidence — Can be used to contradict or corroborate the maker thereof in the manner provided under the Evidence Act — Hence, conviction for misappropriation of property on the basis of allegations contained in the FIR which were not substantiated by oral evidence, held, not sustainable — Prevention of Corruption Act, 1947, S. 5(1)(c) — CrPC, 1973 — S. 154 — Evidence Act, 1872 — Ss. 155(3) and 145. Madhusudan Singh* v. *State of Bihar*, (1996) 11 SCC 248: 1997 SCC (Cri) 187: AIR 1995 SC 1437.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 12-1-1995]

[10722] — S. 477-A — Ingredients of — *On facts appellant made the entries without intent to defraud*

In order to bring home an offence under S. 477-A, IPC, the prosecution has to establish (*i*) that at the relevant time, the accused was a clerk, officer or servant; and (*ii*) that acting in that capacity he destroyed, altered, mutilated or falsified any book, paper, writing, valuable security or account which belonged to or is in the possession of his employer or has been received by him for and on behalf of his employer etc. (*iii*) that he did so wilfully and with intent to defraud. "Wilfully" as used in S. 477-A means "intentionally" or "deliberately". "Intent to defraud" contains two elements viz., deceit and injury. A person is said to deceive another when by practising "suggestio falsi" or "suppressio veri" or both he intentionally induces another to believe a thing to be true, which he knows to be false or does not believe to be true. 'Injury' has been defined in S. 44 of the Code as denoting "any harm whatever illegally caused to any person, in body, mind, reputation or property". *S. Harnam Singh* v. *State (Delhi Admn.)*, (1976) 2 SCC 819: 1976 SCC (Cri) 324: AIR 1976 SC 2140: 1976 Cri LJ 913.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 23-3-1976]

[10723] — S. 477-A — 'Servant' — Includes agent who receives payment for doing work as agent — *Fact that accused was a full time servant of another company 'U' does not mean that he could not be a servant of any other company, or other employer. R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1852: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das, K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 5-4-1962]

[10724] — S. 477-A — Where the prosecution could not show in what way the accounts were falsified or altered conviction under, could not be sustained. *Bishan Chand Madan* v. *State of Punjab*, Cri. A. No. 150 & 151 of 1967.

[Date of decision: 28-8-1969]

[10725] — Ss. 477-A and 109 — Minor contradictions or inconsistencies immaterial — Where facts on which allegation rests not so integrally related that if a part of the case is not proved the rest will fail, the conviction can be sustained — *Prosecution attempting to prove that contractor made no supplies at all to the Government and instead prepared false documents of supplies in concert and with the help of Government officials — Court finding that a substantial part of the contracted supply not made — Held, finding sufficient to warrant conviction — Prevention of Corruption Act, 1947, S. 5(1) and (2). Phanindra Prasad Shukla* v. *State of M.P.*, (1981) 3 SCC 661: 1981 SCC (Cri) 786: AIR 1981 SC 721: 1981 Cri LJ 420.

Bench Strength **2**. Coram: **R.S. Pathak** and *A.D. Koshal*, JJ. [Date of decision: 26-3-1980]

[10726] — Ss. 477-A and 408 — The appellant was rightly convicted. *Sushil Kumar Gupta* v. *Joy Shanker Bhattacharyya*, (1970) 1 SCC 504: 1970 SCC (Cri) 210: AIR 1971 SC 1543.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 23-2-1970]

[10727] — Ss. 477-A and 409 — Charge of offence under — Original receipt, which was allegedly falsified by the accused, missing — *Held, in the absence of a very important document which alone could establish the guilt, the accused could not be held to have committed criminal breach of trust and falsified the accounts — Hence, benefit of doubt must go to the accused. Rasul Mohd. Hanif Gulandaj* v. *State of Maharashtra*, (1972) 4 SCC 650: AIR 1972 SC 521: 1972 Cri LJ 313.

Bench Strength **2**. Coram: *A.N. Ray* and **D.G. Palekar**, JJ. [Date of decision: 25-11-1971]

— S. 477-A r/w S. 34 *See also* Ss. 120-B, 420, 468, 477-A r/w S. 34

See also Ss. 120-B, 420, 468, 477-A r/w S. 34 and S. 5(2) r/w S. 5(1)(d) of Prevention of Corruption Act, 1947

See also Ss. 467, 468, 471, 472 and 477-A r/w S. 34

— S. 477-A r/w S. 120-B *See also* Ss. 409, 420, 467, 468, 471/465 and 477-A r/w S. 120-B

— Ss. 477-A/34 *See also* Ss. 120-B, 420/34, 477-A/34

[10728] — Ss. 477-A/34 and 420/34 — Facts required to be established for both offences basically the same — *Acquittal for offence under Ss. 477-A/34 having become final, held, the reversal of acquittal for offence under Ss. 420/34 cannot stand*

An earlier finding which has attained finality is binding in the subsequent proceedings in the case. The question here is not whether the ingredients of the two offences are the same or substantially the same. That question would be relevant if the plea was one *autre-fois acquit* or *autrefois convict*. The question is not even of 'issue estoppel' properly so called as there were no separate trials. The question really is about the binding force and the conclusive nature, at later stage of a case, of a finding of fact finally determined at an earlier stage of the case, which would depend on the question as to what the allegations were, what facts were required to be proved and what findings were arrived at.

The charges in the present case show that the essential allegation which was required to be proved in respect of the two charges was whether the gate passes were made "dishonestly" so far as the charge under S. 420 was concerned and 'with intent to defraud' so far as the charge under S. 477-A was concerned. A finding that the gate passes were made inadvertently and negligently was destructive of both the charges. If for the purpose of the offence under S. 477-A, the court found that the entries made by the accused in the gate passes were made inadvertently and negligently but not wilfully or with a view to defraud and that finding became final, it would not be open to the court, later to find, on the charge under S. 420, that the entries on the gate passes were made not inadvertently but dishonestly. The finding of fact to that effect which led to the acquittal of the accused on the charge under S. 477-A must, that acquittal having become final, operate for the benefit of the accused and lead to their acquittal on the charge under S. 420 also. *Amritlal Ratilal Mehta* v. *State of Gujarat*, (1980) 1 SCC 121: 1980 SCC (Cri) 81: AIR 1980 SC 301: 1980 MLJ (Cri) 531.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 16-11-1979]

[10729] — Ss. 479, 482 and 486 — Distinction between trade mark and property mark

The distinction between a trade mark and a property mark is that whereas the former denotes the manufacture or quality of the goods to which it is attached, the latter denotes the ownership in them. In other words, a trade mark concerns the goods themselves while a property mark concerns the proprietor. A property mark attached to the moveable property of a person remains even if part of such property goes out of his hands and ceases to be his. *Sumat Prasad Jain* v. *Sheojanam Prasad*, (1973) 1 SCC 56: 1973 SCC (Cri) 186: AIR 1972 SC 2488: (1973) 1 SCR 1050: 1972 Cri LJ 1707.

Bench Strength **3**. Coram: **J.M. Shelat, Acting C.J.** and *D.G. Palekar* and *S.N. Dwivedi*, JJ. [Date of decision: 29-8-1972]

Re Powell's Trade Mark, (1893) 10 RPC 200; Emperor v. Dahyabhai Chakasha, (1904) 6 Bom LR 513: 1 Cri LJ 581, approved

— S. 482 *See also* Ss. 479, 482 and 486

[10730] — Ss. 482 and 485 — Bringing guilt home under

To succeed on the charges under Ss. 482 and 485 the complainant had to establish that the appellant marked the goods manufactured and sold by him, or the packets and receptacles containing such goods or used packets or receptacles bearing that mark, and that he did so in a manner reasonably calculated to cause it to be believed that the goods so marked or the goods contained in the packets and receptacles so marked belonged to the complainant. *Sumat Prasad Jain* v. *Sheojanam Prasad*, (1973) 1 SCC 56: 1973 SCC (Cri) 186: AIR 1972 SC 2488: (1973) 1 SCR 1050: 1972 Cri LJ 1707.

Bench Strength **3**. Coram: **J.M. Shelat, Acting C.J.** and *D.G. Palekar* and *S.N. Dwivedi*, JJ. [Date of decision: 29-8-1972]

— S. 485 *See also* Ss. 482 and 485

— S. 486 *See also* Ss. 420, 486, 465 and 467

See also Ss. 420, 486, 467, 466/471

See also Ss. 479, 482 and 486

[10731] — S. 486 — Fastening of guilt under

For the purpose of S. 486, complainant had to establish that the appellant had sold, or exposed for sale, or had in his possession for sale, goods having a mark calculated to cause it be believed that the goods were the goods manufactured by and belonging to the complainant. *Sumat Prasad Jain* v. *Sheojanam Prasad*, (1973) 1 SCC 56: 1973 SCC (Cri) 186: AIR 1972 SC 2488: (1973) 1 SCR 1050: 1972 Cri LJ 1707.

Bench Strength **3**. Coram: **J.M. Shelat, Actg. C.J.** and *D.G. Palekar* and *S.N. Dwivedi*, JJ. [Date of decision: 29-8-1972]

[10732] — S. 486 — On facts the resemblance between the soap wrappers was such as to deceive a person — *Difference in detail immaterial — Intention to deceive or knowledge of likelihood of deception to be presumed. State of U.P.* v. *Hafiz Mohd. Ismail*, AIR 1960 SC 669: (1960) 2 SCR 911: 1960 ALJ 438: 1960 Cri LJ 1017.

Bench Strength **3**. Coram: *Syed Jafer Imam*, **K.N. Wanchoo** and *J.C. Shah*, JJ. [Date of decision: 9-2-1960]

— S. 489-A *See also* Ss. 304-B and 489-A

[10733] — S. 489-A — Scope — *Held, not only complete act of counterfeiting covered but also any part of process of counterfeiting* (Para 47). *K. Hashim* v. *State of T.N.*, (2005) 1 SCC 237: 2005 SCC (Cri) 292: AIR 2005 SC 128: 2005 Cri LJ 143.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-11-2004]

[10734] — S. 489-A — Counterfeiting currency-notes or banknotes — Conviction for and, sentence of rigorous imprisonment for life — *Challenge to, before Supreme Court — Accused already undergoing sentence for a period of seven years — Maintaining the conviction, Supreme Court altering the sentence to imprisonment for a period of ten years* (Para 6). *Uma Shankar Singh* v. *State of Jharkhand*, (2004) 13 SCC 373.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 9-8-2004]

[10735] — Ss. 489-A to 489-D — Proper authority for remitting sentence — *Offences against laws relating to matters to which the executive power of the Central or the State Government extends — Relationship to legislative competence in this regard*

Currency notes and bank notes, to which the offences under Ss. 489-A to 489-D relate, are matters which are exclusively within the legislative competence of the Union Legislature. It follows therefrom that the offences for which the petitioner has been convicted, are offences, relating to a matter to which the executive power of the Union extends, and the 'appropriate Government' competent to remit the sentence of the petitioner, would be the Central Government and not the State Government.

A plain reading of Entry 1 of List III of the Constitution would show that the ambit of 'Criminal law' was first enlarged by including in it the Penal Code, and, thereafter, from such enlarged ambit all offences against laws with respect to any of the matters specified in List I or List II were specifically excluded. The excluding clause in Entry 1, List III read with Entries 36 and 93 of the Union List, shows beyond all manner of doubt that in respect of offences falling under Ss. 489-A to 489-D, only the Central Government is competent to suspend or remit the sentence of a convict. *G.V. Ramanaiah* v. *Supdt. of Central Jail*, (1974) 3 SCC 531: 1974 SCC (Cri) 6: AIR 1974 SC 31: 1974 Cri LJ 150: (1974) MLJ (Cri) 263: (1974) 1 SCR 852: 1973 CrLR (SC) 754.

Bench Strength **2**. Coram: *H.R. Khanna* and **R.S. Sarkaria**, JJ. [Date of decision: 10-10-1973]

[10736] — Ss. 489-A to 489-E — Object

Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users. (Para 7). *Umashanker* v. *State of Chhattisgarh*, (2001) 9 SCC 642: AIR 2001 SC 3074.

Bench Strength **2**. Coram: *S.S.M. Quadri* and *S.N. Phukan*, JJ. [Date of decision: 5-10-2001]

[10737] — Ss. 489-A to 489-E — Object of — *Held, is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes* (Para 46). *K. Hashim* v. *State of T.N.*, (2005) 1 SCC 237: 2005 SCC (Cri) 292: AIR 2005 SC 128: 2005 Cri LJ 143.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-11-2004]

[10738] — Ss. 489-A to 489-E and S. 28 — Counterfeiting of currency notes not only of India but of foreign countries as well constitutes offence under

The expression 'currency note' in S. 489-A, IPC is wide enough to embrace currency notes issued by India as also those issued by any other country in the world. The expression 'any currency note' refers to 'all' currency notes and, cannot mean only 'Indian currency note' in absence of such a restrictive expression in S. 489-A. The manifest purpose of the provision is to protect people from being deceived or cheated by ensuring that a person accepting a currency note is given a genuine currency which can be exchanged for goods or services and not a worthless piece of paper which will bring him nothing in return, it being a counterfeit or a forged currency note. The legislature cannot have intended to exclude from the protection counterfeiting of currency notes issued by foreign States. The word 'counterfeit' has not only been defined in S. 28, IPC in very wide terms but a rule of evidence has also been prescribed in explanation thereto so as to draw an adverse presumption against the maker of the counterfeit article. Further the expression 'bank note' employed in Ss. 489-A to 489-E, IPC would cover a dollar bill or dollar note issued by a foreign sovereign Government as well. It would, therefore, in any case, be an offence to counterfeit a dollar bill or to be in possession of a counterfeit dollar bill. Though the explanation to S. 489-A in terms refers to a bank note issued 'under the authority of any State or sovereign power', there was neither any occasion, nor any reason, nor any need for addition of a similar explanation to the section in the context of the expression 'currency note'. The definition of currency notes contained in S. 2 of the Indian Paper Currency Act, 1822 is only for the purposes of that particular Act and it cannot be imported into Ss. 489-A to 489-E, IPC. Therefore, Ss. 489-A to 489-E, IPC cannot be said to be inapplicable to currency notes other than Indian currency notes. The High Court accordingly erred in holding that counterfeiting of or possessing of counterfeit dollar bills or dollar notes was not an offence under the Indian law. *State of Kerala* v. *Mathai Verghese*, (1986) 4 SCC 746: 1987 SCC (Cri) 3: AIR 1987 SC 33: 1987 Cri LJ 308.

Bench Strength **2**. Coram: **M.P. Thakkar** and *S. Natarajan*, JJ. [Date of decision: 19-11-1986]

— S. 489-B *See also* Ss. 489-A to 489-D

See also Ss. 489-A to 489-E

See also Ss. 489-A to 489-E and S. 28

[10739] — S. 489-B — Object of — *Held, is to stop the circulation of forged notes. K. Hashim* v. *State of T.N.*, (2005) 1 SCC 237: 2005 SCC (Cri) 292: AIR 2005 SC 128: 2005 Cri LJ 143.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-11-2004]

State of Kerala v. Mathai Verghese, (1986) 4 SCC 746: 1987 SCC (Cri) 3, relied on

[10740] — Ss. 489-B and 420 — Charge against appellant that he purchased paddy from a peasant on payment of forged currency notes — *Appellant offering no explanation as to wherefrom he got the forged notes — Held, silence on the part of the appellant was a telling circumstance which would weigh against him in the consideration of the prosecution evidence — In the circumstances, the conviction and sentence recorded by the lower courts deserved no alteration — Evidence Act, 1872, Ss. 106 and 114(h). Ponnusamy* v. *State*, 1997 SCC (Cri) 217: 1995 Cri LJ 2658.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 18-1-1995]

[10741] — Ss. 489-B and 489-C — Accused alleging that counterfeit currency notes were received by him as against his selling off certain goods — *Held where it is not shown that the appellant had knowledge or reason to believe that the notes were counterfeit, the conviction was not proper — Further held that presumption of knowledge from mere possession can only be drawn if the notes were apparently counterfeit — Notes not shown to be of such a nature. M. Mammutti* v. *State of Karnataka*, (1979) 4 SCC 723: 1980 SCC (Cri) 170: AIR 1979 SC 1705: 1979 Cri LJ 1383.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 15-2-1979]

[10742] — Ss. 489-B and 489-C — Mens rea (Knowing or having reason to believe the same to be forged or counterfeit) essential to constitute the offence under — Mens rea on the part of the accused must be proved by prosecution — *Merely on the basis of evidence that the currency note given to PW by accused, then a student aged 18 years, was fake drawing a presumption that he had the requisite mens rea is not warranted under S. 4 of Evidence Act — Also, no question under S. 313 CrPC was put to the accused about the currency note being fake or counterfeit — Unwary possessors or users not to be prosecuted — Evidence Act, 1872, S. 4* (Para 8). *Umashanker* v. *State of Chhattisgarh*, (2001) 9 SCC 642: AIR 2001 SC 3074.

Bench Strength **2**. Coram: *S.S.M. Quadri* and *S.N. Phukan*, JJ. [Date of decision: 5-10-2001]

— S. 489-C *See also* Ss. 489-A to 489-D

See also Ss. 489-A to 489-E

See also Ss. 489-A to 489-E and S. 28

See also Ss. 489-B and 489-C

[10743] — S. 489-C — Ingredients of — Expression "currency notes" — Scope — *Held, covers currency notes of any country* (Para 49). *K. Hashim* v. *State of T.N.*, (2005) 1 SCC 237: 2005 SCC (Cri) 292: AIR 2005 SC 128: 2005 Cri LJ 143.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-11-2004]

State of Kerala v. Mathai Verghese, (1986) 4 SCC 746: 1987 SCC (Cri) 3, relied on

— S. 489-D *See also* Ss. 489-A to 489-D

See also Ss. 489-A to 489-E

See also Ss. 489-A to 489-E and S. 28

[10744] — S. 489-D — Ingredients of — Scope — *Held, covers the case where a person is found in possession of machinery, instruments or materials required for counterfeiting currency, even though the machinery, instruments or materials so found are not all the materials required for the purpose of counterfeiting* (Paras 49 and 50). *K. Hashim* v. *State of T.N.*, (2005) 1 SCC 237: 2005 SCC (Cri) 292: AIR 2005 SC 128: 2005 Cri LJ 143.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-11-2004]

State of Kerala v. Mathai Verghese, (1986) 4 SCC 746: 1987 SCC (Cri) 3, relied on

— S. 489-E *See also* Ss. 489-A to 489-E

See also Ss. 489-A to 489-E and S. 28

— S. 491 *See also* Ss. 120-B, 467, 468, 471, 491, 420, 381 and 204

See also Ss. 467, 468, 471, 491, 420, 381 and 204 r/w S. 120-B

— **S. 493** *See also* Ss. 417, 493 and 496

[10745] — S. 493 — Cohabitation by deceitful inducement of belief of lawful marriage — Ingredients — *Per Katju, J., marriage of victim woman with accused by performing customary rites and ceremonies [S. 7(1) of Hindu Marriage Act] must have taken place — Accused must by deceit induce a belief in victim that her marriage with accused was lawful — A mere assurance given by accused that he would marry victim would indicate that there was no pre-existing marriage and therefore, it would not amount to inducing belief that she was lawfully married to accused — Per G.S. Misra, J. (disagreeing), S. 493 does not presuppose marriage between victim and accused by following ritual and customary ceremonies — Essence of the offence is practice of deception by accused, thereby inducing in victim belief that she is lawfully married to accused and her consequent cohabitation and physical relationship with accused — Material before victim from which it can reasonably be inferred by ordinary prudence that she is lawfully married to accused, even though no such marriage in fact took place, would be sufficient to establish deceitful inducement of belief of lawful marriage as required by S. 493 — In view of difference of opinion at the Bench, matter referred to another Bench — Hindu Marriage Act, 1955, S. 7(1) — Special Marriage Act, 1954, S. 4*

The complainant developed intimate relationship with the appellant-accused so much so that they lived together and had two children. Although the appellant had given assurance to the complainant that he would marry her, it was alleged that the appellant turned the complainant out of his house, after nine years of cohabitation. The appellant during continuance of relationship, had also filled up an application for information to the Special Marriage Officer, under Section 5 of the Special Marriage Act, 1954 regarding their marriage. The appellant further executed an agreement for marriage certificate on stamp paper of Rs 1.50 and admitted therein that he is living a normal family life as a married couple with the complainant. In the relevant voters' list also the complainant was shown as wife of the appellant. All these documents had been in existence to the knowledge of the appellant-accused, wherein he accepted her as his wife in writing in the presence of the witnesses. These witnesses appeared in the court and supported the relationship of the appellant-accused with the complainant being husband and wife who lived together at different places of posting in the course of service of the appellant as BDO.

The trial court convicted the accused under Section 493 IPC and the High Court upheld the conviction. The present appeal has been filed against the judgment and order of the High Court.

Due to disagreement at the Bench, referring the matter to another Bench, the Supreme Court observed as above.

Held :

Per Katju, J.

There is no finding by the courts below that by deceit the appellant caused the complainant to believe that she is lawfully married to him. Rather the allegation of the complainant is that the appellant assured her that he would marry her and even entered into an agreement to that effect, though that agreement has been disputed. *When the complainant's own case is that the accused had assured her that he will marry her it is obvious that she was not under any belief that she was already married to him.* (Para 7)

A Hindu marriage can be solemnised in accordance with the customary rites and ceremonies of either the boy's caste or the girl's caste (if it is an inter-caste Hindu marriage). There is no allegation that the appellant entered into a marriage with the complainant in accordance with Section 7(1) of the Hindu Marriage Act, rather the allegation is that he promised to marry her in future. *There is also no allegation that the appellant deceived the complainant into believing that they were lawfully married e.g. by getting a ceremony performed other than that referred to under Section 7(1) or by a purported civil marriage not in accordance with the Special Marriage Act.* Hence the ingredients of Section 493 IPC are not satisfied. (Para 9)

It is true that the appellant has not behaved like a gentleman. However, there is a difference between law and morality. Often an act may be regarded as immoral by society, but it may not be illegal. To be illegal the act must clearly attract some specific provision of the Penal Code, or some other statute. Merely saying that the person has done something improper will not necessarily make the act illegal. (Paras 3 and 10)

A criminal statute has to be construed strictly. Unless all its ingredients are satisfied the person cannot be punished, otherwise there will be violation of Articles 20(1) and 21 of the Constitution. In the present case since the ingredients of Section 493 are not satisfied the appellant is entitled to acquittal. (Para 13)

Per G.S. Misra, J. (disagreeing)

There was strong documentary evidence in support of the prosecution case that the appellant-accused deceitfully induced a belief of lawful marriage in the mind of the complainant victim lady that they were lawfully married so that she continued to live with the appellant as wife treating him to be her husband for more than nine years but the appellant later refused to accept her as his wife and drove her out. The appellant thus had deceitfully induced the complainant to believe that she was lawfully married to him as he had executed an agreement for issuing marriage certificate and also filled up an application form to submit before the Special Marriage Officer to give assurance to her. Besides this, in several official documents which are the voter lists of the constituency concerned consecutively for several years, she had been shown to be the wife of the appellant-accused. (Paras 20 and 25)

Further, although no ceremony of marriage took place between them, but as per the social custom prevailing in the district of Lohardaga in State of Jharkhand among the members of the Oraon community, if a young man lives with a young girl in his house for a long period, she is deemed to be his wife which is recognised as marriage. Hence, even though the appellant and the complainant victim lady had not been married by performing any ritual, the evidence on record clearly indicate that there was overwhelming material — documentary evidence as well as customary practice to induce a belief in the victim lady who could infer that she was lawfully married to the appellant-accused with whom she cohabited and also had physical relationship out of which the two children had been born. (Para 21)

There are three ingredients necessary to be established for bringing home the offence under Section 493 IPC are:

(*i*) the accused practiced deception;

(*ii*) such deceit was to induce a woman (complainant) to believe that she was lawfully married to him; and

(*iii*) there was cohabitation or sexual intercourse as a result of the deception. (Para 22)

The aforesaid three ingredients of the offence under Section 493 IPC in the light of the evidence recorded hereinbefore, are clearly fulfilled in the present case. (Para 23)

The essence of an offence under this section consists in the practice of deception by a man on a woman, in consequence of which she is led to believe that she is lawfully married to him while in fact she is not lawfully married to him. Thus, what is required is that, by deceitful means, the accused must induce a belief of a lawful marriage and then make the woman cohabit with him. But Section 493 although emphasises that the victim woman should be induced the belief that she is lawfully married to the accused, this section also lays emphasis on deceit caused by the man who is not lawfully married to the victim and mere inducement of belief of a lawful marriage is sufficient to establish the guilt under Section 493 IPC. (Para 24)

Insofar as the ingredients of a valid marriage under the Hindu Marriage Act, 1955 are concerned, it should be kept in mind that the Court is not dealing with a case herein where the victim lady is claiming a civil remedy viz. the right of inheritance, merely on the basis of her cohabitation with the appellant-accused asserting it as a lawful marriage. The present case is concerned with as to whether the ingredients of criminal offence under Section 493 IPC can be held to have been made out so as to hold the appellant-accused guilty of an offence under Section 493 IPC. (Para 25)

Section 493 IPC does not presuppose a marriage between the accused and the victim necessarily by following a ritual or marriage by customary ceremony. What has been clearly laid down and emphasised is that there should be an inducement of belief in the woman that she is lawfully married to the appellant-accused and the inducement of belief of a lawful marriage cannot be interpreted so as to mean or infer that the marriage necessarily had to be in accordance with any custom or ritual or under the Special Marriage Act. If the evidence on record indicates inducement of a belief in any manner in the woman which cannot possibly be enlisted but from which it can reasonably be inferred by ordinary prudence that she is a lawfully married wife of the man accused of an offence under Section 493 IPC, the same will have to be treated as sufficient material to bring home the guilt under Section 493 IPC. Interpretation of the section in any other manner including an assertion that the marriage should have been performed by customary rituals or in a similar manner only in order to establish that a belief of marriage had been induced, is bound to frustrate the very object and purpose of the provision for which it has been incorporated in the Penal Code which is clearly to prevent the deceitful act of a man inducing the belief of a lawful marriage for the purpose of cohabitation merely to satisfy his lust for sexual pleasure. (Para 26). *Ram Chandra Bhagat* v. *State of Jharkhand*, (2010) 13 SCC 780.

Bench Strength 2. Coram: **Markandey Katju** and *Gyan Sudha Misra*, JJ. [Date of decision: 24-11-2010]

[10746] — Ss. 493 and 376 — Revision by High Court — Reasoned order/Speaking order — Necessity — *High Court allowing revision petition and discharging accused of alleged commission of offences under Ss. 493 and 376 IPC, by a practically unreasoned order — Order merely stating that FIR did not disclose commission of offence — No basis for the decision or discussion found — Impugned order set aside and matter remitted to High Court — CrPC, 1973, Ss. 401 and 227* (Paras 6 to 8)

Accused alleged to have entered the house of informant and raped her, consequent to which she became pregnant. She pressurised the accused for marriage, but when he and his family members refused, FIR was lodged and charge-sheet submitted under Ss. 493 and 376 IPC. Accused filed an application for discharge under S. 227 CrPC primarily on ground that age of informant was not as shown, and therefore no offence under either S. 376 or S. 493 IPC was made out. Trial court declined the prayer for discharge. The High Court by impugned judgment allowed revision petition filed thereagainst by a practically unreasoned order. Hence, the present appeal.

Allowing the appeal, the Supreme Court held as above. *Tutul Kumari Sen* v. *State of Jharkhand*, (2009) 13 SCC 495: AIR 2009 SC 2547: (2009) 3 CTC 408 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 28-4-2009]

Cyril Lasrado v. Juliana Maria Lasrado, (2004) 7 SCC 431; State of Rajasthan v. Sohan Lal, (2004) 5 SCC 573: (2008) 2 SCC (Cri) 53, applied

[10747] — Ss. 493 and 496 — Death complainant after cognizance of offence taken — *Does not affect the case — Prosecution of case by mother of complainant upheld. Ashwin Nanubhai Vyas* v. *State of Maharashtra*, AIR 1967 SC 983: (1967) 1 SCR 807: 1967 Cri LJ 943, 945: 69 Bom LR 308.

Bench Strength **3**. Coram: **M. Hidayatullah**, *S.M. Sikri* and *Raghubar Dayal*, JJ. [Date of decision: 10-10-1966]

— S. 494 *See also* Ss. 365/411, 494 and 506
See also Ss. 406, 494 and 498-A
See also Ss. 498-A and 494

[10748] — S. 494 — Acquittal in prosecution for bigamy — *Held, not a bar to departmental enquiry for contracting a second marriage without permission of the Government — Karnataka Civil Service Rules, R. 28. State of Karnataka* v. *T. Venkataramanappa*, (1996) 6 SCC 455: 1996 SCC (L&S) 1462.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K.S. Paripoornan*, JJ. [Date of decision: 20-9-1996]

[10749] — S. 494 — Admission regarding second marriage — *Evidence Act, 1872 — S. 17*

The admission of accused cannot in law be treated as evidence of the second marriage having taken place, in an adultery or bigamy case; and that in such cases it must be proved by the prosecution that the second marriage as a fact has taken place after the performance of the essential ceremonies. *Priya Bala Ghosh* v. *Suresh Chandra Ghosh*, (1971) 1 SCC 864: 1971 SCC (Cri) 362: AIR 1971 SC 1153: 1971 Cri LJ 939.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 4-3-1971]

[10750] — S. 494 — Applicability — Bar under S. 468 CrPC not applicable to offence under S. 494. *Vanka Radhamanohari* v. *Vanka Venkata Reddy*, (1993) 3 SCC 4: 1993 SCC (Cri) 571.

Bench Strength **2**. Coram: *Kuldip Singh* and **N.P. Singh**, JJ. [Date of decision: 20-4-1993]

[10751] — S. 494 — Applicability — Due performance of ceremonies of both marriages, as required by the personal law governing the parties — Requirement of, reiterated

In order to attract the provisions of Section 494 IPC both the marriages of the accused must be valid in the sense that the necessary ceremonies required by the personal law governing the parties must have been duly performed. (Para 23). *A. Subash Babu* v. *State of A.P.*, (2011) 7 SCC 616.

Bench Strength **2**. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 21-7-2011]

Gopal Lal v. State of Rajasthan, (1979) 2 SCC 170: 1979 SCC (Cri) 401, relied on

[10752] — S. 494 — Bar of limitation for taking cognizance of offence — When not applicable — *Held, there does not exist any period of limitation in respect of an offence under S. 494 IPC, as maximum period of punishment which can be imposed therefor is seven years — CrPC, 1973 — S. 468* (Para 13). *M. Saravana Porselvi* v. *A.R. Chandrashekar*, (2008) 11 SCC 520: AIR 2008 SC 2462: (2008) 68 AIC 192 (SC): 2008 Cri LJ 3034.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 27-5-2008]

[10753] — S. 494 — Bar under — When operates — *A-1 and A-2 tried and convicted for offence of bigamy on complaint made by wife of A-2 — Second trial at the instance of husband of A-1 is barred — CrPC, 1973 — S. 300*

Sub-section (1) of S. 300 bars a fresh trial if a person had been tried and convicted or acquitted by a court of competent jurisdiction for the same offence. The offence of bigamy is committed when a husband or wife in the lifetime of his spouse marries. When a person is tried and convicted for such an offence on the complaint of a person, authorised by law to do so, he or she cannot be prosecuted and tried a second time for the same offence on another complaint filed by another person. The bar under S. 300 is for trial and conviction of the same offence. Since offence remains the same the appellants cannot be tried and convicted for it once again. *Vijayalakshmi* v. *Vasudevan*, (1994) 4 SCC 656: 1994 SCC (Cri) 1317.

Bench Strength **2**. Coram: *R.M. Sahai* and *B.L. Hansaria*, JJ. [Date of decision: 5-4-1994]

[10754] — S. 494 — Bigamy — *Appellant after obtaining an ex parte decree of divorce against his first wife undergoing a second marriage — Thereafter, respondent first wife securing an order setting aside the ex parte decree of divorce and filing a complaint against appellant alleging commission of offence under S. 494 — Held, appellant cannot be convicted under S. 494 on the premise that he had married again since on the date of his second marriage, the ex parte divorce decree remained in force — Criminal proceedings against husband quashed. Krishna Gopal Divedi* v. *Prabha Divedi*, (2002) 10 SCC 216: AIR 2002 SC 389: (2002) 2 KLT 14.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 23-2-2001]

[10755] — S. 494 — Bigamy — Absence of proof of saptapadi — *Held, factum of second marriage not made out — However, since accused husband found living with the alleged second wife as husband and wife, the Supreme Court directed him (husband) to pay Rs 25,000 to his first wife (appellant) as compensation — Constitution of India, Art. 142. Laxmi Devi* v. *Satya Narayan*, (1994) 5 SCC 545: 1994 SCC (Cri) 1566.

Bench Strength **2**. Coram: *P.B. Sawant* and **S. Mohan**, JJ. [Date of decision: 9-8-1994]

Kanwal Ram v. H.P. Administration, AIR 1966 SC 614: (1966) 1 SCR 539: 1966 Cri LJ 472; Priya Bala Ghosh v. Suresh Chandra Ghosh, (1971) 1 SCC 864: 1971 SCC (Cri) 362, followed

[10756] — S. 494 — Bigamy — Charge of, held, not effected by the validness of the second marriage under S. 17 of the Hindu Marriage Act, 1955 — *Sentence reduced*

The essential ingredients of the offence under S. 494, Indian Penal Code are:

(i) that the accused spouse must have contracted the first marriage,

(ii) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and

(iii) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed.

The combined effect of S. 17 of Hindu Marriage Act and S. 494 is that when a person contracts a second marriage after the coming into force of the said Act, while the first marriage is subsisting, he commits the offence of bigamy.

Section 17 of the Hindu Marriage Act requires that the marriage must be properly solemnised in the sense that the necessary ceremonies required by law or by custom must be duly performed. Once these ceremonies are proved to have been performed the marriage becomes properly solemnized and if contracted while the first marriage is still subsisting the provisions of S. 494 will apply automatically. The voidness of the marriage under S. 17 of the Hindu Marriage Act is in fact one of the essential ingredients of S. 494 because the second marriage will become void only because of the provisions of S. 17 of the Hindu Marriage Act. Hence one cannot say that the second marriage being void, S. 494 will have no application. *Gopal Lal* v. *State of Rajasthan*, (1979) 2 SCC 170: 1979 SCC (Cri) 401: AIR 1979 SC 713: 1979 Cri LJ 652: 1979 MLJ (Cri) 480: (1979) 16 ACC 115.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 30-1-1979]

[10757] — S. 494 — Bigamy — Conviction upheld and two years' RI and Rs 500 fine awarded — *But looking to the facts and circumstances, especially the fact of irretrievable breakdown of the first marriage, court persuading the complainant to compound the offence and accept Rs 40,000 as compensation — CrPC, 1973, S. 320. Narotam Singh* v. *State of Punjab*, (1979) 4 SCC 505: 1980 SCC (Cri) 113: AIR 1978 SC 1542: 1978 Cri LJ 1612.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 11-1-1978]

[10758] — S. 494 — Bigamy — Husband already married under Hindu Law, by embracing Islam, solemnising a second marriage under Muslim Law — *Held, that would not result in dissolution of the first marriage under Hindu Law — Unless and until the first marriage is dissolved by a decree under Hindu Marriage Act, the second marriage during subsistence of the first one would be in violation of the Hindu Marriage Act which strictly professes monogamy — Marriage in violation of any law would be 'void' within the meaning of the word used in S. 494 — Word 'void' in S. 494 is wider in amplitude than that used in S. 11 of the Hindu*

Marriage Act — Such second marriage would therefore amount to bigamy punishable under S. 494 — Second marriage would also be in violation of principles of natural justice — Moreover, matrimonial dispute between the apostate and his first wife cannot be decided on the basis of Muslim Personal Law but on the basis of justice, equity and good conscience — On these bases also the second marriage would be void — This interpretation would advance interest of justice being in harmony with two systems of law viz. Hindu Law and Muslim Law — Hindu Marriage Act, 1955, Ss. 5(i), 11, 13 and 15

Per curiam

The second marriage of a Hindu husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 IPC and the apostate husband would be guilty of the offence under Section 494 IPC. (Para 39)

The necessary ingredients of Section 494 are: (1) having a husband or wife living; (2) marries in any case; (3) which such marriage is void; (4) by reason of its taking place during the life of such husband or wife. All the four ingredients of Section 494 IPC are satisfied in the case of a Hindu husband who marries for the second time after conversion to Islam. He has a wife living, he marries again. The said second marriage is void by reason of its taking place during the life of the first wife. (Paras 17 and 26)

The Hindu Marriage Act strictly enforces monogamy. A marriage performed under this Act cannot be dissolved except on the grounds available under Section 13 of the Act. In that situation, parties who have solemnised the marriage under this Act remain married even when the husband embraces Islam in pursuit of another wife. Till the time a Hindu marriage is dissolved under the Hindu Marriage Act none of the spouses can contract a second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Hindu Marriage Act. A second marriage by an apostate under the shelter of conversion to Islam would nevertheless be a marriage in violation of the provisions of the Hindu Marriage Act by which he would be continuing to be governed so far as his first marriage under that Act is concerned despite his conversion to Islam. The second marriage of an apostate would, therefore, be illegal marriage *qua* his wife who married him under the Hindu Marriage Act and continues to be a Hindu. Though the marriage solemnised by a Hindu husband after embracing Islam may not strictly be a void marriage under the Hindu Marriage Act because he is no longer a Hindu, but between the apostate and his Hindu wife the second marriage is in violation of the provisions of the Hindu Marriage Act and as such would be non est. (Paras 17, 21 and 18)

The expression 'void' defined under Section 11 of the Hindu Marriage Act has a limited meaning within the scope of the definition under that section. On the other hand the same expression has a different purpose under Section 494 IPC and has been used in the wider sense. A marriage which is in violation of any provisions of law would be void in terms of the expression used under Section 494 IPC. The real reason for the voidness of the second marriage is the subsistence of the first marriage which is not dissolved even by the conversion of the husband. The second marriage by a convert, therefore, being in violation of the Hindu Marriage Act, would be void in terms of Section 494 IPC. Any act which is in violation of mandatory provisions of law is per se void. (Paras 19, 20, 22 and 21)

The conduct of a spouse who converts to Islam has to be judged on the basis of the rule of justice and right or equity and good conscience. A matrimonial dispute between a convert to Islam and his or her non-Muslim spouse is not a dispute "where the parties are Muslims" and, therefore, the rule of decision in such a case was or is not required to be the "Muslim Personal Law". In such cases the court shall act and the Judge shall decide according to justice, equity and good conscience. The second marriage of a Hindu husband after embracing Islam being violative of justice, equity and good conscience would be void on that ground also and attract the provisions of Section 494 IPC. (Para 23)

Further, assuming that a Hindu husband has a right to embrace Islam as his religion, he has no right under the Hindu Marriage Act to marry again without getting his earlier marriage under that Act dissolved. The second marriage after conversion to Islam would, thus, be in violation of the rules of natural justice and as such would be void. (Para 24)

The above interpretation of Section 494 would advance the interest of justice. It is necessary that there should be harmony between the two systems of law just as there should be harmony between the two communities. The result of the interpretation, would be that the Hindu law on the one hand and the Muslim law on the other hand would operate within their respective ambits without trespassing on the personal laws of each other. Since it is not the object of Islam nor is the intention of the enlightened Muslim community that Hindu husbands should be encouraged to become Muslims merely for the purpose of evading their own personal laws by marrying again, the courts can be persuaded to adopt a construction of the laws resulting in denying the Hindu husband converted to Islam the right to marry again without having his existing marriage dissolved in accordance with law. (Para 25). *Sarla Mudgal* v. *Union of India*, (1995) 3 SCC 635: 1995 SCC (Cri) 569: AIR 1995 SC 1531: (1995) 2 KLT 45: (1995) 2 An LT (Cri) 50: 1995 Cri LJ 2926.

Bench Strength **2**. Coram: **Kuldip Singh**[1] and **R.M. Sahai**[2], JJ. [Date of decision: 10-5-1995]

Ram Kumari, In re, ILR (1891) 18 Cal 264; Budansa v. Fatima, (1914) 22 IC 697: 26 MLJ 260: 1914 MWN 278; Budansa v. Fatima, (1914) 22 IC 697: 26 MLJ 260: 1914 MWN 278; Gul Mohd. v. Emperor, AIR 1947 Nag 121: 48 Cri LJ 43: 228 IC 1; Nandi v. Crown, LR 1920 Lah 440; Emperor v. Ruri, AIR 1919 Lah 389: 48 IC 493: 20 Cri LJ 3; Sayeda Khatoon v. M. Obadiah, 9 CWN 745; Andal Vaidyanathan v. Abdul Allam Vaidya, AIR 1946 Mad 446: (1946) 1 MLJ 402: 227 IC 417; Robasa Khanum v. Khodadad Bomanji Irani, (1946) 48 Bom LR 864; Waghela Rajsanji v. Shekh Masludin, (1887) LR 14 IA 89; Muhammad Raza v. Abbas Bandi Bibi, (1932) LR 59 IA 236, approved

[10759] — S. 494 — Bigamy — Ingredients — First marriage must be subsisting at the time of second marriage — *Appellant had already obtained divorce decree against his first wife when he was alleged to have married second time — Held, S. 494 not attracted*

Section 494 IPC, inter alia, requires the following ingredients to be satisfied, namely, (*i*) the accused must have contracted first marriage; (*ii*) he must have married again; (*iii*) the first marriage must be subsisting; and (*iv*) the spouse must be living. (Para 10)

In the present case, from the affidavit of the first wife, it is apparent that her husband has obtained a divorce judgment. There is nothing in the affidavit that divorce judgment has been stayed or set aside. It was only after passing of the divorce judgment the appellant is said to have married second time. Thus his first marriage was not subsisting at the time of his second marriage. Therefore, Section 494 is not attracted. (Para 11). *Pashaura Singh* v. *State of Punjab*, (2010) 11 SCC 749: AIR 2010 SC 922: (2009) 4 APLJ 122 (SC): 2010 Cri LJ 875: (2010) 2 Guj LR 1817: (2010) 1 ECrN 708 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **R.M. Lodha**, JJ. [Date of decision: 13-11-2009]

[10760] — S. 494 — Bigamy — Manner of proving — *Validity of second marriage, held, is required to be proved by the prosecution by satisfactory evidence — Evidence Act, 1872, Ss. 101-103 — Hindu Marriage Act, 1955 — S. 17* (Para 10). *S. Nagalingam* v. *Sivagami*, (2001) 7 SCC 487: 2001 SCC (Cri) 1273: AIR 2001 SC 3576.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **K.G. Balakrishnan**, JJ. [Date of decision: 31-8-2001]

[10761] — S. 494 — Bigamy — Offence under S. 494 is compoundable with the consent of wife and permission of court (Para 2). *Parameswari* v. *Vennila*, (2000) 10 SCC 348.

Bench Strength **2**. Coram: *G.T. Nanavati* and *S.N. Phukan*, JJ. [Date of decision: 2-8-1999]

[10762] — S. 494 — Bigamy — Proof — *Apprehension that in view of judgment in* Sarla Mudgal *v.* Union of India *(1995) 3 SCC 635 men having undergone second marriage under Muslim law after conversion would be liable to be convicted without any further proof, held, to be without substance as complainant must prove all the ingredients of the offence, including proper solemnisation of second marriage — Conviction cannot be based on mere admission made outside court*

The two concurring judgments in these matters deal with several writ petitions and review petitions, all revolving around the situation created when a non-Muslim man, married according to religious sites stipulating monogamy, renounces his religion, converts to Islam and solemnises a second marriage, according to Islamic rites, without divorcing his first wife.

Held :

Per curiam :

Counsel appearing for the petitioners have alleged that in view of the judgment in *Sarla Mudgal case* their clients are liable to be convicted without any further proof. Such an apprehension is without any substance inasmuch as the person seeking conviction of the accused for a commission of offence under Section 494 is under a legal obligation to prove all the ingredients of the offence charged and conviction cannot be based upon mere admission made outside the Court. To attract the provisions of Section 494 IPC the second marriage has to be proved besides proving the previous marriage. Such marriage is further required to be proved to have been performed or celebrated with proper ceremonies. (Para 63). *Lily Thomas* v. *Union of India*, (2000) 6 SCC 224: 2000 SCC (Cri) 1056: AIR 2000 SC 1650: 2000 Cri LJ 2433.

Bench Strength **2**. Coram: **S. Saghir Ahmad**[1] and **R.P. Sethi**[2], JJ. [Date of decision: 5-5-2000]

Kanwal Ram v. H.P. Admn., AIR 1966 SC 614: (1966) 1 SCR 539: 1966 Cri LJ 472; Bhaurao Shankar Lokhande v. State of Maharashtra, AIR 1965 SC 1564: (1965) 2 SCR 837, relied on

Sarla Mudgal v. Union of India, (1995) 3 SCC 635, affirmed

[**Ed.**: *See also* Thapalyal, A.: "Proving Bigamy: Unfair Burden?" (1986) 4 SCC 11(J).]

[10763] — S. 494 — Bigamy — Proof — Concurrent finding of courts below — Interference with — Impermissibility — Principles reiterated — *In the instant case three courts below had given* *concurrent finding regarding factum of marriage and its validity — Supreme Court being fourth court should not interfere with exercise of discretion by courts below as they had exercised discretion in good faith giving due weight to relevant material and without being swayed by any irrelevant material — Hence, interference with finding of fact so far as commission of bigamy is concerned, nor quantum of punishment on that count, warranted* (Paras 9 to 11)

Appellant, a government servant was married to complainant on 5-2-1992 as per Hindu rites. However, relationship between husband and wife was not cordial as it was alleged by the wife that she was being tortured mentally and physically by the appellant. The complainant left her matrimonial home in 1993 in spite of the fact that she was seven months' pregnant because she found it impossible to live there, and started residing with her father thereafter. In 1997 she came to know that appellant had married one *R*. Hence, she filed an FIR against him. Appellant was charged under Section 498-A and Section 494 IPC. The trial court found him guilty and sentenced him to RI for 2 years under Section 498-A, and for 3 years under Section 494. The appeal filed thereagainst was dismissed by the appellate court. The criminal revision filed thereagainst was also dismissed by the High Court by impugned judgment. Hence, the present appeal.

Partly allowing the appeal, the Supreme Court held as above. *Manju Ram Kalita* v. *State of Assam*, (2009) 13 SCC 330: (2009) 79 AIC 88 (SC).

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 29-5-2009]

Firm Sriniwas Ram Kumar v. Mahabir Prasad, AIR 1951 SC 177, considered and relied on

Tulsi Das Khimji v. Workmen, AIR 1963 SC 1007; Pentakota Satyanarayana v. Pentakota Seetharatnam, (2005) 8 SCC 67; Madhavan Nair v. Bhaskar Pillai, (2005) 10 SCC 553, relied on

[10764] — S. 494 — Bigamy — Second marriage during subsistence of first marriage — No evidence regarding performance of essential ceremonies like homo and saptapadi — Effect

It is clear that if the alleged second marriage is not a valid one according to law applicable to the parties, it will not be void by reason of its taking place during the life of the husband or the wife of the person marrying so as to attract S. 494, IPC. Again in order to hold that the second marriage has been solemnised so as to attract S. 17 of the Act, it is essential that the second marriage should have been celebrated with proper ceremonies and in due form.

The prosecution has to prove that the alleged second marriage had been duly performed in accordance with the essential religious rites applicable to the form of marriage gone through by the parties and that the said marriage must be a valid one according to law applicable to the parties.

The admission of accused cannot in law be treated as evidence of the second marriage having taken place, in an adultery or bigamy case; and that in such cases it must be proved by the prosecution that the second marriage as a fact has taken place after the performance of the essential ceremonies.

Both the learned Sessions Judge and the High Court have categorically found that the Homo and Saptapadi are the essential rites for marriage according to the law governing the parties and that there is no evidence that these two essential ceremonies have been performed when the respondent is stated to have married Sandhya Rani. No reliance can be placed on the admissions stated to be contained in the admission of accused. *Priya Bala Ghosh* v. *Suresh Chandra Ghosh*, (1971) 1 SCC 864: 1971 SCC (Cri) 362: AIR 1971 SC 1153: 1971 Cri LJ 939.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 4-3-1971]

[10765] — S. 494 — Bigamy — Second marriage must be shown to be void for applicability of S. 494 — *Where parties are governed by any custom, it has to be shown that the custom renders the second marriage null, ineffectual and non est — Mere pleading of existence of a custom stressing monogamy is not enough — Whether appellant nevertheless entitled to maintenance, succession and other benefits, held, must be decided by filing separate suits*

The appellant filed a complaint in the Court of Chief Metropolitan Magistrate, New Delhi stating therein that her marriage was solemnised with the respondent in Delhi "according to Hindu rites and customs". Alleging that the respondent had solemnised another marriage with Accused 2, the complainant pleaded that the accused husband not having obtained any divorce, his action was in contravention of Section 494 IPC. It was conceded by the appellant that the parties are tribals and are governed by their tribal custom and usage. The complaint was dismissed by the trial court holding "there is no mention of any such custom in the complaint nor is there evidence of such custom. In the absence of pleadings and evidence reference to book alone is not sufficient". The High Court held that in the absence of notification in terms of Section 2(2) of the Hindu Marriage Act no case for prosecution for the offence of bigamy was made out against the respondent because the alleged second arriage cannot be termed to be void either under e Act or any alleged custom having the force of w.

Dismissing the appeal,

eld :

The trial Magistrate and the High Court have ghtly dismissed the complaint of the appellant. Para 14)

The fact of second marriage being void is a sine ua non for the applicability of Section 494 IPC. In is case nowhere in the complaint the appellant has eferred to any alleged custom having the force of w which prohibits the solemnisation of second arriage by the respondent and the consequences ereof. Mere pleading of a custom stressing for onogamy by itself was not sufficient unless it was rther pleaded that second marriage was void by ason of its taking place during the life of such husand or wife. In order to prove the second marriage oid, the appellant was under an obligation to show e existence of a custom which made such marage null, ineffectual, having no force of law or nding effect, incapable of being enforced in law non est. In view of the fact that parties admittedly elong to the Scheduled Tribes within the meaning clause (25) of Article 366 of the Constitution as otified by the Constitution (Scheduled Tribes) rder, 1950 as amended by the Scheduled Castes d Scheduled Tribes Order (Amendment) Acts 63 1956, 108 of 1976, 18 of 1987 and 15 of 1990 ssed in terms of Article 342 and in the absence of ecific pleadings, evidence and proof of the leged custom making the second marriage void, offence under Section 494 of the Indian Penal ode can possibly be made out against the responent. (Paras 14 and 15). *Surajmani Stella Kujur r.)* v. *Durga Charan Hansdah*, (2001) 3 SCC 13: 01 SCC (Cri) 1305: AIR 2001 SC 938.

nch Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, [Date of decision: 14-2-2001]

Durga Charan v. State of Delhi, 2000 Cri LJ 3530, rmed

766] — S. 494 — Bigamy — Second marriage rformed without the ceremony of "saptapadi" Validity of, for the purposes of constituting ence under S. 494 — *Held, "saptapadi" is an ential ceremony for a valid marriage only in es where it is admitted by the parties entering the marriage that it is an essential ritual to be formed for the marriage as per the personal law orm of marriage applicable to them — S. 7-A of Hindu Marriage Act, 1955 [as inserted by the Hindu Marriage (Tamil Nadu Amendment) Act, 1967] validates the marriage performed between the parties concerned by garlanding each other or putting a ring upon any finger of the other or tying a thali — So second marriage entered into by the appellant-accused with another woman 'K' (both resident of State of T.N.), under S. 7-A of the Act, without ceremony of saptapadi, was a valid marriage so as to constitute an offence under S. 494 IPC — Hindu Marriage Act, 1955, Ss. 7-A, 7 and 17*

Appellant-accused entering into a second marriage with another woman '*K*', both resident of the State of T.N., during the subsistence of his first marriage with the respondent complainant. The aforesaid marriage was performed in accordance with the provisions of Section 7-A of the Hindu Marriage Act, 1955 [inserted by the Hindu Marriage (Tamil Nadu Amendment) Act, 1967] which for constituting a valid marriage requires the parties to the marriage only to garland each other or put a ring upon any finger of the other or tie a thali. By the impugned judgment, High Court reversed the acquittal of appellant by trial court and convicted him under Section 494 IPC. The appellant in instant appeal challenged the said judgment of the High Court on the ground that the second marriage entered into by him with '*K*' on 18-6-1984 was not a valid marriage under the Hindu law so as to hold him guilty of the offence of bigamy as the said marriage was solemnised without the performance of an important ceremony of "saptapadi", which is an essential Hindu rite to be performed for a valid marriage. Dismissing the appeal,

Held :

In the Hindu Marriage Act, 1955, there is a State amendment by the State of Tamil Nadu, which has inserted Section 7-A. The said section applies to any marriage between two Hindus solemnized in the presence of relatives, friends or other persons. The main thrust of this provision is that the presence of a priest is not necessary for the performance of a valid marriage. Parties can enter into a marriage in the presence of relatives or friends or other persons and each party to the marriage should declare in the language understood by the parties that each takes the other to be his wife or, as the case may be, her husband, and the marriage would be completed by a simple ceremony requiring the parties to the marriage to garland each other or put a ring upon any finger of the other or tie a thali. Any of these ceremonies would be sufficient to complete a valid marriage. Sub-section (2)(*a*) of Section 7-A specifically says that notwithstanding anything contained in Section 7, all marriages to which this provision applies and solemnized after the commencement of the Hindu Marriage (Tamil Nadu Amendment) Act, 1967, shall be good and valid in law. (Paras 17 and 18)

The appellant-accused and his alleged second wife are residents of the State of Tamil Nadu and their marriage was performed at Thiruthani Temple within the State of Tamil Nadu. The evidence in this case as given by PW 3 clearly shows that there was a valid marriage in accordance with the provisions of Section 7-A of the Hindu Marriage Act. PW 3 deposed that the bridegroom brought the "thirumangalam" and tied it around the neck of the bride and thereafter the bride and the bridegroom exchanged garlands three times and the father of the bride stated that he was giving his daughter to "kanniyathan" on behalf of and in the witness of "agnidevi" and the father of the bridegroom received and accepted the "kanniyathan". PW 3 also deposed that he performed the marriage in accordance with the customs applicable to the parties. (Paras 17 and 19)

Under such circumstances, the provisions of Section 7-A, namely, the State amendment inserted in the statute are applicable and there was a valid marriage between the appellant and the second accused. Moreover, "Saptapadi" is an essential ceremony for a valid marriage only in cases where it is admitted by the parties that as per the form of marriage applicable to them that is an essential ceremony. The appellant-accused in the instant case, however, had no such case that "saptapadi" was an essential ceremony for a valid marriage as per the personal law applicable, whereas the provisions contained in Section 7-A are applicable to the parties. In any view of the matter, there was a valid marriage on 18-6-1984 between the appellant and the second accused. Therefore, the appellant had committed the offence of bigamy as it was done during the subsistence of his earlier marriage held on 6-9-1970 and the High Court correctly remanded the matter to the trial court for awarding appropriate sentence. (Paras 20 and 21). *S. Nagalingam* v. *Sivagami*, (2001) 7 SCC 487: 2001 SCC (Cri) 1273: AIR 2001 SC 3576.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **K.G. Balakrishnan**, JJ. [Date of decision: 31-8-2001]

Kanwal Ram v. H.P. Admn., AIR 1966 SC 614: 1966 Cri LJ 472; Priya Bala Ghosh v. Suresh Chandra Ghosh, (1971) 1 SCC 864: 1971 SCC (Cri) 362; Santi Deb Berma v. Kanchan Prava Devi, 1991 Supp (2) SCC 616: 1992 SCC (Cri) 65, followed

Lingari Obulamma v. L. Venkata Reddy, (1979) 3 SCC 80: 1979 SCC (Cri) 654; Laxmi Devi v. Satya Narayan, (1994) 5 SCC 545: 1994 SCC (Cri) 1566, considered and distinguished on facts

[10767] — S. 494 — Bigamy — Validity of second marriage — Parties Hindus — Complainant wife not alleging that second marriage solemnised by customary rites and usage which do not include Saptapadi — Proof of Saptapadi — *Held, must be based on cogent evidence — That the essential ceremonies of a valid marriage were performed cannot be deduced from letters or oral evidence of the accused and second wife living as husband and wife — Accused acquitted — Hindu Marriage Act, 1955, Ss. 7, 5 and 17* (Para 7). *Santi Deb Berma* v. *Kanchan Prava Devi*, 1991 Supp (2) SCC 616: AIR 1991 SC 816: 1991 Cri LJ 660.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 10-10-1990]

[10768] — S. 494 — Bigamy — Validity of the second marriage — *Essential ceremonies under Hindu law viz., datta homa or saptapadi not performed — Existence of any custom in derogation of S. 7, Hindu Marriage Act, 1955 neither alleged in the complaint nor proved in the evidence — Offence not made out. Lingari Obulamma* v. *L. Venkata Reddy*, (1979) 3 SCC 80: 1979 SCC (Cri) 654: AIR 1979 SC 848: 1979 Cri LJ 849.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 19-1-1979]

[10769] — S. 494 — Birth of son by second wife proved — Marriage also proved — No interference — Sentence however reduced. *Anandrao Tulsiram Bhawar* v. *State of Maharashtra*, (1972) 1 SCC 800: 1972 SCC (Cri) 519: AIR 1972 SC 1232: 1972 Cri LJ 766.

Bench Strength **3**. Coram: **A.N. Grover**, *A.N. Ray* and *D.G. Palekar*, JJ. [Date of decision: 9-3-1972]

[10770] — S. 494 — Cognizance of offence of bigamy under is taken only on complaint of person aggrieved as specified in S. 198 CrPC — *Therefore, held, person having right to make complaint would have to be identified on basis of the personal law applicable to the complainant and respondent accused — CrPC, 1973 — S. 198*

S and the respondent underwent a Hindu marriage in 1984. In May 1992 the respondent informed *S* that he had converted to Islam and that he intended to remarry; he advised *S* to agree to a divorce by mutual consent. *S* contended that her husband's conversion was entirely fraudulent, carried out with the sole aim of solemnising a second marriage; she contended that he had no real faith in Islam, that the conversion was not even remotely connected to a spiritual quest and that it was not an exercise of the freedom of religion guaranteed under the Constitution. She pointed out that there was no change in his way of living at all since the conversion. He had not even changed his name. She submitted documents including the birth certificate of his child from the second marriage, copies of relevant entries of the electoral list and an application for a visa to enter Bangladesh, all showing the respondent's name as "G.C. Ghosh" and "Hindu" as his religion. The second wife was entered as "Vanita Ghosh" in all the documents and also described as "Hindu".

In view of the pleadings in *S's petition, the Court formulated the following question: "In order to avoid the clutches of S. 17 of the Hindu Marriage Act, 1955, if a person renounces his 'Hindu' religion and converts to another religion and marries a second time, what would be the effect on his criminal liability?"*

Held :

Per curiam:

Since taking of cognizance of the offence under Section 494 is limited to the complaints made by the persons specified in Section 198 CrPC, it is obvious that the person making the complaint would have to be decided in terms of the personal law applicable to the complainant and the respondent (accused), since mere conversion does not dissolve the marriage automatically and they continue to be "husband and wife".(Para 25). *Lily Thomas* v. *Union of India*, (2000) 6 SCC 224: 2000 SCC (Cri) 1056: AIR 2000 SC 1650: 2000 Cri LJ 2433.

Bench Strength **2**. Coram: **S. Saghir Ahmad**[1] and **R.P. Sethi**[2], JJ. [Date of decision: 5-5-2000]

Bhaurao Shankar Lokhande v. State of Maharashtra, (1965) 2 SCR 837: AIR 1965 SC 1564; Kanwal Ram v. H.P. Admn., AIR 1966 SC 614: (1966) 1 SCR 539: 1966 Cri LJ 472; Priya Bala Ghosh v. Suresh Chandra Ghosh, (1971) 1 SCC 864: 1971 SCC (Cri) 362; Gopal Lal v. State of Rajasthan, (1979) 2 SCC 170, relied upon

[10771] — S. 494 — Contravention of S. 17 of Hindu Marriage Act, 1955 — Applicability of S. 494 — *Second marriage must be 'solemnized' — Meaning of the expression 'solemnize' in S. 17 of Hindu Marriage Act — Celebration with proper ceremonies essential — Merely going through certain ceremonies with intention that parties be taken to be married not sufficient*

Section 17 provides that any marriage between two Hindus solemnized after the commencement of the Act is void if at the date of such marriage either party had a husband or wife living and that the provisions of Ss. 494 and 495 IPC shall apply accordingly.

The marriage between two Hindus is void in view of S. 17 if two conditions are satisfied; (*i*) the marriage is solemnized after the commencement of the Act; (*ii*) at the date of such marriage, either party had a spouse living.

The word "solemnize" means, in connection with a marriage, "to celebrate the marriage with proper ceremonies, and in due form", according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is "celebrated or performed with proper ceremonies and in due form" it cannot be said to be "solemnized". It is, therefore, essential, for the purpose of S. 17 of the Act, that the marriage to which S. 494, IPC applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. Merely going through certain ceremonies with the intention that the parties be taken to be married, will not make the ceremonies prescribed by law or approved by any established custom. *Bhaurao Shankar Lokhande* v. *State of Maharashtra*, AIR 1965 SC 1564: (1965) 2 SCR 837: (1965) 2 Cri LJ 544, 545.

Bench Strength **3**. Coram: **Raghubar Dayal**, *J.R. Mudholkar* and *V. Ramaswami*, JJ. [Date of decision: 1-2-1965]

Followed in (1971) 1 SCC 864: 1971 SCC (Cri) 362

[10772] — S. 494 — Conversion does not automatically dissolve first marriage — Hence bigamous marriage triable — *Held, since bigamous marriage is prohibited under HMA, 1955 and is an offence under S. 17 HMA, any marriage solemnised by the husband during the subsistence of his Hindu marriage would be void under S. 11 HMA, and an offence triable under S. 17 HMA r/w S. 494 IPC, regardless of such husband's conversion to another religion permitting polygamy — Mere conversion does not dissolve the original marriage automatically — Apostate husband and first wife continue to be "husband and wife" — Conversion is only a ground for divorce under S. 13 HMA or judicial separation under S. 10 HMA, 1955 — Stay of criminal cases in subordinate courts against the husband vacated — Hindu Marriage Act, 1955 — Ss. 17, 11, 13, 10 and 5(i)*

The two concurring judgments in these matters deal with several writ petitions and review petitions, all revolving around the situation created when a non-Muslim man, married according to religious sites stipulating monogamy, renounces his religion, converts to Islam and solemnises a second marriage, according to Islamic rites, without divorcing his first wife.

The pleadings of *S*, the petitioner in one of the cases revealed the following: *S* and the respondent underwent a Hindu marriage in 1984. In May 1992 the respondent informed *S* that he had converted to

Islam and that he intended to remarry; he advised *S* to agree to a divorce by mutual consent. *S* contended that her husband's conversion was entirely fraudulent, carried out with the sole aim of solemnising a second marriage; she contended that he had no real faith in Islam, that the conversion was not even remotely connected to a spiritual quest and that it was not an exercise of the freedom of religion guaranteed under the Constitution. She pointed out that there was no change in his way of living at all since the conversion. He had not even changed his name. She submitted documents including the birth certificate of his child from the second marriage, copies of relevant entries of the electoral list and an application for a visa to enter Bangladesh, all showing the respondent's name as "G.C. Ghosh" and "Hindu" as his religion. The second wife was entered as "Vanita Ghosh" in all the documents and also described as "Hindu".

In view of the pleadings in *S's petition, the Court formulated the following question: "In order to avoid the clutches of S. 17 of the Hindu Marriage Act, 1955, if a person renounces his 'Hindu' religion and converts to another religion and marries a second time, what would be the effect on his criminal liability?"*

The judgments also disposed of petitions seeking review of the decision in *Sarla Mudgal, President, Kalyani* v. *Union of India* (1995) 3 SCC 635, in which it had been held that the second marriage of a Hindu husband after converting to Islam, without dissolution of his first marriage under law, would be void in terms of Section 494 IPC and such husband would be guilty of bigamy under that section. The primary contention of the review petitioners was that the decision resulted in deprivation of the fundamental right to freedom of religion.

Dismissing the review petitions, and disposing of all the petitions finally and vacating the stay of connected criminal cases under Section 494 IPC in subordinate courts,

Held :

Per curiam :

It is under the Hindu Marriage Act, 1955 that it has to be seen whether the husband, who has married a second wife, has committed the offence of bigamy or not. Since under the Hindu Marriage Act, a bigamous marriage is prohibited and has been constituted as an offence under Section 17 of the Act, any marriage solemnised by the husband during the subsistence of that marriage, in spite of his conversion to another religion, would be an offence triable under Section 17 of the Hindu Marriage Act read with Section 494 IPC. Since taking of cognizance of the offence under Section 494 is limited to the complaints made by the persons specified in Section 198 CrPC, it is obvious that the person making the complaint would have to be decided in terms of the personal law applicable to the complainant and the respondent (accused), since mere conversion does not dissolve the marriage automatically and they continue to be "husband and wife".(Para 25)

If a person marries a second time during the lifetime of his wife, such marriage apart from being void under Sections 11 and 17 of the Hindu Marriage Act, would also constitute an offence and that person would be liable to be prosecuted under Section 494 IPC. (Para 29)

Conversion or apostasy does not automatically dissolve a marriage already solemnised under the Hindu Marriage Act. It only provides a ground for divorce under Section 13. Under Section 10 which provides for judicial separation, conversion to another religion is now a ground for a decree for judicial separation after the Act was amended by the Marriage Laws (Amendment) Act, 1976. The first marriage, therefore, is not affected and it continues to subsist. If the "marital" status is not affected on account of the marriage still subsisting, the husband's second marriage qua the existing marriage would be void and in spite of conversion he would be liable to be prosecuted for the offence of bigamy under Section 494. (Paras 30 and 31)

Mere conversion does not bring to an end the marital ties unless a decree for divorce on that ground is obtained from the court. Till a decree is passed, the marriage subsists. Any other marriage, during the subsistence of the first marriage would constitute an offence under Section 494 read with Section 17 of the Hindu Marriage Act, 1955 and the person, in spite of his conversion to some other religion, would be liable to be prosecuted for the offence of bigamy. It also follows that if the first marriage was solemnised under the Hindu Marriage Act, the "husband" or the "wife", by mere conversion to another religion, cannot bring to an end the marital ties already established on account of a valid marriage having been performed between them. So long as that marriage subsists, another marriage cannot be performed, not even under any other personal law, and on such marriage being performed, the person would be liable to be prosecuted for the offence under Section 494 IPC. (Para 35)

Religion is a matter of faith stemming from the depth of the heart and mind. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry. Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited. The institution of marriage under every personal law is a sacred institution. Under Hindu law, marriage is a sacrament. Both have to be preserved. (Para 38)

The important words used in Section 494 IPC are "*Marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife*". These words indicate that before an offence under Section 494 can be said to have been constituted, the second marriage should be shown to be void in a case where such a marriage would be void by reason of its taking place in the lifetime of such husband or wife. The words "husband or wife" are also important in the sense that they indicate the personal law applicable to them which would continue to be applicable to them so long as the marriage subsists and they remain "husband and wife". (Para 23)

Counsel appearing for the petitioners have alleged that in view of the judgment in *Sarla Mudgal case* their clients are liable to be convicted without any further proof. Such an apprehension is without any substance inasmuch as the person seeking conviction of the accused for a commission of offence under Section 494 is under a legal obligation to prove all the ingredients of the offence charged and conviction cannot be based upon mere admission made outside the Court. To attract the provisions of Section 494 IPC the second marriage has to be proved besides proving the previous marriage. Such marriage is further required to be proved to have been performed or celebrated with proper ceremonies. (Para 63)

The grievance that the judgment in *Sarla Mudgal* v. *Union of India* (1995) 3 SCC 635 amounts to violation of the freedom of conscience and free profession, practice and propagation of religion is also far-fetched and apparently artificially carved out by such persons who are alleged to have violated the law by attempting to cloak themselves under the protective fundamental right guaranteed under Article 25 of the Constitution. No person, by the judgment impugned, has been denied the freedom of conscience and propagation of religion. The rule of monogamous marriage amongst Hindus was introduced with the enactment of the Hindu Marriage Act. The second marriage solemnised by a Hindu during the subsistence of a first marriage is an offence punishable under the penal law. Freedom guaranteed under Article 25 of the Constitution is such freedom which does not encroach upon a similar freedom of other persons. Under the constitutional scheme every person has a fundamental right not merely to entertain the religious belief of his choice but also to exhibit this belief and ideas in a manner which does not infringe the religious right and personal freedom of others. (Para 62)

What is guaranteed under Article 21 is that no person shall be deprived of his life and personal liberty except according to the procedure established by law. The aggrieved persons are apprehended to be prosecuted for the commission of offence punishable under Section 494 IPC. It is premature, at this stage, to canvass that they would be deprived of their life and liberty without following the procedure established by law. The procedure established by law, as mentioned in Article 21 of the Constitution, means the law prescribed by the legislature. The judgment in *Sarla Mudgal case* has neither changed the procedure nor created any law for the prosecution of the persons sought to be proceeded against for the alleged commission of the offence under Section 494 IPC. (Para 61)

In the review petitions the notice issued was limited to the question of Article 20(1) of the Constitution. It was contended that the judgment of the Court entailed on a convert to Islam the liability of prosecution for the offence of bigamy under Section 494 IPC which would, otherwise not be an offence under the law applicable to him. Section 494 forms part of a substantive law and is applicable to all unless specifically excluded. As no notice has been issued for review of the main judgment which interpreted Section 494 IPC it cannot be said that any person was likely to be convicted for an offence except for violation of law in force at the time of commission of the act charged as an offence. (Para 57)

The petitioners have not made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in *Sarla Mudgal case*. The petition is misconceived and bereft of any substance. (Para 58)

The progressive outlook and wider approach of Islamic law cannot be permitted to be squeezed and narrowed by unscrupulous litigants, apparently indulging in sensual lust sought to be quenched by illegal means, who apparently are found to be guilty of the commission of the offence under the law to which they belonged before their alleged conversion. It is nobody's case that any such convertee has been deprived of practising any other religious right for the attainment of spiritual goals. (Para 62)

Prosecution under Section 494 in respect of a second marriage under Mohammedan law can be avoided only if the first marriage was also under the Mohammedan law and not if the first marriage was under any other personal law where there was a prohibition on contracting a second marriage in the lifetime of the spouse. (Para 36)

The offence of bigamy in the Hindu Marriage Act, 1955 has been created by reference. By providing in Section 17 that provisions of Sections 494 and 495 would be applicable to such a marriage, the legislature has bodily lifted the provisions of Sections 494 and 495 IPC and placed them in Section 17 of the Hindu Marriage Act. This is a well-known legislative device. (Para 23)

The contention that the law declared in *Sarla Mudgal case* cannot be applied to persons who have solemnised marriages in violation of the mandate of law prior to the date of judgment is not acceptable. The Supreme Court had not laid down any new law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law. The argument that the second marriage by a convert male Muslim has been made an offence only by judicial pronouncement is not correct. The judgment has only interpreted the existing law after taking into consideration various aspects argued at length before the Bench which pronounced the judgment. The review petition alleging violation of Article 20(1) of the Constitution is without any substance and is liable to be dismissed on this ground alone. (Para 59)

Status of children born of second bigamous marriage and that of second wife herself, held, are issues not involved in the present case. *Lily Thomas* v. *Union of India*, (2000) 6 SCC 224: 2000 SCC (Cri) 1056: AIR 2000 SC 1650: 2000 Cri LJ 2433.

Bench Strength **2**. Coram: **S. Saghir Ahmad**[1] and **R.P. Sethi**[2], JJ. [Date of decision: 5-5-2000]

Bhaurao Shankar Lokhande v. State of Maharashtra, (1965) 2 SCR 837: AIR 1965 SC 1564; Kanwal Ram v. H.P. Admn., AIR 1966 SC 614: (1966) 1 SCR 539: 1966 Cri LJ 472; Priya Bala Ghosh v. Suresh Chandra Ghosh, (1971) 1 SCC 864: 1971 SCC (Cri) 362; Gopal Lal v. State of Rajasthan, (1979) 2 SCC 170: 1979 SCC (Cri) 401, relied upon

Govt. of Bombay v. Ganga, ILR (1880) 4 Bom 330; Budansa Rowther v. Fatima Bi, AIR 1914 Mad 192; Emperor v. Ruri, AIR 1919 Lah 389: 20 Cri LJ 3; Jamna Devi v. Mul Raj, (1907) 49 PR 1907: 83 PLR 1908; Rakeya Bibi v. Anil Kumar Mukherji, ILR (1948) 2 Cal 119; Sayeda Khatoon v. M. Obadiah, (1944-45) 49 CWN 745; Amar Nath v. Mrs Amar Nath, (1947) 49 PLR 147: AIR 1948 Lah 129 (FB); Gul Mohd. v. Emperor, AIR 1947 Nag 121: 48 Cri LJ 43, approved

Kanwal Ram v. H.P. Admn., AIR 1966 SC 614: (1966) 1 SCR 539: 1966 Cri LJ 472; Bhaurao Shankar Lokhande v. State of Maharashtra, AIR 1965 SC 1564: (1965) 2 SCR 837, relied on

[Ed.: See also Thapalyal, A: Proving Bigamy: Unfair Burden?" (1986) 4 SCC 11(J).]

Sarla Mudgal v. Union of India, (1995) 3 SCC 635, affirmed

[10773] — S. 494 — Foreign judgment on matrimonial dispute — Recognition of — Principles laid down — Divorce decree by a foreign (USA) Court — Parties married in India and governed by Hindu Marriage Act — *Ground on which decree passed not covered by Act — Besides, husband appellant not a domicile but only technically satisfying the residence requirement of 90 days for assuming the jurisdiction of the foreign court — Wife respondent contesting the petition without submitting to the jurisdiction of the foreign court — Held, decree unenforceable against the respondent — Appellant played a fraud on the foreign court by representing to it incorrect jurisdictional facts — Hence divorce decree not available as defence to the charge of bigamy filed by wife — Hindu Marriage Act, 1955, Ss. 19 and 13 — CPC, 1908 — Ss. 13 and 14*

Appellant 1 and respondent 1 were married in India at Tirupati in 1975 according to Hindu law but they separated in 1978. The appellant filed an application in 1978 for dissolution of the marriage in the Sub-Court of Tirupati averring that he was a resident of New Orleans, Louisiana, USA and that he was a citizen of India. Meanwhile in 1980 he filed another petition for dissolution of marriage in the Circuit Court of St. Louis County, Missouri, USA. In the petition he besides alleging that he had been a resident of the State of Missouri for 90 days or more immediately preceding the filing of the petition, alleged that respondent 1 had deserted him for one year or more next preceding the filing of the petition by refusal to continue to live with him in the United States and particularly in the State of Missouri. However, from the averments made in the petition before the Sub-court of Tirupati it was clear that both respondent 1 and petitioner 1 had last resided together at New Orleans, Louisiana and never within the jurisdiction of the Circuit Court of St. Louis County in the State of Missouri. Respondent 1 filed her reply without prejudice to the contention that she was not submitting to the jurisdiction of the foreign court. The Circuit Court assumed jurisdiction over the matter on the ground that appellant 1 had been a resident of the State of Missouri for 90 days next preceding the commencement of the action in that court. The Circuit Court passed a decree for dissolution of marriage on February 19, 1980 in the absence of respondent 1 on the only ground that the marriage was "irretrievably broken". The petition before the Sub-Court of Tirupati was thereupon dismissed as not pressed on the application of appellant 1. In 1981 appellant 1 married appellant 2 in India. Respondent 1 then filed a criminal complaint against the appellants for the offence of bigamy. The appellants filed an application for their discharge in view of the decree for dissolution of marriage passed by the Missouri Court. The Magistrate discharged the appellants holding that the complainant, i.e., respondent 1 had failed to make out a prima facie case against the appellants. But on revision the High Court set aside the order of the Magistrate holding that a photostat copy of the judgment of the Missouri Court was not admissible in evidence to prove the dissolution of marriage. Hence the appeal.

Held :

The decree dissolving the marriage passed by the foreign court is without jurisdiction according to the Hindu Marriage Act as neither the marriage was celebrated nor the parties last resided together nor the respondent resided within the jurisdiction of that court. Residence does not mean a temporary residence for the purpose of obtaining a divorce but habitual residence or residence which is intended to be permanent for future as well. The decree had been obtained by appellant 1 by stating that he was the resident of the Missouri State when the record shows that he was only a bird of passage there and was ordinarily a resident of the State of Louisiana. He had, if at all, only technically satisfied the requirement of residence of 90 days with the only purpose of obtaining the divorce. He was neither domiciled in that State nor had he an intention to make it his home. He had also no substantial connection with the forum. Appellant 1 had further brought no rules on record under which the St. Louis Court could assume jurisdiction over the matter. On the contrary, he had in his petition made a false averment that respondent 1 had refused to continue to stay with him in the State of Missouri where she had never been. Therefore, the case can be disposed of on the narrow ground that the appellant played a fraud on the foreign court representing to it incorrect jurisdictional facts. However, even presuming that the foreign court by its own rules of jurisdiction had rightly entertained the dispute and granted a valid decree of divorce according to its law, it must be held that since with regard to the jurisdiction of the forum as well as the ground on which it was passed the foreign decree in the present case is not in accordance with the Act under which the parties were married, and the respondent had not submitted to the jurisdiction of the court or consented to its passing, it cannot be recognised by the courts in this country and is, therefore, unenforceable. (Paras 9, 10 and 22)

The relevant provisions of S. 13 of the Code are capable of being interpreted to secure the required certainty in the sphere of this branch of law in conformity with public policy, justice, equity and good conscience, and the rules so evolved will protect the sanctity of the institution of marriage and the unity of family which are the cornerstones of our societal life. Today the need for definitive rules for recognition of foreign judgments in personal and family matters, and particularly in matrimonial disputes has surged to the surface. Though the rules of guidance may prove inadequate or miss some aspects but a beginning has to be made as best as one can, the lacunae and the errors being left to be filled in and corrected by future judgments. (Paras 14 and 13)

On an interpretation of S. 13 CPC the following rule can be deduced for recognising a foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (*i*) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (*ii*) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (*iii*) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties. (Para 20). *Narasimha Rao* v. *Venkata Lakshmi*, (1991) 3 SCC 451: 1991 SCC (Cri) 626.

Bench Strength **2**. Coram: *Ranganath Misra, C.J.* and **P.B. Sawant**, J. [Date of decision: 9-7-1991]

Satya v. Teja Singh, (1975) 1 SCC 120: 1975 SCC (Cri) 50, relied on

[10774] — S. 494 — Held, the important words in S. 494 are "marries in any case in which such marriage is void by reason of its taking place during the life of such husband and wife" — They indicate that offence can be said to be constituted only where second marriage is shown to be void for the reason that it has taken place in the lifetime of the original husband or wife — *Further held, the words "husband or wife" are important because they indicate that personal law* *applicable to them would continue to be applicable as long as their marriage subsists. Lily Thomas* v. *Union of India*, (2000) 6 SCC 224: 2000 SCC (Cri) 1056: AIR 2000 SC 1650: 2000 Cri LJ 2433.

Bench Strength **2**. Coram: **S. Saghir Ahmad**[1] and **R.P. Sethi**[2], JJ. [Date of decision: 5-5-2000]

[10775] — S. 494 — Offence under — Compensation to first wife — *Rs 7000 directed to be paid out of the amount of fine imposed on the accused. Ananda Dagadu Jadhav* v. *Rukminibai Anand Jadav*, 1993 Supp (3) SCC 68: 1993 SCC (Cri) 868.

Bench Strength **3**. Coram: *S. Ratnavel Pandian*, *Kuldip Singh* and *R.M. Sahai*, JJ. [Date of decision: 12-2-1992]

[10776] — S. 494 — Quashing of complaint and criminal proceedings — *Where clear and specific allegation made in the complaint that accused 1 and 2, having married during subsistence of a valid marriage of accused 1 with the complainant, committed offence under S. 494 IPC and Magistrate having regard to the statement made on oath by the complainant as also evidence of witnesses produced by her and other material, reached his satisfaction regarding existence of a prima facie case against the accused, held, High Court not justified in quashing the complaint and the criminal proceedings on ground of abuse of process of court by relying on some additional material produced by the accused not admitted or accepted by the complainant. Chand Dhawan* v. *Jawahar Lal*, (1992) 3 SCC 317: 1992 SCC (Cri) 636: AIR 1992 SC 1379: 1992 Cri LJ 1956.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 28-4-1992]

[10777] — S. 494 — Quashing of proceedings under S. 561-A CrPC — Legality — Bigamy — Alleged offence of — *Decree for dissolution of marriage — Appeal against, filed before High Court by wife — Punjab & Haryana High Court vide order dt. 24-11-2000 staying the operation of said decree and restraining the husband from remarrying till further orders — Wife filing complaint before Judicial Magistrate alleging that during subsistence of a valid marriage, her husband contracted second marriage — Wife submitting that second marriage solemnised on 8-3-2001 when the order of stay dt. 24-11-2000 was in operation — J&K High Court, while quashing the proceedings initiated on the said complaint, acted on the basis that second marriage was solemnised on 8-3-2001 — No reference to the order of stay made in the impugned order — As per husband, second marriage was solemnised subsequent to the date of said decree but prior to the date of order of stay — High Court directed to rehear the matter afresh by taking into account the effect of the order of stay and adjudicating upon the question as to when the second marriage actually took place — CrPC, 1973, S. 482 — Ranbir Penal Code, 1932 (1989 Smvt.), S. 494 — J&K Code of Criminal Procedure, 1989 — S. 561-A (akin to S. 482 CrPC)*

Disposing of the appeal,

Held :

It is not in dispute that the order dated 24-11-2000 clearly restrained the husband from remarriage and the operation of the decree of divorce was stayed. The High Court, while acting under Section 561-A, Jammu and Kashmir Code of Criminal Procedure, 1989, proceeded on the basis that the marriage between the husband and *U* (second wife) took place on 8-3-2001 and applying the ratio in *Krishna Gopal case*, (2002) 10 SCC 216 it held that no offence was made out. The impugned order does not refer to the order of stay and the effect thereof. There is a great deal of factual distinction between *Krishna Gopal case* and the case at hand. Again it has to be noted that there is a dispute, as presently raised by the respondent husband, that the date of marriage was much before the date on which the order of stay was passed and subsequent to the date on which the decree for dissolution of marriage was passed. (Para 6)

In view of the above controversy, the matter needs to be reheard by the High Court. While considering the matter afresh, the effect of the order of stay dated 24-11-2000 shall be taken note of. Much would depend on the date when the marriage took place. There is no dispute that the respondent husband has married *U*. The crucial question is when the marriage took place. All these aspects are to be adjudicated by the High Court while dealing with the matter afresh. (Para 7). *Kunti Devi* v. *Som Raj*, (2004) 11 SCC 278.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 23-9-2004]

Krishna Gopal Divedi v. Prabha Divedi, (2002) 10 SCC 216: 2004 SCC (Cri) 473: AIR 2002 SC 389, distinguished on facts

[10778] — S. 494 — Requirements for a valid marriage under S. 7-A (as inserted by T.N. Act 21 of 1967), Hindu Marriage Act, 1955 — *Presence of a priest, held, is not necessary for solemnising the marriage under the aforesaid section — Parties can enter into a marriage in the presence of relatives or friends or other persons by garlanding each other or putting a ring upon any finger of the other or tying a thali — Evidence Act, 1872, Ss. 101-103. S. Nagalingam* v. *Sivagami*, (2001) 7 SCC 487: 2001 SCC (Cri) 1273: AIR 2001 SC 3576.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **K.G. Balakrishnan**, JJ. [Date of decision: 31-8-2001]

[10779] — S. 494 — Revision — Scope of — High Court in exercise of revisional jurisdiction in a matter relating to S. 125 CrPC giving directions for initiation of departmental proceedings — Unsustainability of — *Issues involving appellant's marriage/double marriage pending adjudication in a title suit — High Court adjudicating that an offence under S. 494 IPC was made out — High Court's direction for departmental proceedings in exercise of its revisional jurisdiction while deciding a S. 125 CrPC matter, held, erroneous — Hindu Marriage Act, 1955, S. 5(i) — CrPC, 1973 — Ss. 397 and 125*

The High Court was clearly in error in directing initiation of departmental proceedings while dealing with an application for revision in the matter relating to Section 125 CrPC. The High Court while dealing with the application under Section 125 CrPC has essentially adjudicated that an offence punishable under Section 494 IPC is made out. A title suit was pending where prayer was made for declaration that the respondent was not his wife. Whether there was a second marriage as contended and whether *L* (respondent) was his wife as claimed by her or *C* was the wife of the appellant as claimed by him has yet to be decided. (Para 8). *Taraknath Kar* v. *Lipika Kar*, (2008) 5 SCC 387: (2008) 2 SCC (Cri) 618: AIR 2008 SC 2310.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 7-5-2008]

[10780] — S. 494 — Second marriage — Departmental enquiry for contracting a second marriage without requisite permission from the Government preceded by discharge in criminal trial for bigamy — *In such circumstances, although the departmental enquiry could be continued, continued suspension during the departmental enquiry, held, unwarranted — Karnataka Civil Service Rules, R. 28. State of Karnataka* v. *T. Venkataramanappa*, (1996) 6 SCC 455: 1996 SCC (L&S) 1462.

Bench Strength 2. Coram: *M.M. Punchhi* and *K.S. Paripoornan*, JJ. [Date of decision: 20-9-1996]

[10781] — S. 494 — Second marriage — Proof of — *Mere admission by accused not enough — Prosecution must prove that the marriage was performed in a regular way after performing due ceremonies for the marriage*

The appellant husband was charged under Section 494 IPC. In response to the charge laid against him he admitted the second marriage. The Magistrate recorded the prosecution evidence and came to the conclusion that there was no legal evidence to prove the factum of marriage. The High Court set aside the order of acquittal mainly on the ground that there was an admission of the husband and ordered a retrial. Allowing the appeal by special leave

Held :

The High Court was in error in upsetting the well-considered order of the trial Magistrate requiring due ceremonies of the alleged second marriage being proved so as to satisfy the tests laid down by the Supreme Court. The admission of the husband could at best be understood to mean that the first appellant had taken a wife, but that admission did not necessarily mean that he had taken the second wife after solemnising a Hindu marriage with her after performing due ceremonies for the marriage. Such plea, which he need not have even entered upon, and which was ignorable by the Court, did not absolve the prosecution to otherwise prove its case, that the marriage in question was performed in a regular way so as to visit him with penal consequences. *P. Satyanarayana* v. *P. Mallaiah*, (1996) 6 SCC 122: 1996 SCC (Cri) 1120.

Bench Strength 2. Coram: *M.M. Punchhi* and *K.T. Thomas*, JJ. [Date of decision: 30-8-1996]

Bhaurao Shankar Lokhande v. State of Maharashtra, (1965) 2 SCR 837: AIR 1965 SC 1564; Kanwal Ram v. H.P. Admn, (1966) 1 SCR 539: AIR 1966 SC 614; Priya Bala Ghosh v. Suresh Chandra Ghosh, (1971) 1 SCC 864: 1971 SCC (Cri) 362, followed

[10782] — S. 494 — Sentence under — Quantum of — *Offence committed about 18 years ago and the accused facing the proceedings for over 17 years — In such circumstances, substantive sentence of 5 years of imprisonment reduced to the period already undergone but the fine of Rs 1500 enhanced to Rs 3000. Ananda Dagadu Jadhav* v. *Rukminibai Anand Jadav*, 1993 Supp (3) SCC 68: 1993 SCC (Cri) 868.

Bench Strength 3. Coram: *S. Ratnavel Pandian*, *Kuldip Singh* and *R.M. Sahai*, JJ. [Date of decision: 12-2-1992]

[10783] — S. 494 — Where on a complaint filed alleging bigamy, CJM on being prima facie satisfied that offence of bigamy under S. 494 and Ss. 494/109 IPC made out, issued process to respondents, held, High Court under S. 482 CrPC not justified in quashing the proceedings by taking the view that there was no allegation in the complaint about first and second marriages by performance of religious rites. *Mohinder Singh* v. *Gulwant Singh*, (1992) 2 SCC 213: 1992 SCC (Cri) 361: AIR 1992 SC 1894.

Bench Strength 3. Coram: *S. Ratnavel Pandian*, *M. Fathima Beevi* and *Yogeshwar Dayal*, JJ. [Date of decision: 17-12-1991]

[10784] — S. 494 — Whether subsequent marriage need be a valid marriage — *Question not decided. Bhaurao Shankar Lokhande* v. *State of Maharashtra*, AIR 1965 SC 1564: (1965) 2 SCR 837: (1965) 2 Cri LJ 544.

Bench Strength **3**. Coram: **Raghubar Dayal,** *J.R. Mudholkar* and *V. Ramaswami*, JJ. [Date of decision: 1-2-1965]

[10785] — Ss. 494 and 109 — Abetment of bigamy — *By mere presence or otherwise the other accused cannot be held to have facilitated the solemnisation of the second marriage with the knowledge that the earlier marriage was subsisting — So the allegations imputing them with guilty knowledge unsupported by other material would not justify the continuance of the proceedings against them. Chand Dhawan* v. *Jawahar Lal*, (1992) 3 SCC 317: 1992 SCC (Cri) 636: AIR 1992 SC 1379: 1992 Cri LJ 1956.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 28-4-1992]

[10786] — Ss. 494 and 109 — Abetting the offence of bigamy — Sentence — Quantum of — *Imprisonment till rising of the court and fine of Rs 500 — Upheld. Ananda Dagadu Jadhav* v. *Rukminibai Anand Jadav*, 1993 Supp (3) SCC 68: 1993 SCC (Cri) 868.

Bench Strength **3**. Coram: *S. Ratnavel Pandian*, *Kuldip Singh* and *R.M. Sahai*, JJ. [Date of decision: 12-2-1992]

[10787] — Ss. 494, 120-B and 109 — Quashing of private complaint — Maliciously instituted proceedings to wreak vengeance on the accused [as per Category 7 in *Bhajan Lal case*, 1992 Supp (1) SCC 335] — Applicability — *Complaint case instituted by the father of the appellant-accused's earlier wife (frustrated with marriage, living separately and divorced) against appellant, his family members, subsequent wife and subsequent in-laws under Ss. 494, 120-B and 109 IPC r/w Ss. 3/4 of Dowry Act — Case instituted in 1994, allegations of dowry torture in 1992 and dowry demand by husband in 1993 — Appellant-accused's subsequent marriage on 2-3-1993 was after the time-limit for filing appeal against ex parte decree of divorce had expired — No specific allegation against other accused (except appellant-accused) though they were impleaded in the private complaint — In spite of service of notice none appeared on behalf of Respondent 1 (complainant) — Category 7 of* Bhajan Lal case *for quashing of complaint, on facts, held, applicable — Dowry Prohibition Act, 1961, Ss. 3 and 4 — Hindu Marriage Act, 1955, S. 15 — CrPC, 1973 — S. 482 and Ch. XV*

M, left her husband *P* and started living in her parental house. On 1-1-1993, an ex parte decreed for dissolution of marriage was passed against *M* on the ground of cruelty and harassment. After the time for filing appeal against the ex parte decree dated 1-1-1993 under Section 28(4) of the Hindu Marriage Act, 1955 (the Marriage Act) expired on 31-1-1993, and no appeal was preferred, *P* married *S* on 2-3-1993. The respondent (*M*'s father), thereafter, on 6-12-1994 filed a private complaint wherein all the appellants (*P*, his family members and in-laws) were arrayed as accused persons for offences punishable under Sections 494, 120-B and 109 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (the Dowry Act). By the impugned order, the High Court rejected the Section 482 CrPC petition of the appellants on the ground that the trial court can be directed to conclude the trial expeditiously and at the time of framing charges, the appellants can raise such points as have been raised in the present dispute.

Allowing the appeal,

Held :

The present case appears to be one where Category 7 of the illustrations given in *Bhajan Lal case*, 1992 Supp (1) SCC 335 is clearly applicable. The parameters for exercise of power under Section 482 CrPC have been laid down by the Supreme Court in several cases. In the complaint filed, the allegation is that the dowry torture was made sometime in 1992. It has not been explained as to why for more than two years no action was taken. Apart from *P* (husband of *M*), his mother, mother's sister, *S* (subsequently married wife), brother-in-law and *S's father were impleaded as parties. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in February 1993 when the complaint was filed on 6-12-1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice, none appeared on behalf of Respondent 1. The proceedings pending before the CJM, are, therefore, quashed. (Paras 8 to 13). Priya Vrat Singh* v. *Shyam Ji Sahai*, (2008) 8 SCC 232: (2008) 3 SCC (Cri) 463: (2008) 5 All LJ 673: 2008 Cri LJ 4367.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 5-8-2008]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36, followed

Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[10788] — Ss. 494 and 420 — Sustainability of prosecution under S. 494 IPC — Statement of subsequent wife — Relevance — *Complaint against husband for offence of bigamy filed by father of subsequent wife allegedly on her behalf but against her express desire stated in her sworn written statement — She was a major when she married of her own free will and that she was living happily and peacefully thereafter — Initiation of prosecution in such circumstances, held, was improper — Magistrate was not justified in taking cognizance of the said offence — Since husband and his wife staying together happily, further prosecution would only harass the accused — Hence, proceedings quashed — CrPC, 1973 — Ss. 198(1) proviso (c) and 482* (Para 4). *Manish Das (Dr.)* v. *State of U.P.*, (2006) 6 SCC 536: (2006) 3 SCC (Cri) 113.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *D.K. Jain*, JJ. [Date of decision: 14-7-2006]

[10789] — S. 494 and S. 494 r/w S. 109 — Bigamy — Commission of offence of, by husband — Delay of four years in filing complaint — Conviction of husband under S. 494 IPC and that of father under S. 494 r/w S. 109 IPC — Propriety — *Soon after the first marriage there were disputes and differences between husband and wife — Wife staying with her father for the last 14 years — Disputes were pending in civil court — On such facts, held, it would be highly improbable, if not impossible, not to take any step for four years — Even that apart, no explanation given for the said delay — There were only parrot-like depositions of PWs having seen the second marriage — None of them could give any further detail when questioned in cross-examination — No evidence to prove the deposition of wife's father that two sons were born from the second marriage — Under such circumstances, held, conviction of husband and his father not sustainable* (Para 7). *Purandar Sahoo* v. *Golapi Sahoo*, (2007) 15 SCC 696.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 23-1-2003]

[10790] — Ss. 494 and 495 — Bigamy — Prosecution for — Expression "aggrieved person" under S. 198 — Scope, meaning, ambit and interpretation — Second spouse, whether an aggrieved person entitled to file complaint for offences under Ss. 494 and 495 IPC — Appellant concealing fact of his having an earlier living wife, and marrying Respondent 2 — *Held, a woman with whom a second marriage is contracted by suppressing fact of former marriage is an "aggrieved person" for purposes of S. 198 CrPC and would be entitled to maintain a complaint under Ss. 494 and 495 IPC — S. 494 IPC does not restrict right of filing complaint to first wife only and there is no reason to read S. 494 IPC in a restricted manner — To achieve laudable object of monogamy, meaning of phrase "aggrieved person" has to be expanded — Expression "aggrieved person" denotes an elastic and an elusive concept — Its scope and meaning depends on diverse and variable factors — Further, S. 495 IPC punishes an aggravated form of bigamy and is an extension of S. 494 — Word "concealment" in S. 495 refers to concealment of former marriage from second wife — Therefore, second wife is an "aggrieved person" under S. 495 IPC — As S. 495 is an extension of S. 494 IPC, second wife is also an "aggrieved person" under S. 494 IPC — Considering the miseries inflicted on such second wife arising out of the gross fraud perpetrated upon her, further held, to debar second wife from filing complaint under S. 494 IPC would be the height of perversity* — CrPC, 1973, S. 198

The High Court by the impugned judgment partly accepted the petition filed by the appellant husband under Section 482 CrPC insofar as the offence punishable under Section 498-A IPC was concerned, whereas the prayer made by the appellant to quash the proceedings insofar as the offences punishable under Sections 494, 495, 417 and 420 IPC, were concerned, was rejected, giving rise to the instant appeal.

Disposing of the appeal in the terms below,

Held :

The contention that Respondent 2 (complainant second wife) is not an aggrieved person so far as commission of offences punishable under Sections 494 and 495 IPC is concerned, has no substance and cannot be accepted.

(Para 17)

When a court of law declares second marriage to be void on a petition presented by the husband who contracts the second marriage on the ground that he has a spouse living at the time of marriage, it only brings untold hardships and miseries in the life of the woman with whom the second marriage is performed apart from shattering her ambition to live a comfortable life after marriage. When a law, such as Section 11 of the Hindu Marriage Act, 1955 declares that a second marriage by a husband, who has a living wife, with another woman is void, for breach of Section 5(*i*) of the said Act, it brings/attaches several legal disabilities to the woman with whom the second marriage is performed. Say for example, she would not be entitled to claim maintenance from her husband even if she is inhumanly treated, subjected to mental and physical cruelty of variety of kinds, etc. and is not able to maintain herself. The law of inheritance would prejudicially operate against her. She herself would suffer outrageous, wrong and absurd social stigma of being another woman in the life of the male who contracts second marriage with her. The members of the cruel society including her kith and kin like parents, brothers, sisters, etc. would look down upon her and she would be left in the lurch by one and all. (Paras 19 and 18)

Polygamy was practised in many sections of Hindu society in ancient times. Section 494 IPC is intended to achieve the laudable object of monogamy. This object can be achieved only by expanding the meaning of the phrase "aggrieved person". (Para 21)

For a variety of reasons the first wife may not choose to file a complaint against her husband e.g. when she is assured of re-union by her husband, when the husband assures to snap the tie of second marriage, etc. Non-filing of the complaint under Section 494 IPC by the first wife does not mean that the offence is wiped out and monogamy sought to be achieved by means of Section 494 IPC merely remains in the statute book. (Para 22)

Having regard to the scope, purpose, context and object of enacting Section 494 IPC and also the prevailing practices in the society sought to be curbed by Section 494 IPC, there is no manner of doubt that the complainant second wife should be an "aggrieved person". (Para 22)

In order to attract the provisions of Section 494 IPC both the marriages of the accused must be valid in the sense that the necessary ceremonies required by the personal law governing the parties must have been duly performed. (Para 23)

Though Section 11 of the Hindu Marriage Act provides that any marriage solemnised, if it contravenes the conditions specified in clause (*i*) of Section 5 of the said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast an obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent court, the woman with whom second marriage is solemnised continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband. Even otherwise, the second wife suffers several legal wrongs and/or legal injuries when the second marriage is treated as a nullity by the husband arbitrarily, without recourse to the court or where a declaration sought is granted by a competent court. The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. Section 494 does not restrict the right of filing complaint to the first wife and there is no reason to read the said section in a restricted manner. Section 494 does not say that the complaint for commission of offence under the said section can be filed only by the wife living and not by the woman with whom the subsequent marriage takes place during the lifetime of the wife living and which marriage is void by reason of its taking place during the life of such wife. (Paras 24 and 25)

A bare reading of the complaint together with the statutory provisions makes it abundantly clear that the appellant having a living wife, married Respondent 2 herein by concealing from her the fact of the former marriage and therefore her complaint against the appellant for commission of offence punishable under Sections 494 and 495 IPC is maintainable and cannot be quashed on this ground. To hold that a woman with whom second marriage is performed is not entitled to maintain a complaint under Section 494 IPC though she suffers legal injuries would be the height of perversity. (Para 26)

The offence mentioned in Section 495 IPC is an aggravated form of bigamy provided in Section 494 IPC. The circumstance of aggravation is the concealment of the fact of the former marriage from the person with whom the second marriage is contracted. Since the offence under Section 495 IPC is in essence bigamy, it follows that all the elements necessary to constitute that offence must be present here also. A married man who by passing himself off as unmarried induces an innocent woman to become, as she thinks his wife, but in reality his mistress, commits one of the grossest forms of frauds known to law and therefore severe punishment is provided therefor in Section 495 IPC. (Para 28)

The reference to Section 494 IPC in Section 495 IPC makes it clear that Section 495 IPC is an extension of Section 494 IPC and part and parcel of it. The "concealment" spoken of in Section 495 IPC would be from the woman with whom the subsequent marriage is performed. Therefore, the wife with whom the subsequent marriage is contracted after concealment of the former marriage, would also be entitled to lodge a complaint for commission of offence punishable under Section 495 IPC. Where the second wife alleges that the accused husband had married her according to Hindu rites despite the fact that he was already married to another lady and the factum of the first marriage was concealed from her, the second wife would be an "aggrieved person" within the meaning of Section 198 CrPC. (Para 29)

If the woman with whom the second marriage is performed by concealment of the former marriage is entitled to file a complaint for commission of offence under Section 495 IPC, there is no reason why she should not be entitled to file a complaint under Section 494 IPC, more particularly when Section 495 IPC is an extension and part and parcel of Section 494 IPC. (Para 30)

Thus, a woman with whom a second marriage is contracted by suppressing the fact of former marriage would be entitled to maintain a complaint against her husband under Sections 494 and 495 IPC. (Para 31). *A. Subash Babu* v. *State of A.P.*, (2011) 7 SCC 616.

Bench Strength **2**. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 21-7-2011]

Gopal Lal v. State of Rajasthan, (1979) 2 SCC 170: 1979 SCC (Cri) 401, relied on

[10791] — Ss. 494 and 495 — Relative Scope and inter-relationship between, explained

The offence mentioned in Section 495 IPC is an aggravated form of bigamy provided in Section 494 IPC. The circumstance of aggravation is the concealment of the fact of the former marriage from the person with whom the second marriage is contracted. Since the offence under Section 495 IPC is in essence bigamy, it follows that all the elements necessary to constitute that offence must be present here also. A married man who by passing himself off as unmarried induces an innocent woman to become, as she thinks his wife, but in reality his mistress, commits one of the grossest forms of frauds known to law and therefore severe punishment is provided therefor in Section 495 IPC. (Para 28)

The reference to Section 494 IPC in Section 495 IPC makes it clear that Section 495 IPC is an extension of Section 494 IPC and part and parcel of it. The "concealment" spoken of in Section 495 IPC would be from the woman with whom the subsequent marriage is performed. Therefore, the wife with whom the subsequent marriage is contracted after concealment of the former marriage, would also be entitled to lodge a complaint for commission of offence punishable under Section 495 IPC. Where the second wife alleges that the accused husband had married her according to Hindu rites despite the fact that he was already married to another lady and the factum of the first marriage was concealed from her, the second wife would be an "aggrieved person" within the meaning of Section 198 CrPC. (Para 29)

If the woman with whom the second marriage is performed by concealment of the former marriage is entitled to file a complaint for commission of offence under Section 495 IPC, there is no reason why she should not be entitled to file a complaint under Section 494 IPC, more particularly when Section 495 IPC is an extension and part and parcel of Section 494 IPC. (Para 30)

Thus, a woman with whom a second marriage is contracted by suppressing the fact of former marriage would be entitled to maintain a complaint against her husband under Sections 494 and 495 IPC. (Para 31). *A. Subash Babu* v. *State of A.P.*, (2011) 7 SCC 616.

Bench Strength **2**. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 21-7-2011]

[10792] — Ss. 494 and 495 (as applicable to State of Andhra Pradesh due to 1992 State amendment in CrPC) — State amending a Central statute like CrPC (belonging to Concurrent List) with Presidential assent — Such amendment, reiterated, would prevail over provision(s) concerned of Central statute in State concerned — *Thus, Ss. 494 and 495 IPC are cognizable offences so far as Andhra Pradesh is concerned on account of 1992 A.P. Amendment because it received Presidential assent under Art. 254(2)* — CrPC, 1973, S. 2(c) and Sch. I (as amended by Andhra Pradesh Act 2 of 1992) — Constitution of India, Arts. 254(2) and Sch. VII List III Entry 2

Sections 494 and 495 IPC are cognizable offences so far as the State of Andhra Pradesh is concerned. What is relevant to be noticed is that the Code of Criminal Procedure (Andhra Pradesh Second Amendment) Act, 1992 was reserved by the

Governor of Andhra Pradesh for consideration and assent of the President. The Presidential assent was received on 10-2-1992 after which the Code of Criminal Procedure (Andhra Pradesh Second Amendment) Act, 1992 was published on 15-2-1992 in the Andhra Pradesh Gazette Part IV-B (Extraordinary). (Para 38)

In terms of Entry 2 in List III i.e. the Concurrent List in the Seventh Schedule, Constitution, Parliament and subject to Article 246(1) the legislature of any State also has the power to make laws with respect to CrPC. (Para 34)

Article 254(2) provides for curing of repugnancy which would otherwise invalidate a State law which is inconsistent with a Central law or an existing law. (Para 41)

The effect is merely to supersede the Central Act or to eclipse it by the State Act. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and overrule the provisions of the Central Act, in that State. (Para 43). *A. Subash Babu* v. *State of A.P.*, (2011) 7 SCC 616.

Bench Strength **2**. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 21-7-2011]

[10793] — Ss. 494 and 498-A — Facts disclosing both cognizable and non-cognizable offences relating to offences concerning marriage — Complaint not filed by aggrieved party — Police not debarred from investigating non-cognizable cases also and including them in the charge-sheet — *Complaint to the police in respect of offences under Ss. 498-A and 494 IPC lodged by the Women's Commission and not by the wife herself — Offence under S. 494 IPC being non-cognizable — Held, the High Court was not justified in quashing the charge under S. 494 IPC — CrPC, 1973 — Ss. 155(4) and 198*

Sub-section (4) of Section 155 creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising cognizable and non-cognizable offences) is to be treated as cognizable, the police had no option but to investigate the whole of the case and to submit a charge-sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed.

The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in sub-section (4) provides that even a non-cognizable case shall, in that situation, be treated as cognizable. *State of Orissa* v. *Sharat Chandra Sahu*, (1996) 6 SCC 435: 1996 SCC (Cri) 1387: AIR 1997 SC 1.

Bench Strength **2**. Coram: *Kuldip Singh* and **S. Saghir Ahmad**, JJ. [Date of decision: 8-10-1996]

[10794] — Ss. 494 and 498-A — Reversal of acquittal by High Court in revision — Propriety — Conviction by trial court based on recall of witness — Acquittal by appellate court, held, rightly reversed by High Court in revision — *Complainant did not press charges under Ss. 494 and 498-A and went to live with her husband and his second wife under a settlement with her husband (petitioner) — Complainant however filed a petition before trial court before conclusion of trial stating that accused had breached the settlement — Trial court recalled her for re-examination as a court witness — She supported allegations in the complaint — Trial court based thereon convicted petitioner under Ss. 494 and 498-A — Appellate court held that recalling of complainant as a court witness was invalid and acquitted petitioner — High Court set aside order of appellate court on this score and restored order of conviction passed by trial court — Held, High Court took correct view of matter and its order cannot be said to be in excess of revisional jurisdiction under Ss. 397 and 401 CrPC — CrPC, 1973, Ss. 397, 401, 311 and 320. Lal Kishore Jha* v. *State of Jharkhand*, (2011) 6 SCC 453.

Bench Strength **2**. Coram : *Aftab Alam* and *R.M. Lodha*, JJ. [Date of decision : 2-5-2011]

Vimal Singh v. Khuman Singh, (1998) 7 SCC 223: 1998 SCC (Cri) 1574; Mahendra Pratap Singh v. Sarju Singh, AIR 1968 SC 707: 1968 Cri LJ 865, distinguished on facts

[10795] — S. 494 r/w S. 17 of Hindu Marriage Act, 1955 — Challenge to validity of judgment of Supreme Court after dismissal of review petition against it whether maintainable — *Judgment under Art. 142 [allowing appeal and passing decree of divorce under S. 13-B, Hindu Marriage Act, 1955 and declaring all pending proceedings between the parties terminated including those under S. 494 IPC (bigamy) r/w S. 17 Hindu Marriage Act, 1955] challenged in review petition* *which was dismissed — Petitioner then challenging the said judgment as a nullity in fresh proceedings under Art. 32 — Whether permissible — Question directed to be placed before a Constitution Bench for consideration — Constitution of India, Art. 142 — Hindu Marriage Act, 1955, Ss. 13-B and 17 — Constitution of India, Arts. 32 and 137. Rupa Ashok Hurra* v. *Ashok Hurra*, (1999) 2 SCC 103: AIR 1999 SC 2870.

Bench Strength **3**. Coram: *S.C. Agrawal, S. Saghir Ahmad* and *M. Srinivasan*, JJ. [Date of decision: 8-5-1998]

— S. 494 r/w S. 109 *See also* Ss. 494 and S. 494 r/w S. 109

[10796] — S. 494 r/w S. 109 — Consent regarding compounding of offence — *Where consent given by complainant wife appeared to be free and genuine, and the compromise seemed on the face of it reasonable and in the interest of wife, and wife was an educated person, held, on facts, it was a fit case deserving permission for compounding of the offence of bigamy — CrPC, 1973 — S. 320. Parameswari* v. *Vennila*, (2000) 10 SCC 348.

Bench Strength **2**. Coram: *G.T. Nanavati* and *S.N. Phukan*, JJ. [Date of decision: 2-8-1999]

[10797] — Ss. 494/109 — Second marriage — Proof of — Admission of marriage by accused — Effect

A marriage is not proved unless the essential ceremonies required for its solemnisation are proved to have been performed.

Admission of marriage by the accused is not evidence of it for the purpose of proving marriage in an adultery or bigamy case. *Kanwal Ram* v. *Himachal Pradesh Admn.*, AIR 1966 SC 614: (1966) 1 SCR 539: 1966 Cri LJ 472, 473.

Bench Strength **3**. Coram: **A.K. Sarkar**, *Raghubar Dayal* and *V. Ramaswami*, JJ. [Date of decision: 19-8-1965]

— S. 496 *See also* Ss. 25 and Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496

See also Ss. 417, 493 and 496

See also Ss. 493 and 496

[10798] — S. 497 — Constitutionality — *Held, not violative of Arts. 14, 15 and 21 — Husband's complaint against wife's paramour with whom the wife was allegedly living in adultery, on facts, quashed, the husband having already obtained a divorce decree*

The argument that S. 497 effects discrimination between men and women as it confers upon the husband the right to prosecute the adulterer but it does not confer any right upon the wife to prosecute the woman with whom her husband has committed adultery, cannot be sustained because such argument goes to the policy of the law and not to its constitutionality unless while implementing the policy any provision of the Constitution is infringed. In defining the offence of adultery so as to restrict the class of offenders to men only, no constitutional provision is infringed. S. 497 cannot be struck down on the ground that it is desirable to delete it.

The challenge to S. 497 on ground that it does not confer any right on the wife to prosecute the husband who has committed adultery with another woman is also untenable. Who can prosecute whom for which offence depends, firstly, on the definition of the offence and, secondly, upon the restrictions placed by the law of procedure on the right to prosecute. The section does not envisage the prosecution of the wife by the husband for 'adultery'. It provides expressly that the wife shall not be punishable even as an abettor. No grievance can then be made that the section does not allow the wife to prosecute the husband for adultery. The offence of adultery, as defined in S. 497, is considered by the Legislature as an offence against the sanctity of the matrimonial home, an act which is committed by a man, as it generally is. Therefore, those men who defile that sanctity are brought within the net of the law.

Merely because S. 497 does not take in cases where the husband has sexual relations with an unmarried woman, it would not become unconstitutional. An under-inclusive definition is not necessarily discriminatory. The law, as it is, does not offend either Art. 14 or Art. 15. Law does not confer freedom upon husbands to be licentious by gallivanting with unmarried women. It only makes a specific kind of extra-marital relationship an offence, the relationship between a man and a married woman, the man alone being the offender. An unfaithful husband risks or, perhaps, invites a civil action by the wife for separation. The Legislature is entitled to deal with the evil where it is felt and seen most: A man seducing the wife of another.

Although the reputation of a married woman is adversely affected if a man is alleged to have committed adultery with her, but the argument that in absence of a provision in S. 497 for hearing the woman or impleading her as a necessary party to the prosecution the section would be violative of Art. 21 cannot be accepted. If the wife makes an application in the trial court that she should be heard before a finding is recorded on the question of adultery, the application would receive due consideration from the court. The right of hearing is a concomitant of the principles of natural justice, though not in all situations. That right can be read into the law in appropriate cases.

Though the erring spouses have no remedy against each other within the confines of S. 497 of the Penal Code, that is to say, they cannot prosecute each other for adultery, each one has a remedy against the other under the civil law for divorce on the ground of adultery. 'Adultery' under the civil law has a wider connotation than under the Penal Code.

Since the petitioner's husband has already obtained divorce against her on the ground of desertion, no useful purpose will be served by inquiring into the allegation whether she had adulterous relationship with another man against whom the husband had lodged a complaint under S. 497. *Sowmithri Vishnu* v. *Union of India*, 1985 Supp SCC 137: 1985 SCC (Cri) 325: AIR 1985 SC 1618: 1985 Cri LJ 1302.

Bench Strength **3**. Coram: **Y.V. Chandrachud, C.J.** and *R.S. Pathak* and *A.N. Sen*, JJ. [Date of decision: 27-5-1985]

[10799] — S. 497 — Provision disentitling wife to file complaint against her husband for offence of adultery, held not discriminatory

Section 497 of IPC is so designed that a husband cannot prosecute the wife for defiling the sanctity of the matrimonial tie by committing adultery. Thus the law permits neither the husband of the offending wife to prosecute his wife nor does the law permit the wife to prosecute the offending husband for being disloyal to her. Thus both the husband and the wife are disabled from striking each other with the weapon of criminal law.

Section 497 of IPC and S. 198(1) r/w S. 198(2) of the CrPC go hand in hand and constitute a legislative packet to deal with the offence committed by an outsider to the matrimonial unit who invades the peace and privacy of the matrimonial unit and poisons the relationship between the two partners constituting the matrimonial unit. The community punishes the 'outsider' who breaks into the matrimonial home and occasions the violation of sanctity of the matrimonial tie by developing an illicit relationship with one of the spouses subject to the rider that the erring 'man' alone can be punished and not the erring woman. It does not arm the two spouses to hit each other with the weapon of criminal law. That is why neither the husband can prosecute the wife and send her to jail nor can the wife prosecute the husband and send him to jail. There is no discrimination based on sex. While the outsider who violates the sanctity of the matrimonial home is punished a rider has been added that if the outsider is a woman she is not punished. There is thus reverse discrimination in 'favour' of the woman rather than 'against' her. The law does not envisage the punishment of any of the spouses at the instance of each other. Thus there is no discrimination against the woman insofar as she is not permitted to prosecute her husband. A husband is not permitted because the wife is not treated as an offender in the eye of the law. *V. Revathi* v. *Union of India*, (1988) 2 SCC 72: 1988 SCC (Cri) 308: AIR 1988 SC 835: (1988) 1 KLT 771: (1988) 2 HLR 39: (1988) 1 Punj LR 649.

Bench Strength **2**. Coram: **M.P. Thakkar** and *M.M. Dutt*, JJ. [Date of decision: 25-2-1988]

[10800] — S. 497 — Wife shall not be punishable as an abettor — *Provision does not offend Art. 14 of Constitution*

Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two Articles (14 and 15) read validate the clause in S. 497, Penal Code, according to which the wife is not punishable as an abettor of the offence of adultery. *Yusuf Abdul Aziz* v. *State of Bombay*, AIR 1954 SC 321: 1954 SCR 930: (1954) 1 MLJ 618: 56 Bom LR 1176: 1954 Cri LJ 886, 887.

Bench Strength **5**. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea*, *S.R. Das*, **Vivian Bose** and *Ghulam Hasan*, JJ. [Date of decision: 10-3-1954]

1952 Cri LJ 23 (Bom), affirmed

[10801] — S. 497 — Wife with whom adultery alleged, held, entitled to be heard at the trial before a finding is recorded affecting her reputation

If the wife makes an application in the trial court that she should be heard before a finding is recorded on the question of adultery, the application would receive due consideration from the court. There is nothing, either in the substantive or the adjectival criminal law, which bars the court from affording a hearing to a party, which is likely to be adversely affected, directly and immediately, by the decision of the court. *Sowmithri Vishnu* v. *Union of India*, 1985 Supp SCC 137: 1985 SCC (Cri) 325: AIR 1985 SC 1618: 1985 Cri LJ 1302.

Bench Strength **3**. Coram: **Y.V. Chandrachud, C.J.** and *R.S. Pathak* and *A.N. Sen*, JJ. [Date of decision: 27-5-1985]

— **S. 498** *See also* Ss. 304-B and 498
See also Ss. 304-B(1) and 498

[10802] — S. 498 — Scope, object and essential ingredients of

The provisions of S. 498, like those of S. 497 are intended to protect the rights of the husband and not those of the wife. The gist of the offence under S. 498 appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her. So prima facie the consent of the wife to deprive her husband of his proper control over her would not be material. It is infringement of the rights of the husband coupled with the intention of illicit intercourse that is the essential ingredient of the offence under S. 498. *Alamgir* v. *State of Bihar*, AIR 1959 SC 436: 1959 Supp (1) SCR 464: 1959 Cri LJ 527, 529.

Bench Strength **2**. Coram: **P.B. Gajendragadkar** and *A.K. Sarkar*, JJ. [Date of decision: 14-11-1958]

[10803] — S. 498 — "Detains" — Scope and meaning of — Willingness of wife is immaterial *— Person responsible for wife's willingness is deemed to have detained her*

The word "detains" may denote detention of a person against his or her will; but in the context of the section it is impossible to give this meaning to the said word. If the object of the section had been to protect the wife such a construction would obviously have been appropriate; but, since the object of the section is to protect the rights of the husband, it cannot be any defence to the charge to say that, though the husband has been deprived of his rights, the wife is willing to injure the said rights and so the person who is responsible for her willingness has not detained her. Detention in the context must mean keeping back a wife from her husband or any other person having the care of her on behalf of her husband with the requisite intention. Such keeping back may be by force; but it need not be by force. It can be the result of persuasion, allurement or blandishments which may either have caused the willingness of the woman, or may have encouraged, or cooperated with, her initial inclination, to leave her husband. If the willingness of the wife is immaterial and it cannot be a defence in cases falling under the first three categories mentioned in S. 498, it cannot be treated as material factor in dealing with the last category of case of detention mentioned in the said section. *Alamgir* v. *State of Bihar*, AIR 1959 SC 436: 1959 Supp (1) SCR 464: 1959 Cri LJ 527, 529.

Bench Strength **2**. Coram: **P.B. Gajendragadkar** and *A.K. Sarkar*, JJ. [Date of decision: 14-11-1958]

In re Sundara Das Tevan, 4 Mad HCR 20; Ramaswamy Udayar v. Raju Udayar, AIR 1953 Mad 333; Emperor v. Mahiji Fula, ILR 58 Bom 88: AIR 1933 Bom 489; Emperor v. Ramnarayan Baburao, 39 Bom LR 61: AIR 1937 Bom186; Ballabhdas Moti Ram Gupta v. Emperor, AIR 1943 Bom 178; Prithi Misir v. Harak Nath Singh, ILR (1937) 1 Cal 166: AIR 1936 Cal 450; Bipad Bhanjan Sarkar v. Emperor, AIR 1940 Cal 477: ILR (1940) 2 Cal 93; Banarsi Raut v. Emperor, AIR 1938 Pat 432; Bansi Lal v. Crown, 319 Pun LR 1913, approved

Mobarakshaikh v. Ahmad Nawaz, 48 Cal WN 980; Harnam Singh v. Emperor, AIR 1939 Lah 295: 40 Cri LJ 760, overruled

AIR 1957 Pat 285, affirmed

[10804] — S. 498 — Not established that the accused prevented or obstructed the wife from accompanying her husband or going to his house *— It was the wife who refused — Nor shown that enticement was for purposes of illicit intercourse — Offence, therefore, on facts not established. Adikanda Samal* v. *Madhabananda Nayak*, (1979) 4 SCC 488: 1980 SCC (Cri) 108: AIR 1980 SC 1729.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 24-1-1979]

[10805] — S. 498 — Policy underlying

The policy underlying the provisions of S. 498 may no doubt sound inconsistent with the modern notions of the status of women and of the mutual rights and obligations under marriage. That, however, is a question of policy with which courts are not concerned. *Alamgir* v. *State of Bihar*, AIR 1959 SC 436: 1959 Supp (1) SCR 464: 1959 Cri LJ 527, 529.

Bench Strength **2**. Coram: **P.B. Gajendragadkar** and *A.K. Sarkar*, JJ. [Date of decision: 14-11-1958]

[10806] — S. 498 — Sentence *— Sessions Judge imposing a sentence of 2 months' S. I. — High Court enhancing it to 6 months' R. I. — Interference by High Court was not justified — Sessions Judge's order restored*

It is true that, in enhancing the sentence, the High Court has observed that "women in this country, whether chaste or unchaste, must be protected and that it is the duty of the Court to see that they are given sufficient protection". The consideration set out in this observation is really not very helpful and not decisive because, S. 498 does not purport to protect the rights of women but it safeguards the rights of husbands. Besides, in the present case, it is clear that the woman is of loose moral character, was dissatisfied with the complainant, who is her second husband, and was willing to marry Appellant 1. In such a case, though Appellant 1 is guilty under S. 498, it is difficult to accept the view of the High Court that the sentence of two months' simple imprisonment imposed on him by the trial Court was so unduly or manifestly lenient as not to meet the ends of justice. It would not be right for the appellate Court to interfere with the order of sentence passed by the trial Court merely on the ground that if it had tried the case it would have imposed a slightly higher or heavier sentence. *Alamgir* v. *State of Bihar*, AIR 1959 SC 436: 1959 Supp (1) SCR 464: 1959 Cri LJ 527, 533.

Bench Strength **2**. Coram: **P.B. Gajendragadkar** and *A.K. Sarkar*, JJ. [Date of decision: 14-11-1958]

AIR 1957 Pat 285, reversed on a point

[10807] — S. 498 — Wife found in the house of accused — *Accused telling the complainant that he had married her and refusing to let her go with husband — Wife dissatisfied with the husband and going to live with accused willingly — Accused is guilty under S. 498*

It may be that the wife was dissatisfied with her husband and wanted voluntarily to leave her husband; but, on the evidence, it has been held that she must have been encouraged or induced not to go back to her husband because she knew that she would find ready shelter and protection with the accused and she must have looked forward to marry him. In fact the accused claims to have married her. Thus there can be no doubt that he intended to have illicit sexual intercourse with her. *Alamgir* v. *State of Bihar*, AIR 1959 SC 436: 1959 Supp (1) SCR 464: 1959 Cri LJ 527, 531, 532.

Bench Strength **2**. Coram: **P.B. Gajendragadkar** and *A.K. Sarkar*, JJ. [Date of decision: 14-11-1958]

S. 498-A — CRUELTY BY HUSBAND OR HIS RELATIVES

Synopsis

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(1) Generally — Object, Nature, Scope and Applicability

See also under Ss. 304-B and 306, above

[10808] — S. 498-A — Object of — *Held, is to combat the menace of dowry death and cruelty* (Para 10). *Sushil Kumar Sharma* v. *Union of India*, (2005) 6 SCC 281: 2005 SCC (Cri) 1473: AIR 2005 SC 3100: 2005 Cri LJ 3439.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 19-7-2005]

[10809] — S. 498-A — Object of — Restated (Para 17). *Noorjahan* v. *State*, (2008) 11 SCC 55: (2008) 3 SCC (Cri) 915: AIR 2008 SC 2131: (2008) 66 AIC 79 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 23-4-2008]

[10810] — S. 498-A — Object of, restated

The object of introducing Chapter XX-A in IPC was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. A hypertechnical view would be counterproductive and would act against the interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power by the High Court to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of IPC. (Para 14). *B.S. Joshi* v. *State of Haryana*, (2003) 4 SCC 675: 2003 SCC (Cri) 848: AIR 2003 SC 1386: (2003) 2 KLT 1062: 2003 Cri LJ 2028.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 13-3-2003]

[10811] — S. 498-A — Object reiterated — Caution indicated as the provision could be used as a device to achieve oblique motives

Section 498-A IPC was introduced with the avowed object to combat the menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives. (Para 20). *Onkar Nath Mishra* v. *State (NCT of Delhi)*, (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507: (2008) 62 AIC 155 (SC): 2008 Cri LJ 1391.

Bench Strength **2**. Coram: *Ashok Bhan* and **D.K. Jain**, JJ. [Date of decision: 14-12-2007]

[10812] — S. 498-A — Applicability — Second wife — S. 498-A, held, is attracted even in case of allegation of cruelty to second wife — *Therefore, quashment of proceeding under S. 498-A initiated by second wife, by High Court on that ground, set aside — Case restored to be further proceeded with — CrPC, 1973 — S. 482 — Quashment — Second wife — S. 498-A IPC, held, is attracted even in case of allegation of cruelty to second wife*

The High Court was not justified at all in quashing the proceedings initiated against the appellant under Section 498-A IPC on the ground that Respondent 2 was not "wife" within the meaning of Section 498-A IPC and was not entitled to maintain a complaint under the said provision. (Para 55)

Though challenge was not made by any of the two respondents to the finding recorded by the Single Judge that the complaint lodged by Respondent 2 for alleged commission of offence punishable under Section 498-A IPC is not maintainable because she is not a "wife", absence of challenge either by the State or by the original complainant should not persuade or prevent the Supreme Court from doing justice between the parties by restoring the complaint filed by Respondent 2 under Section 498-A IPC to the file of the Magistrate. (Para 62)

The conclusion arrived at by the High Court is such as to shake the conscience and sense of justice and therefore it is the duty of the Supreme Court to strike down the finding recorded with respect to the offence punishable under Section 498-A, irrespective of technicalities. The judgment of the High Court quashing the proceedings initiated by the Magistrate for commission of the offence punishable under Section 498-A is tainted with serious legal infirmities and is founded on a legal construction which is erroneous. (Para 63)

There may be several reasons due to which the State might not have challenged that part of the judgment of the Single Judge quashing the complaint filed by Respondent 2 under Section 498-A IPC. (Para 58)

So the technical plea that in the absence of an appeal by any of the respondents, quashing of proceedings with respect to the offence punishable under Section 498-A IPC, cannot be set aside, is hereby rejected. (Para 64). *A. Subash Babu* v. *State of A.P.*, (2011) 7 SCC 616.

Bench Strength **2**. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 21-7-2011]

Reema Aggarwal v. Anupam, (2004) 3 SCC 199: 2004 SCC (Cri) 699, applied

Chandrakant Patil v. State, (1998) 3 SCC 38: 1998 SCC (Cri) 720, relied on

[10813] — Ss. 498-A and 304-B — *Object behind enactment of said sections of the Penal Code and Evidence Act, explained — Husband — Who is — Evidence Act, 1872 — S. 113-B*

The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions. (Para 18)

The essential ingredient constituting the offence of bigamy is the "marrying" again during the lifetime of husband or wife in contrast to the ingredients of Section 498-A which, among other things, envisage subjecting the woman concerned to cruelty. The thrust is mainly on "marrying" in Section 494 IPC as against subjecting of the woman to cruelty in Section 498-A. Likewise, the thrust of the offence under Section 304-B is also on "dowry death". Consequently, the evils sought to be curbed are distinct and separate from the persons committing the offending acts and there could be no impediment in law to liberally construe the words or expressions relating to the persons committing the offence so as to rope in not only those validly married but also anyone who has undergone some or other form of marriage and thereby assumed for himself the position of husband to live, cohabit and exercise authority as such husband over another woman. (Para 9). *Reema Aggarwal* v. *Anupam*, (2004) 3 SCC 199: 2004 SCC (Cri) 699: AIR 2004 SC 1418: 2004 Cri LJ 892: (2004) 2 KLT 822.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-1-2004]

Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530: 1988 SCC (Cri) 182, impliedly distinguished

Vungarala Yedukondalu v. State of A.P., 1988 Cri LJ 1538: (1988) 1 An LT 1 (AP); State of Karnataka v. Shivaraj, 2002 Cri LJ 2741 (Kant), approved

Heydon's case, (1584) 3 Co Rep 7a: 76 ER 637; Chief Justice of A.P. v. L.V.A. Dixitulu, (1979) 2 SCC 34: 1979 SCC (L&S) 99; Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609: 1988 SCC (Cri) 711; District Mining Officer v. Tata Iron & Steel Co., (2001) 7 SCC 358; Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424; Seaford Court Estates Ltd. v. Asher, (1949) 2 All ER 155 (CA), relied on

Ramnarayan v. State of M.P., (1998) 3 Crimes 147 (MP), overruled

Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661; Goodyear India Ltd. v. State of Haryana, (1990) 2 SCC 71: 1990 SCC (Tax) 223; Parayankandiyal Eravath Kanapravan Kalliani Amma v. K. Devi, (1996) 4 SCC 76: AIR 1996 SC 1963; Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd., (2004) 1 SCC 702, followed

Bhaurao Shankar Lokhande v. State of Maharashtra, AIR 1965 SC 1564: (1965) 2 Cri LJ 544; Surjit Kaur v. Garja Singh, (1994) 1 SCC 407: 1994 SCC (Cri) 259, explained and distinguished

[10814] — Ss. 498-A and 304-B and Evidence Act, 1872, Ss. 113-A and 113-B — Object and purpose of introducing these amendments

The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the legislative conscience to such an extent that the legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Ss. 113-A and 113-B in the Evidence Act and Ss. 498-A and 304-B in the Penal Code. *Brij Lal* v. *Prem Chand*, 1989 Supp (2) SCC 680: AIR 1989 SC 1661.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 20-4-1989]

(2) Ss. 498-A, 304-B & 306 — Relative scope

See also under Ss. 304-B and 306, above

[10815] — Ss. 498-A, 302/34 and 304-B — Death of housewife by burning — Charge of murder against parents-in-law of the deceased not established — *Evidence on record showing that parents-in-law of the deceased subjected her to cruelty leading to the inference that she committed self-immolation unable to bear the cruelty of her in-laws any more — Circumstances probabilising the defence version that the deceased committed self-immolation — There being no allegation of harassment on account of demand of dowry S. 304-B would not apply — In the circumstances of the case, conviction of the appellants altered from Ss. 302/34 to S. 498-A and sentence reduced to the period already undergone. Kanchy Komuramma* v. *State of A.P.*, 1995 Supp (4) SCC 118: 1996 SCC (Cri) 31.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 24-2-1994]

[10816] — Ss. 498-A and 304-B — *Object behind enactment of said sections of the Penal Code and Evidence Act, explained — Husband — Who is — Evidence Act, 1872 — S. 113-B*

The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions. (Para 18)

The essential ingredient constituting the offence of bigamy is the "marrying" again during the lifetime of husband or wife in contrast to the ingredients of Section 498-A which, among other things, envisage subjecting the woman concerned to cruelty. The thrust is mainly on "marrying" in Section 494 IPC as against subjecting of the woman to cruelty in Section 498-Aa. Likewise, the thrust of the offence under Section 304-B is also on "dowry death". Consequently, the evils sought to be curbed are distinct and separate from the persons committing the offending acts and there could be no impediment in law to liberally construe the words or expressions relating to the persons committing the offence so as to rope in not only those validly married but also anyone who has undergone some or other form of marriage and thereby assumed for himself the position of husband to live, cohabit and exercise authority as such husband over another woman. (Para 9). *Reema Aggarwal* v. *Anupam*, (2004) 3 SCC 199: 2004 SCC (Cri) 699: AIR 2004 SC 1418: 2004 Cri LJ 892: (2004) 2 KLT 822.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-1-2004]

Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530: 1988 SCC (Cri) 182, impliedly distinguished

Vungarala Yedukondalu v. State of A.P., 1988 Cri LJ 1538: (1988) 1 An LT 1 (AP); State of Karnataka v. Shivaraj, 2002 Cri LJ 2741 (Kant), approved

Heydon's case, (1584) 3 Co Rep 7a: 76 ER 637; Chief Justice of A.P. v. L.V.A. Dixitulu, (1979) 2 SCC 34: 1979 SCC (L&S) 99; Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609: 1988 SCC (Cri) 711; District Mining Officer v. Tata Iron & Steel Co., (2001) 7 SCC 358; Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424; Seaford Court Estates Ltd. v. Asher, (1949) 2 All ER 155 (CA), relied on

Ramnarayan v. State of M.P., (1998) 3 Crimes 147 (MP), overruled

Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661; Goodyear India Ltd. v. State of Haryana, (1990) 2 SCC 71: 1990 SCC (Tax) 223; Parayankandiyal Eravath Kanapravan Kalliani Amma v. K. Devi, (1996) 4 SCC 76: AIR 1996 SC 1963; Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd., (2004) 1 SCC 702, followed

Bhaurao Shankar Lokhande v. State of Maharashtra, AIR 1965 SC 1564: (1965) 2 Cri LJ 544; Surjit Kaur v. Garja Singh, (1994) 1 SCC 407: 1994 SCC (Cri) 259, explained and distinguished

[10817] — Ss. 498-A and 304-B — Accused charged under S. 304-B only — Conviction under S. 498-A where no case made out under S. 304-B — *Comparison between Ss. 498-A and 304-B — Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman, held, required to be established for the applicability of S. 498-A — Ss. 498-A and 304-B, held, deal with two distinct offences — Meaning of "cruelty" or harassment" under S. 304-B, held, is same as prescribed in Expln. to S. 498-A — A person charged and acquitted under S. 304-B, held, can be convicted under S. 498-A without that charge being there, if such a case is made out — On a case being established there can be conviction under both the sections*

Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman are required to be established in order to bring home the application of Section 498-A IPC. Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of "cruelty". In Section 304-B there is no such explanation about the meaning of "cruelty". But having regard to the common background to these offences, it has to be taken that the meaning of "cruelty" or "harassment" is the same as prescribed in the Explanation to Section 498-A under which "cruelty" by itself amounts to an offence. Under Section 304-B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. A person charged and acquitted under Section 304-B can be convicted under Section 498-A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (Para 7). *Kaliyaperumal* v. *State of T.N.*, (2004) 9 SCC 157: 2004 SCC (Cri) 1417: AIR 2003 SC 3828: 2003 Cri LJ 4321.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-8-2003]

Akula Ravinder v. State of A.P., 1991 Supp (2) SCC 99: 1991 SCC (Cri) 990, relied on

[10818] — Ss. 498-A and 304-B — Allegations relating to offence under S. 498-A IPC could not be established by prosecution — *As regards offence under S. 304-B IPC, in absence of any evidence to suggest that soon before the occurrence, deceased was subjected to torture and harassment, conviction thereunder as recorded by trial court also cannot be sustained — Order of acquittal by High Court, being based on evidence on record and on proper appreciation of evidence, held, proper — CrPC, 1973 — Ss. 378 and 386. State of Orissa* v. *Niranjan Mohapatra*, (2005) 9 SCC 578: 2005 SCC (Cri) 1251: AIR 2005 SC 970: 2005 Cri LJ 1427.

Bench Strength **2**. Coram: **B.P. Singh** and *B.N. Srikrishna*, JJ. [Date of decision: 3-2-2005]

[10819] — Ss. 498-A and 304-B — Applicability of S. 498-A — Comparison between S. 498-A and S. 304-B — *Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman, held, required to be established for the applicability of S. 498-A — Ss. 304-B and 498-A, held, deal with two distinct offences — Meaning of "cruelty" or "harassment" under S. 304-B, held, is same as prescribed in Expln. to S. 498-A — A person charged and acquitted under S. 304-B, held, can be convicted under S. 498-A without that charge being there, if such a case is made out — On a case being established there can be conviction under both the sections*

Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498-A IPC. Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of "cruelty". In Section 304-B there is no such explanation about the meaning of "cruelty". But having regard to the common background of these offences it has to be taken that the meaning of "cruelty" or "harassment" is the same as prescribed in the Explanation to Section 498-A under which "cruelty" by itself amounts to an offence. Under Section 304-B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. A person charged and acquitted under Section 304-B can be convicted under Section 498-A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (Para 11). *Hira Lal* v. *State (Govt. of NCT of Delhi)*, (2003) 8 SCC 80: 2003 SCC (Cri) 2016: AIR 2003 SC 2865: (2003) 105 DLT 705: 2003 Cri LJ 3711.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-7-2003]

Akula Ravinder v. State of A.P., 1991 Supp (2) SCC 99: 1991 SCC (Cri) 990, relied on

[10820] — Ss. 498-A and 304-B — Comparison between these sections — *Held, Ss. 304-B and 498-A deal with two distinct offences — Meaning of "cruelty" or "harassment" under S. 304-B is same as prescribed in Expln. to S. 498-A* (Para 9). *Sushil Kumar Sharma* v. *Union of India*, (2005) 6 SCC 281: 2005 SCC (Cri) 1473: AIR 2005 SC 3100: 2005 Cri LJ 3439.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 19-7-2005]

[10821] — Ss. 498-A & 304-B — Distinction between — The two provisions are not mutually exclusive — *They deal with different and distinct offences — Person charged and acquitted under S. 304-B can be convicted under S. 498-A even in absence of any charge*

Sections 304-B and 498-A are not mutually exclusive. They deal with different and distinct offences. In both the sections, "cruelty" is a common element. Under Section 498-A, however, cruelty by itself amounts to an offence and is punishable. Under Section 304-B, it is the dowry death that is punishable and such death must have occurred within seven years of the marriage. No such period is mentioned in Section 498-A. Moreover, a person charged and acquitted under Section 304-B can be convicted under Section 498-A without a specific charge being there, if such a case is made out. (Para 29). *Arun Garg* v. *State of Punjab*, (2004) 8 SCC 251: (2004) 3 KLT 435.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 29-9-2004]

[10822] — Ss. 498-A and 306 — Charge under S. 498-A is maintainable even if accused is acquitted under S. 306

Charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other. But in order to justify a conviction under Section 498-A there must be available on record some material and cogent evidence. (Para 17). *Girdhar Shankar Tawade* v. *State of Maharashtra*, (2002) 5 SCC 177: 2002 SCC (Cri) 971: AIR 2002 SC 2078: 2002 Cri LJ 2814: (2002) 4 MPLJ 5: (2002) 4 Mah LJ 5.

Bench Strength **2**. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 24-4-2002]

[10823] — Ss. 498-A and 306 — Conviction for abetment of suicide and cruelty — Sustain-ability — *Letters purportedly written by appellant-accused clearly establishing commission of offences punishable under S. 498-A IPC and S. 3, Dowry Prohibition Act, 1961 — However, considering principles laid down by Supreme Court in its various decisions to sustain conviction under S. 306, held on facts, allegations pertaining to S. 306 not made out — Hence, appellant liable to be* *convicted under S. 498-A and S. 3, DP Act — While maintaining sentence of 10 years imposed under S. 498-A, sentence in respect of offence under S. 3, DP Act, reduced to 3 years from 5 years — Dowry Prohibition Act, 1961, Ss. 3 and 7* (Paras 2 and 12 to 14). *Kishangiri Mangalgiri Goswami* v. *State of Gujarat*, (2009) 4 SCC 52: (2009) 2 SCC (Cri) 62: AIR 2009 SC 1808: 2009 Cri LJ 1720: (2009) 2 Guj LR 1074.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 28-1-2009]

Mahendra Singh v. State of M.P., 1995 Supp (3) SCC 731: 1995 SCC (Cri) 1157, considered and relied on

Kishori Lal v. State of M.P., (2007) 10 SCC 797: (2007) 3 SCC (Cri) 701; Randhir Singh v. State of Punjab, (2004) 13 SCC 129: 2005 SCC (Cri) 56; Sohan Raj Sharma v. State of Haryana, (2008) 11 SCC 215: (2009) 1 SCC (Cri) 387, relied on

[10824] — Ss. 498-A and 306 & 107 — Case of cruelty and abetment of suicide — Conviction under S. 306 reversed — Upheld under S. 498-A — Deceased (wife of appellant-accused) objected to extra-marital relationship of appellant with a woman *A — Appellant sought permission of deceased to marry* **A**, *which was refused by deceased — Consequently, he started torturing deceased both physically and mentally — Allegations that deceased was provoked by appellant to end her life by consuming poison or by hanging herself — Case that three months prior to death of deceased, appellant brought* **A** *to his house — That, in the evening prior to date of death of deceased, deceased was assaulted by* **A**, *appellant and his family members — On next morning, deceased found hanging in appellant's house — High Court upholding appellant's conviction under aforementioned sections — Sustainability — Held, no direct evidence to show that appellant by his acts instigated or provoked deceased to commit suicide — No act done by him which could be said to have facilitated commission of suicide by deceased — However, fact that cruelty was meted out to deceased, sufficiently proved from evidence on record — Accordingly, conviction of appellant under S. 306 set aside, but his conviction under S. 498-A upheld*

The prosecution heavily relied on clause Thirdly of Section 107 IPC because, according to the prosecution, the appellant-accused by way of harassment and torturing the deceased (appellant's wife) at various points of time and by marrying *A* (woman with whom appellant had extra-marital relationship) for the second time without the permission and against the will of the deceased, intentionally aided the commission of suicide by the deceased. In support of the aforesaid contention, the prosecution relied upon Explanation 2 to Section 107 IPC. The prosecution submitted that prior to the commission of suicide by the deceased, the appellant had, by bringing said *A* as his second wife to his house, facilitated the commission of suicide by the deceased and thus, the appellant intentionally aided the commission of suicide by the deceased. The evidence on record, however, does not support such a case. (Paras 18 and 19)

It is pertinent to note that the appellant had brought *A* to stay with him at his house three months prior to the date of the death of the deceased. If the deceased had been so perturbed by the act of the appellant in marrying the said *A* and in bringing her to his house that she felt impelled to commit suicide, then she could have done so on the very day when *A* had come to stay with the appellant in his house, as naturally at that point of time her annoyance or dismay with life would have been at its pinnacle. From the period of three months which elapsed in between the incidents of the appellant bringing *A* to his house and the deceased committing suicide, it can be clearly inferred that it was not the act of the appellant which instigated or provoked the deceased to commit suicide. (Para 20)

The perpetration of physical torture on the deceased on the day prior to the date of the incident which led the deceased to commit suicide is the prosecution case all throughout. It is nowhere the case of the prosecution that the appellant had played any active role either in instigating or aiding the commission of suicide by the deceased for denying to accept *A* as the wife of the appellant. *A*, the second wife of the appellant was brought by the appellant to his house about three months prior to the date of the incident of suicide by the deceased and therefore, bringing of the second wife to the house by the appellant cannot be said to have either incited or facilitated the commission of suicide by the deceased. It is also not the case of the prosecution as disclosed from the evidence led. The aforesaid contention is far-fetched and is not established by the facts of the present case. (Para 21)

There is no direct evidence to show that the appellant had by his acts instigated or provoked the deceased to commit suicide and has not done any act which could be said to have facilitated the commission of suicide by the deceased. (Para 22)

Regarding whether a case under Section 498-A IPC is made out against the appellant or not, the prosecution witnesses have in their testimonies stated that the deceased was tortured both physically and mentally by the appellant for the first time after his marriage with the deceased when he was refused permission for marriage with said *A* by the deceased. On having been refused the permission for his second marriage with *A*, the appellant again, after a few days requested the deceased to accede to his request for marriage with *A*, which request was again refused by the deceased. Consequent to the said position and due to the adamant position taken by the deceased, cruelty was meted out to her by the accused, which fact is sufficiently proved from the evidence on record. Therefore, there is no reason to take a different view than what has been taken by the trial court and the High Court as far as Section 498-A IPC is concerned. (Paras 23 and 24)

Accordingly, the conviction of the appellant under Section 306 IPC is set aside but the conviction of the appellant under Section 498-A IPC is upheld. (Para 25). *Amalendu Pal* v. *State of W.B.*, (2010) 1 SCC 707.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *R.M. Lodha*, JJ. [Date of decision: 11-11-2009]

Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177: 2002 SCC (Cri) 971, relied on

[10825] — Ss. 498-A, 306 and 304-B — Death of a young wife by consuming aluminium phosphate — *Evidence of brother of the deceased that the deceased was subjected to humiliation and mental torture on account of demand of dowry — Absence of sufficient evidence to establish charge under Ss. 306 and 304-B — Hence conviction under those sections set aside — However, there being direct and convincing evidence that the deceased had been humiliated and treated with cruelty on some occasion by the appellant and his mother who died before the trial, conviction of the appellant under S. 498-A upheld. Satpal* v. *State of Haryana*, (1998) 5 SCC 687: 1998 SCC (Cri) 1372: AIR 1999 SC 1476.

Bench Strength **2**. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 19-2-1998]

[10826] — Ss. 498-A and 306/304-B r/w S. 34 — Acquittal confirmed — Respondent *R*, with his father and mother acquitted by trial court from charges under Ss. 306/ 304-B r/w S. 34, while only accused *R* convicted under S. 498-A — Appeal against acquittal dismissed by High Court in limine — *In Supreme Court, acquittal from offence under S. 306 only challenged on grounds that trial Judge had not considered the ingredients of S. 113-A of Evidence Act, 1872 and further he had not given any reason as to why he had acquitted the accused persons under S. 306 IPC particularly when he had convicted Accused 1 for offence under S. 498-A of Penal Code — Held, reasoning of trial Judge that no demand of dowry proved as also no case of abetment to commit suicide is made out, was correct — High Court's approach to dismiss appeal in limine without assigning reasons, however disapproved — CrPC, 1973, S. 378 — Evidence Act, 1872, S. 113-A*

Dismissing the appeal,

Held :

The Additional Sessions Judge had given good reasons as to why the presumption would not arise under Section 113-A, Evidence Act. The Additional Sessions Judge has recorded the finding that there was no material to prove that there was any demand of dowry made by the husband or by the father-in-law or by the mother-in-law. The Additional Sessions Judge has also further found that there was no material on record to prove that there was any cruelty meted out to the deceased to commit suicide. (Para 9)

The High Court had not given reasons and had chosen to dismiss the said appeal in limine refusing the leave to file appeal against the acquittal. The course adopted by the High Court cannot be appreciated. Ordinarily, the High Court should have given good reasons even before refusing the leave to file an appeal against the acquittal. That is the established law now. However, sending back the matter again to the High Court would be hazardous as about ten years have elapsed since the death of the deceased. (Para 10)

After overall consideration, the Additional Sessions Judge was correct in acquitting the respondent-accused under Section 306 IPC and the High Court was also correct to refuse the State to file an appeal against the acquittal although the High Court should have given reasons. (Para 11). *State of Punjab* v. *Rajwinder Singh*, (2009) 16 SCC 778: (2010) 3 SCC (Cri) 1008.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and *R.M. Lodha*, JJ. [Date of decision: 26-5-2009]

(3) Abuse of S. 498-A

See also under S. 482, CrPC, 1973 '(11)(xxvii) Quashment re family/marital/dowry, etc. disputes', pp. 485 et seq. in Vol. 18, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 2 of *SC on CrPC and Criminal Trial*

[10827] — S. 498-A — Abuse and misuse of — Measures to be taken for prevention of — Duty of courts and investigating agency — *Held, legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with — Till then the courts have to take care of the situation within the existing framework — There* *is no question of the investigating agency and courts casually dealing with the allegations — There is no scope for any preconceived notion or view — Ultimate objective of legal system is to arrive at the truth, punish the guilty and protect the innocent — Investigating agencies and courts to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations — While dealing with cases based on circumstantial evidence, the law laid down relating to circumstantial evidence has to be kept in view — Constitution of India, Art. 32*

The object of Section 498-A IPC is to strike at the roots of dowry menace. But by misuse of the said provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. Many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. (Para 19)

It is argued that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalised a statement. Certain statutory presumptions are drawn which again are rebuttable. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. The role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view. (Para 19). *Sushil Kumar Sharma* v. *Union of India*, (2005) 6 SCC 281: 2005 SCC (Cri) 1473: AIR 2005 SC 3100: 2005 Cri LJ 3439.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 19-7-2005]

[10828] — S. 498-A — Ingredients/prerequisites for presumption of offence under — Whether made out at stage of framing of charge against in-laws — *No allegation of wilful conduct of harassment by Appellants 1 and 2 (in-laws) — Allegation that A-3 (husband) wanting the complainant wife to beg apology from, talk with and obey her in-laws as a condition to return back to her conjugal life — Admittedly after 3-7-1994 complainant had never lived with A-1 and A-2 — Complainant alleging dowry demand in her complaint dated 4-4-1995 — The allegation of misbehaviour on the part to A-1 and A-2 and demand of dowry by them, held, was an afterthought and not bona fide — Hence charges quashed against A-1 and A-2 — However, trial directed to continue against A-3 under S. 498-A*

Section 498-A IPC was introduced with the avowed object to combat the menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives. (Para 20)

In the complaint dated 8-11-1994 there was not even a whisper of a wilful conduct of Appellants 1 and 2 of harassment of the complainant at their hands with a view to coercing her to meet any unlawful demand by them so as to attract the provisions of Section 498-A read with Explanation thereto. The complaint referred to the talk the complainant purports to have had with her husband, Appellant 3, who is alleged to have told her to come to Bijnore; and if she apologised to his father, kept him happy, obeyed his sister and talked to her father (the complainant's) to give her Rs 50,000 and VCR and bring these articles to Bijnore. The allegation of misbehaviour on the part of Appellants 1 and 2 and the demand of Rs 50,000 and VCR by them made by the complainant in her subsequent statement, dated 4-4-1995, was an afterthought and not bona fide. (Paras 19 to 20 and 9). *Onkar Nath Mishra* v. *State (NCT of Delhi)*, (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507: (2008) 62 AIC 155 (SC): 2008 Cri LJ 1391.

Bench Strength **2**. Coram: *Ashok Bhan* and **D.K. Jain**, JJ. [Date of decision: 14-12-2007]

[10829] — S. 498-A — Prosecution under — Need for restraint — Duty of Bar and Bench — *Social responsibility and obligation to maintain social fibre of family life — Genuine cases of dowry harassment matter of serious concern but exaggerated version of small incidents should not be reflected in the criminal complaints — Allegations to be scrutinised with great care and circumspection, especially against husband's relatives who were living in different cities and never visited or rarely visited the matrimonial home of the complainant — Need for serious relook at entire provision by Parliament recommended*

It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including the Supreme Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of society. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. It is seen that a large number of such complaints are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern. (Paras 30 and 32)

The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on the advice or with concurrence of the learned members of the Bar who belong to a noble profession and must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases. (Para 33)

Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations. (Para 34)

The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in a majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. (Para 35)

The allegations of harassment by the husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant wife resided would have an entirely different complexion. Such allegations of the complainant are required to be scrutinised with great care and circumspection. (Para 35)

Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful. (Para 36)

A serious relook at Section 498-A is warranted by the legislature. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. (Para 37)

A copy of this judgment is directed to be sent to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interests of society. (Para 38). *Preeti Gupta* v. *State of Jharkhand*, (2010) 7 SCC 667.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 13-8-2010]

[10830] — S. 498-A — Quashing of proceedings by High Court — Allegation of mala fides against informant — Effect of — Allegations of cruelty, dowry demand by appellant wife — *On facts, held, allegation of mala fides against informant are of no consequence and cannot by themselves be the basis for quashing the proceedings — Dowry Prohibition Act, 1961, Ss. 3 and 4 — CrPC, 1973, S. 482* (Paras 10, 9 and 6)

The appellant wife, married Respondent 3, *R* on 1-7-1998, alleging mental and physical torture for dowry demands made a complaint alleging commission of offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (the Act). The police registered an FIR. In the suit for divorce filed by the husband, Family Court directed maintenance at the rate of Rs 2000 p.m. and the cost of litigation to be paid to the appellant. The appellant's father-in-law filed Miscellaneous Case No. 12 of 2001 questioning correctness of the maintenance order on the ground that the appellant's husband has no share in the ancestral property and maintenance cannot be paid out of it. Charge-sheet was filed on 12-8-2000. An application for discharge in terms of Section 239 CrPC was filed on 28-8-2001. The prayer was rejected on 7-9-2001 by SDJM. The Sessions Judge dismissed the revision application of the respondents. However, by the impugned order, the High Court quashed the proceedings initiated against Respondents 1 to 7, in purported exercise of power under Section 482 CrPC.

Allowing the appeal, the Supreme Court held as above. *Renu Kumari* v. *Sanjay Kumar*, (2008) 12 SCC 346.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 3-3-2008]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691: 2004 SCC (Cri) 353; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272, relied on

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, distinguished

[10831] — S. 498-A — Validity of — Challenge made to, on ground of its misuse and abuse against accused — Held, was not sustainable — *Said provision is legal/constitutional — If a provision of law is misused and subjected to abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary*

By a petition under Article 32 of the Constitution prayer was made to declare Section 498-A IPC to be unconstitutional and ultra vires, or in the alternative to formulate guidelines so that innocent persons are not victimised by unscrupulous persons making false accusations. Further prayer was made that whenever, any court comes to the conclusion that the allegations made regarding commission of offence under Section 498-A IPC are unfounded, stringent action should be taken against the person making the allegations. This, according to the petitioner, would discourage persons from coming to courts with unclean hands and ulterior motives.

Held :

There is no substance in the plea that Section 498-A IPC has no legal or constitutional foundation. (Para 18)

Mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed, unless the contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand". Therefore, if a statutory provision is otherwise intra vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra vires or unconstitutional. In such cases, "action" and not the "section" may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved. (Paras 12 and 14)

While interpreting a provision, the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (Para 16). *Sushil Kumar Sharma* v. *Union of India*, (2005) 6 SCC 281: 2005 SCC (Cri) 1473: AIR 2005 SC 3100: 2005 Cri LJ 3439.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 19-7-2005]

A. Thangal Kunju Musaliar v. M. Venkatichalam Potti, (1955) 2 SCR 1196: AIR 1956 SC 246; Budhan Choudhry v. State of Bihar, (1955) 1 SCR 1045: AIR 1955 SC 191: 1955 Cri LJ 374; Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536; Collector of Customs v. Nathella Sampathu Chetty, (1962) 3 SCR 786: (1962) 1 Cri LJ 364; State of Rajasthan v. Union of India, (1977) 3 SCC 592; Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005: AIR 1954 SC 282, followed

Savitri Devi v. Ramesh Chand, CR No. 462 of 2002, held, disapproved

Maulavi Hussein Haji Abraham Umarji v. State of Gujarat, (2004) 6 SCC 672: 2004 SCC (Cri) 1815; Unique Butyle Tube Industries (P) Ltd. v. U.P. Financial Corpn., (2003) 2 SCC 455; Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, relied on

[10832] — Ss. 498-A and 406 — Abuse of — Apprehensions of father that mother of child would embroil him in prosecution under matrimonial and dowry laws — Role and power of court — *Guardians and Wards Act, 1890, Ss. 7, 17 and 39*

In the ordinary course the District Court ought to have made provision for visitation rights because even an interim order of custody in favour of one parent should not insulate the minor from the parental touch and influence of the other parent, which is so very important for the healthy growth of the minor and the development of his personality. It is noteworthy that even the respondent father did not claim such rights in his application or in the proceedings before the High Court. (Para 68)

Serious apprehensions about the safety of the father may not be entirely out of place i.e. fear of prosecution under Sections 498-A or 406 IPC or the Dowry Prohibition Act, 1961, but that does not mean that the courts below could not grant redress against the same. In fact an FIR in respect of such offences has rightly been quashed by the High Court, and which quashment has been upheld by the Supreme Court. (Paras 69 and 81)

For a boy so young in years, a deep-rooted dislike for the father could arise only because of a constant hammering of negative feeling in him against his father. This approach and attitude on the part of the appellant mother or her parents can hardly be appreciated. What the appellant mother ought to appreciate is that feeding the minor with such dislike for his father does not serve his interest or his growth as a normal child. (Para 72)

Telephonic contact and videoconferencing should not be prevented by the appellant. (Para 74)

The stated directions regarding visitation rights are subject to the condition that the respondent does not remove the child from the jurisdiction of the Supreme Court pending final disposal of the application for grant of custody by the Guardians and Wards Court, Delhi. Within the broad parameters of the directions regarding visitation rights of the respondent, the parties shall be free to seek further directions from the court seized of the guardianship proceedings, to take care of any difficulties that may arise in the actual implementation of this order. (Para 77). *Ruchi Majoo* v. *Sanjeev Majoo*, (2011) 6 SCC 479.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **T.S. Thakur**, JJ. [Date of decision : 13-5-2011]

(4) Ingredients of S. 498-A

Synopsis

(i) Broadly 1144
(ii) Husband — Who is 1147
(iii) Women protected under S. 498-A 1148
(iv) Relative of husband — Who is 1148
(v) Cruelty — Meaning of 1150
  1. Broadly 1150
  2. Wilful conduct likely to drive woman to commit suicide 1157
  3. Wilful conduct likely to cause grave injury or danger to health (mental or physical) of woman 1163
  4. Harassment to meet unlawful demand for property or valuable security — Dowry demand 1164
  5. Presumption under Ss. 113-A /113-B, Evidence Act 1167

(i) Broadly

See also '(v)1. Cruelty — Meaning of — Broadly', below

[10833] — S. 498-A — Object of — Restated — Essential ingredients of offence under — Enumerated — Averments necessary — *Held, for proving offence under S. 498-A IPC, complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any wilful conduct on part of accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health — In present case, no such allegation had been made or otherwise could be found out so as to arrive at opinion that appellants prima facie committed such an offence. Bhaskar Lal Sharma* v. *Monica*, (2009) 10 SCC 604: (2009) 161 DLT 739.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 27-7-2009]

[10834] — S. 498-A — Evidence Act, 1872 — S. 113-A — Both these provisions include in their amplitude past events of cruelty

Section 498-A IPC and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-A of the Evidence Act is seven years; presumption arises as to dowry death when a woman committed suicide within a period of seven years from the date of marriage. (Para 11). *Hira Lal* v. *State (Govt. of NCT of Delhi)*, (2003) 8 SCC 80: 2003 SCC (Cri) 2016: AIR 2003 SC 2865: (2003) 105 DLT 705: 2003 Cri LJ 3711.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-7-2003]

[10835] — S. 498-A — Cruelty — Essential ingredient — To bring home the charge under S. 498-A, held, cruelty is the necessary ingredient which is needed to be proved. *State of Maharashtra* v. *Ashok Narayan Dandalwar*, (2000) 9 SCC 257: AIR 2000 SC 3568 (2).

Bench Strength 2. Coram: *G.B. Pattanaik* and *S.N. Variava*, JJ. [Date of decision: 27-4-2000]

[10836] — S. 498-A — Ingredients of, re-enumerated (Paras 7 to 10). *U. Suvetha* v. *State*, (2009) 6 SCC 757: (2009) 3 SCC (Cri) 36: 2009 Cri LJ 2974: (2009) 2 KLT 686.

Bench Strength 2. Coram: **S.B. Sinha** and *R.M. Lodha*, JJ. [Date of decision: 6-5-2009]

[10837] — S. 498-A — S. 113-A, Evidence Act — Both the provisions include in their amplitude past events of cruelty — *Evidence Act, 1872, S. 113-A*

Section 498-A IPC and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. The period of operation of Section 113-A of the Evidence Act is seven years; presumption arises as to dowry death when a woman committed suicide within a period of seven years from the date of marriage. (Para 7). *Kaliyaperumal* v. *State of T.N.*, (2004) 9 SCC 157: 2004 SCC (Cri) 1417: AIR 2003 SC 3828: 2003 Cri LJ 4321.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-8-2003]

[10838] — Ss. 498-A, 406 and 34 — Applicability — Cruelty to married woman — Allegations of — Ingredients for presumption of offence under — Whether made out — *Complaint filed by respondent against husband and his appellant parents — Summons and non-bailable warrants issued against appellants — High Court dismissing application for quashing summoning order — Appeal against — Held, allegations relating to place where marriage took place have nothing to do with offence under S. 498-A IPC — Allegations that A-2 (mother-in-law) kicked respondent and told her that her mother was a liar, may make out some other offence but not one punishable under S. 498-A — Allegations that A-2 poisoned ears of her son against respondent; she gave two used lady's suits of her daughter to complainant; giving perpetual sermons to complainant; threatening her son may be divorced for the second time, held, do not give rise to offences punishable under S. 498-A — No case made out under S. 498-A IPC — Hence, summoning order passed against appellants, except A-2 set aside as proceedings against her could continue under S. 406 IPC only — CrPC, 1973, S. 482* (Paras 32, 36, 37, 40 and 61)

Respondent *M* married *V*, son of the appellants. *V* was a divorcee who had two children from his first wife. The marriage with the respondent took place on 16-1-2004. Shortly thereafter the relationship between the parties deteriorated. During this entire period including the period after she left her matrimonial home in June 2004, the parties communicated with each other through e-mails.

M filed a complaint under Sections 498-A, 406 and 34 IPC against her husband *V* and the appellants. An application for grant of maintenance was also filed claiming maintenance of a sum of Rs 2 lakhs per month as also an order of interim maintenance of Rs 2 lakhs per month till the disposal of the case. Her application for grant of interim maintenance was allowed by the Metropolitan Magistrate at the rate of Rs 5000 per month. Non-bailable warrants of arrest were also issued against the appellants as also *V*. The respondent filed a revision application before the High Court seeking increase in the maintenance. The High Court enhanced the interim maintenance to Rs 50,000 per month. Subsequently the appellants as also *V* filed an application for quashing the order directing issuance of non-bailable warrants against them. The High Court stayed the order issuing non-bailable warrants against the appellants with an undertaking that *V* and the appellants would appear before the Magistrate.

The appellants along with *V* also filed an application for quashing of the summoning order passed by the Magistrate summoning them for attending the trial court. The appellants and their son came to India; they appeared before the Magistrate; they were admitted to bail.

The High Court in criminal revision directed impounding of the passport of *V* stating that efforts were being made for reconciliation. Talks of reconciliation failed. The High Court modified the said finding stating that the marriage seems to have broken down irretrievably and directed return of the passport to *V*. Pursuant to the liberty granted by the High Court, the appellants as also *V* filed an application for permission to go abroad, which was allowed subject to the condition that additional bank guarantees be furnished of Rs 1 lakh for each of the applicants. *M* filed a criminal complaint

(4)(i) Broadly *(contd.)*

under Section 420 IPC against the appellants and *V* inter alia alleging all material facts relating to the first marriage and divorce, and in particular the fact that the first wife of *V* in her divorce suit alleged acts of cruelty on the part of her husband had not been disclosed.

For one reason or the other the appellants having failed to attend the Court of the Metropolitan Magistrate, *M* filed an application for attachment of the ancestral property of Appellant 1. Interpol also was sounded. Orders were passed for attachment of the property in terms of Section 83 CrPC situated both at Delhi as also the ancestral house of Appellant 1 at Jaipur.

The High Court dismissed the application for quashing the summoning order filed by the appellants. The appellants had thus filed the present appeal.

Allowing the appeal in terms below, the Supreme Court held as above.

Held :

Parliament by Act 46 of 1983 with a view to combat the menace of dowry deaths and harassment of woman at the hands of her husband or his relatives introduced Section 498-A and Section 304-B in IPC.

Thus, the essential ingredients of Section 498-A are:

1. A woman must be married.

2. She must be subjected to cruelty.

3. Cruelty must be of the nature of:

(*i*) any wilful conduct as was likely to drive such woman:

(*a*) to commit suicide;

(*b*) cause grave injury or danger to her life, limb, either mental or physical;

(*ii*) harassment of such woman,

(1) with a view to coerce her to meet unlawful demand for property or valuable security,

(2) or on account of failure of such woman or by any of her relation to meet the unlawful demand;

(*iii*) woman was subjected to such cruelty by:

(1) husband of that woman, or

(2) any relative of the husband.

For constitution of an offence under Section 498-A IPC, therefore, the ingredients thereof must be held to be existing. (Paras 27 and 29)

For proving the offence under Section 498-A IPC, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any wilful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. No such allegation has been made or otherwise can be found out so as to arrive at an opinion that the appellants prima facie have committed such an offence. The complaint petition must also be read with several other documents which form part of the complaint petition. The children from the first wife of *V* were with *M*. *V* affirmed an affidavit so as to enable *M* to apply for their passports. *V*, therefore, wanted to have children with them. (Paras 30 to 36)

Based on the e-mails exchanged between the couple and their parents it is evident that the couple had developed incompatibility in respect of various aspects of life including the one as to whether *M* did a favour to *V* by marrying him. They also include the children, her going out of the home without informing any senior member of the house, allegation of extramarital affairs against *V*; her taking of detergent powder evidently to commit suicide; they had been staying in separate rooms, differences in respect of carrying of business, her becoming hysterical at some point of time. *V* even thought that she had been trying to blackmail him by refusing to go back to India and threatening to commit suicide. The e-mails show allegations, counter-allegations and explanations by *M* in relation thereto. There are many more e-mails exchanged between the couple as also their parents. However, in none of them had any allegation with regard to cruelty or breach of trust been made. Such allegations are made for the first time in the complaint petition as also in the application for grant of maintenance. (Paras 32 and 36)

The correspondences exchanged between the spouses or by and between *V* and his in-laws do not disclose any allegation which would amount to criminal misconduct on the part of the appellants. (Para 55)

Ex facie no case has been made out under Section 498-A IPC so far as the appellants are concerned. The allegations relating to the place where the marriage took place have nothing to do with an offence under Section 498-A IPC. Allegations that Appellant 2 kicked the respondent with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498-A. Similarly her allegations that Appellant 2 poisoned the ears of her son against the respondent; she gave two used lady's suits of her daughter to the complainant and has been given perpetual sermons to the complainant could not be said to be offences punishable under Section 498-A. Even threatening that her son may be divorced for the second time could not make out the offence under Section 498-A IPC. (Paras 37 and 49)

The jurisdiction of the High Court to quash an order of summoning and/or a criminal proceeding as also the Supreme Court are well known. (Para 40)

Courts at all levels have made endeavours to bring about a settlement between the parties. The High Court in the earlier round of proceedings probably rightly observed that the marriage between *M* and *V* has irretrievably broken down. (Paras 49 and 60). *Bhaskar Lal Sharma* v. *Monica*, (2009) 10 SCC 604: (2009) 161 DLT 739.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 27-7-2009]

Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Noorjahan v. State, (2008) 11 SCC 55: (2008) 3 SCC (Cri) 915; Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281: 2005 SCC (Cri) 1473; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu, (2009) 11 SCC 203: (2009) 3 SCC (Cri) 1297; Kailashi Bai v. Aarti Arya, (2009) 13 SCC 548; Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507; Ramesh v. State of T.N., (2005) 3 SCC 507: 2005 SCC (Cri) 735; Devendra v. State of U.P., (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461, relied on

Mahila Vinod Kumari v. State of M.P., (2008) 8 SCC 34: (2008) 3 SCC (Cri) 414: (2008) 10 Scale 97, distinguished

(ii) Husband — Who is

[10839] — Ss. 498-A and 304-B — Applicability — Existence of valid marriage — Proof and necessity of — Expression "husband" — *Meaning and scope of, in respect of said offences — Held, would cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any purposes enumerated in Ss. 304-B/498-A, whatever be the legitimacy of the marriage itself — Hence, husband contracting second marriage during subsistence of earlier marriage can be charged under Ss. 304-B and 498-A — Heydon's rule pressed into service — Purposive construction and mischief rule applied*

Before the trial court the accused persons put the plea that charge under Section 498-A IPC was thoroughly misconceived as both Sections 304-B and 498-A IPC presuppose a valid marriage of the alleged victim woman with the offender husband. Thus, it was contended (*i*) that it was required to be shown that the victim woman (appellant) was the legally married wife of the accused (Respondent 1), (*ii*) that the appellant had married during the lifetime of the first wife of Respondent 1, and (*iii*) that since the prosecution had failed to establish that the earlier marriage was dissolved legally, Section 498-A had no application. The trial court held that in view of the legal position highlighted by the accused persons vis-à-vis Section 498-A, the charge in that regard was not established. Accordingly, the accused persons were acquitted. The High Court rejected the application for grant of leave filed by the State and the revision filed by the appellant, by cryptic orders.

Before the Supreme Court, the appellant submitted that the expressions "husband" and "woman" appearing in Section 498-A IPC are to be read in a manner so as to give full effect to the purpose for which Section 498-A was brought into the statute. The restricted meaning as given by the Madhya Pradesh High Court in *Ramnarayan case*, (1998) 3 Crimes 147 (MP), does not reflect the correct position of law. On the other hand, contrary views expressed by the Karnataka and Andhra Pradesh High Courts reflect the correct view.

Holding that the High Court was not justified in summarily rejecting the application for grant of leave and remitting the matter back to the High Court for decision on merits,

Held :

The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. (Para 18)

If the legality of the marriage itself is an issue, further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498-A and 304-B IPC and Section 113-B of the Indian Evidence Act, 1872 were introduced, cannot be lost sight of. Legislation enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with a certain element of realism too and not merely pedantically or hypertechnically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. (Para 18)

Can a person who enters into a marital arrangement be allowed to take shelter behind a smokescreen to contend that since there was no valid marriage, the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498-A. Hence if a restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. (Para 18)

Thus, it would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions — Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions. (Para 18). *Reema Aggarwal* v. *Anupam*, (2004) 3 SCC 199: 2004 SCC (Cri) 699: AIR 2004 SC 1418: 2004 Cri LJ 892: (2004) 2 KLT 822.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-1-2004]

(iii) Women protected under S. 498-A

[10840] — **Ss. 498-A and 306 — Conviction under S. 498-A when deceased not a legal wife — Sustainability** — *During lifetime of his first wife K (appellant-accused), S (also appellant-accused) marrying deceased as his second wife — But after marriage, both appellants torturing the deceased, resulting in her committing suicide — Held, alleged marriage of S with deceased, during subsistence of a valid marriage of S with K, is null and void — Hence, conviction under S. 498-A set aside — However, regarding conviction under S. 306, absolutely clear evidence of PWs 1 to 3, that it was on account of torture by both appellants that deceased committed suicide inside house of S in another room — No error committed by courts below, either in appreciation or in their approach, relating to aforesaid evidence — Therefore, no infirmity in conviction of appellants under S. 306 — However, RI for seven years on conviction under S. 306, reduced to five* (Para 2). *Shivcharan Lal Verma* v. *State of M.P.*, (2007) 15 SCC 369.

Bench Strength **3**. Coram: *G.B. Pattanaik*, *S.N. Phukan* and *S.N. Variava*, JJ. [Date of decision: 19-2-2002]

[10841] — **S. 498-A r/w S. 34 — Disputed question of fact — Whether complainant was the legally wedded wife of appellant — Non-interference, in exercise of its inherent jurisdiction** — *High Court by impugned judgment dismissing application of appellant for quashing complaint filed against him under S. 498-A r/w S. 34 IPC, on ground that it involved disputed question of fact — Appellant contending that complainant was not his legally wedded wife as he was already married, and therefore S. 498-A IPC had no application — Held, no interference with impugned judgment called for — CrPC, 1973, S. 482* (Paras 2, 3, 8 and 9). *Koppisetti Subbharao* v. *State of A.P.*, (2009) 12 SCC 331: AIR 2009 SC 2684: (2009) 2 KLT 531: 2009 Cri LJ 3480: (2009) 2 APLJ 114 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 29-4-2009]

Reema Aggarwal v. Anupam, (2004) 3 SCC 199: 2004 SCC (Cri) 699, followed

Mayne: Early History of Institution, p. 319; Banerjee: Marriage and Stridhan, p. 345; Mayne's Hindu Law and Usage, cited

(iv) Relative of husband — Who is

[10842] — **S. 498-A — Applicability — Held, in order to be charged under S. 498-A, one has to be "relative" of husband by blood, marriage or adoption** — *Appellant being foster sister of complainant's husband and not belonging to his family or being his "relative" in any manner as referred to in S. 498-A, cannot be tried for offence under S. 498-A — Charge re S. 498-A IPC, quashed — CrPC, 1973, S. 482* (Paras 11 to 13). *Vijeta Gajra* v. *State (NCT of Delhi)*, (2010) 11 SCC 618: AIR 2010 SC 2712: 2010 Cri LJ 3841: (2010) 92 AIC 76 (SC).

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 8-7-2010]

U. Suvetha v. State, (2009) 6 SCC 757: (2009) 3 SCC (Cri) 36, followed

R. Ramanatha Aiyar's Advance Law Lexicon, Vol. 4, 3rd Edn., referred to

[10843] — S. 498-A — Consort in live-in relationship with husband of complainant — Liability under S. 498-A, if any — *Appellant was living with accused husband of complainant, allegedly as his wife — Appellant prayed for discharge, as she could not be made an accused under S. 498-A since she was not a relative of M (husband of complainant) — Held, S. 498-A being a penal provision, deserves strict construction — Neither a girlfriend nor concubine is a relative of husband within meaning of S. 498-A IPC — Appellant discharged — CrPC, 1973, Ss. 227 and 482* (Paras 15 and 16). *Sunita Jha* v. *State of Jharkhand*, (2010) 10 SCC 190.

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 13-9-2010]

U. Suvetha v. State, (2009) 6 SCC 757: (2009) 3 SCC (Cri) 36, applied

[10844] — S. 498-A — Persons who may commit offence under — "Relative of the husband" in S. 498-A, whether includes "girlfriend" or "concubine" — *Held, status of a relative is conferred only by blood or marriage or adoption — "Girlfriend" or "concubine" being not connected by blood or marriage is not a relative of the husband as per S. 498-A IPC — Meaning of "relative" depends upon the nature of statute — Persons who can commit an offence under S. 498-A are husband and his relatives only, girlfriend (appellant herein) being not a relative cannot be charged under S. 498-A*

The question which arose for consideration was whether the term "relative of the husband of a woman" within the meaning of Section 498-A of the Penal Code should be given an extended meaning so as to include "girlfriend" into its ambit.

An FIR was filed under Section 498-A IPC against the husband as well as the appellant, where appellant was referred to as the girlfriend and concubine of the husband. The appellant was not charged for abetment of a crime. Any conspiracy amongst the accused persons had also not been alleged. There were no allegations that appellant had any role to play with regard to demand of dowry. Thus, inter alia, on the premise that FIR did not disclose an offence under Section 498-A IPC, an application for discharge was filed by appellant before the trial court but the same was dismissed. A revision application filed thereagainst was also dismissed by High Court.

Allowing the appeal,

Held :

Section 498-A is a penal one. It, thus, deserves strict construction. Ordinarily, save and except where a contextual meaning is required to be given to a statute, a penal provision is required to be construed strictly. (Para 13)

By no stretch of imagination would a girlfriend or even a concubine in an etymological sense be a "relative". The word "relative" brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise. (Paras 18 to 24)

In the absence of any statutory definition, the term "relative" must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word "relative" would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption. (Paras 10 to 12)

It will be assumed that the term "husband" would bring within its fold a person who is said to have contracted a marriage with another woman and subjected her to cruelty. Herein relationship of the appellant with the husband of the first informant, is said to have been existing from before the marriage. Indisputably they lived separately. For all intent and purport the husband was also living at a separate place. The purported torture is said to have been inflicted by the husband upon the first informant either at her in-laws' place or at her parents' place. There is no allegation that the appellant had any role to play in that regard. Hence, appellant's discharge application is allowed. (Paras 16, 17 and 24)

The word "cruelty" having been defined in terms of the Explanation appended to Section 498-A, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same would not attract the wrath of Section 498-A IPC. An offence in terms of the said provision is committed by the persons specified therein. They have to be the "husband" or his "relative". Either the husband of the woman or his relative must have subjected her to cruelty within the aforementioned provision. If the appellant had been instigating the husband of the first informant to torture her, as has been noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the Penal Code and the appellant may be held guilty for abetment of commission of such an offence but not an offence under Section 498-A of the Penal Code. (Paras 8 and 9). *U. Suvetha* v. *State*, (2009) 6 SCC 757: (2009) 3 SCC (Cri) 36: 2009 Cri LJ 2974: (2009) 2 KLT 686.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.M. Lodha*, JJ. [Date of decision: 6-5-2009]

(4)(v)1. Cruelty — Meaning of - Broadly

P.N. Krishna Lal v. Govt. of Kerala, 1995 Supp (2) SCC 187: 1995 SCC (Cri) 466; Noor Aga v. State of Punjab, (2008) 16 SCC 417; T. Ashok Pai v. CIT, (2007) 7 SCC 162; Shivcharan Lal Verma v. State of M.P., (2007) 15 SCC 369, relied on

Reema Aggarwal v. Anupam, (2004) 3 SCC 199: 2004 SCC (Cri) 699, discussed and distinguished

Rajeti Laxmi v. State of A.P., (2006) 2 APLJ 451: (2007) 1 DMC 797 (AP); Swapnaja v. State of Maharashtra, Criminal Application No. 388 of 2008 decided on 21-4-2008; Ranjana Gopalrao Thorat v. State of Maharashtra, (2007) 5 Mah LJ 425: 2007 Cri LJ 3866 (Bom); Capt. Rajinder Tiwari v. State (NCT of Delhi), Criminal Revision Petition No. 872 of 2006 decided on 14-12-2006, affirmed

John Idiculla v. State of Kerala, 2005 MLJ (Cri) 841 (Ker), considered

Random House Webster's Concise College Dictionary, referred to

U. Suvetha v. State, (2008) 3 MLJ (Cri) 787, reversed

(v) Cruelty — Meaning of

Synopsis

1. Broadly **1150**
2. Wilful conduct likely to drive woman to commit suicide **1157**
3. Wilful conduct likely to cause grave injury or danger to health (mental or physical) of woman **1163**
4. Harassment to meet unlawful demand for property or valuable security — Dowry demand **1164**
5. Presumption under Ss. 113-A /113-B, Evidence Act **1167**

1. Broadly

[10845] — S. 498-A — Applicability — Factual basis to be established — *Held, consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman is required to be established* (Para 16). *Noorjahan* v. *State*, (2008) 11 SCC 55: (2008) 3 SCC (Cri) 915: AIR 2008 SC 2131: (2008) 66 AIC 79 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 23-4-2008]

[10846] — S. 498-A — Applicability of — Requirements for — *Held, consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established for application of S. 498-A* (Para 9). *Sushil Kumar Sharma* v. *Union of India*, (2005) 6 SCC 281: 2005 SCC (Cri) 1473: AIR 2005 SC 3100: 2005 Cri LJ 3439.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 19-7-2005]

[10847] — S. 498-A — 'Cruelty' — *Hindu Marriage Act, 1955, S. 13(1)(i-a) — Dowry Prohibition Act, 1961, S. 4 — Dowry Prohibition (Amendment) Act, 1984*

The word 'cruelty' has not been defined in the Hindu Marriage Act. It has been used in S. 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment. *Shobha Rani* v. *Madhukar Reddi*, (1988) 1 SCC 105: 1988 SCC (Cri) 60: AIR 1988 SC 121: (1988) 1 HLR 169: 1988 BLJR 138.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 12-11-1987]

[10848] — S. 498-A — Cruelty — Meaning — Held, can either be mental or physical — *Cannot be put into straitjacket formula because it is a relative term — What constitutes cruelty for one person may not constitute cruelty for another* (Para 24). *G.V. Siddaramesh* v. *State of Karnataka*, (2010) 3 SCC 152.

Bench Strength **2**. Coram: *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision: 5-2-2010]

V. Bhagat v. D. Bhagat, (1994) 1 SCC 337, relied on

[10849] — S. 498-A — Cruelty — Illicit relationship of a married man with another woman, held, would clearly amount to cruelty — *Hindu Marriage Act, 1955, S. 13(1)(i-a)* (Para 7). *Laxman Ram Mane* v. *State of Maharashtra*, (2010) 13 SCC 125.

Bench Strength **2**. Coram: *H.S. Bedi* and *R.M. Lodha*, JJ. [Date of decision: 7-10-2010]

[10850] — S. 498-A — Cruelty — Ingredients — Restated — *Further held, for the purpose of S. 498-A IPC, harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property, etc. that it amounts to "cruelty" punishable under S. 498-A IPC* (Paras 16 to 18). *State of A.P.* v. *M. Madhusudhan Rao*, (2008) 15 SCC 582: (2009) 3 SCC (Cri) 1123: (2009) 1 ECrN 489 (SC): (2008) 71 AIC 8 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 24-10-2008]

[10851] — S. 498-A — Cruelty — Proof — Proximity test — Also, impact of cruelty not being continuous — Effect — *Held, "cruelty" for purpose of S. 498-A is to be established in that context as it may be different from other statutory provisions — It is to be determined/inferred by considering conduct of the man, weighing gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. — It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging of complaint — Petty quarrels cannot be termed as "cruelty" to attract provisions of S. 498-A IPC — Causing mental torture to the extent that it becomes unbearable may be termed as cruelty — In present case physical and mental torture alleged up to 1993 but complaint of cruelty lodged in 1997 i.e. after four years of wife (though 7 months' pregnant) leaving matrimonial home — Besides, mental or physical torture was not continuous on part of appellant as there was no complaint against him between 1993 to 1997 i.e. leaving matrimonial home by wife and performing second marriage by husband — Even PW 1, father of complainant wife had not stated any incident of physical or mental torture after 1993, nor any other witness deposed to this effect — Hence, all three courts below erred in not considering the case in correct perspective — Further held, findings recorded by courts below may be relevant for granting relief in a matrimonial dispute i.e. divorce, etc. but could not bring home charge under S. 498-A IPC — Hence, conviction of appellant under S. 498-A set aside* (Paras 12 to 28)

Appellant, a government servant was married to complainant on 5-2-1992 as per Hindu rites. However, relationship between husband and wife was not cordial as it was alleged by the wife that she was being tortured mentally and physically by the appellant. The complainant left her matrimonial home in 1993 in spite of the fact that she was seven months' pregnant because she found it impossible to live there, and started residing with her father thereafter. In 1997 she came to know that appellant had married one *R*. Hence, she filed an FIR against him. Appellant was charged under Section 498-A and Section 494 IPC. The trial court found him guilty and sentenced him to RI for 2 years under Section 498-A, and for 3 years under Section 494. The appeal filed thereagainst was dismissed by the appellate court. The criminal revision filed thereagainst was also dismissed by the High Court by impugned judgment. Hence, the present appeal.

Partly allowing the appeal, the Supreme Court held as above. *Manju Ram Kalita* v. *State of Assam*, (2009) 13 SCC 330: (2009) 79 AIC 88 (SC).

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 29-5-2009]

Mohd. Hoshan v. State of A.P., (2002) 7 SCC 414: 2002 SCC (Cri) 1765; Raj Rani v. State (Delhi Admn.), (2000) 10 SCC 662: 2001 SCC (Cri) 1518; Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281: 2005 SCC (Cri) 1473; Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177: 2002 SCC (Cri) 971, considered and relied on

S. Hanumantha Rao v. S. Ramani, (1999) 3 SCC 620; V. Bhagat v. D. Bhagat, (1994) 1 SCC 337, distinguished

[10852] — Ss. 498-A, 107 and 306 — Presumption under — Criteria for invocation of, reiterated — Meaning of "cruelty" under — *In Expln. to S. 113-A expression "cruelty" has same meaning as in S. 498-A IPC — Thus, if degree of cruelty is such as to warrant a conviction under S. 498-A, it may be sufficient for a presumption to be drawn under S. 113-A, Evidence Act, 1872 in harmony with S. 107 IPC — Evidence Act, 1872, S. 113-A with Expln. thereto*

Dismissing the appeal,

Held :

There is sufficient evidence to bring home the charge under Section 498-A IPC. The question arising is whether there is sufficient evidence on record to indicate that by any of the acts of cruelty attributed to the petitioner, there was an intention to instigate the victim into committing suicide. There is no getting away from the fact that the victim committed suicide in the 4th year of marriage when she was six months' pregnant. Ordinarily, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty. It is only in extreme circumstances that a woman may decide to take her life and that of her unborn child when she reaches a point of no return and is in a mental state to take her own life. (Paras 19 and 21)

(4)(v)1. Cruelty — Meaning of - Broadly *(contd.)*

Section 113-A of the Evidence Act establishes a link between an offence under Sections 498-A, 107 and 306 IPC, thereby permitting the court to presume the commission of an offence under Section 107 IPC on the basis of evidence adduced to prove an offence under Section 498-A IPC. Evidence of PWs 2, 3, 7, 9, 11 and 13 sufficient to establish prosecution case against petitioner under Ss. 498-A and 306 IPC. (Para 28)

The element of instigation as understood within the meaning of Section 107 IPC is duly satisfied in this case in view of the provisions of Section 113-A of the Evidence Act, 1872. Since the victim committed suicide in the 4th year of her marriage, such condition is duly satisfied. The second condition is that the husband or such relative of the husband had subjected the victim to cruelty which led to the commission of suicide by the victim. Section 113-A indicates that in such circumstances, the court may presume, having regard to all the circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. (Para 25)

In the Explanation to Section 113-A it has also been indicated that for the purpose of the said section, the expression "cruelty" would have the same meaning as in Section 498-A IPC. Accordingly, if the degree of cruelty is such as to warrant a conviction under Section 498-A IPC, the same may be sufficient for a presumption to be drawn under Section 113-A of the Evidence Act in harmony with the provisions of Section 107 IPC. (Para 26)

The dying declaration of the victim can be relied upon, notwithstanding the objections raised regarding its veracity. There is no reason to disbelieve either PW 9, Naib Tahsildar and Executive Magistrate, or PW 11, the doctor who attended to victim in the hospital. A dying declaration has to be treated with caution, since the accused does not get a chance to cross-examine the victim. There is no ambiguity or irregularity as far as the dying declaration is concerned and it has been stated in clear and simple language that the victim had been treated with both mental and physical cruelty and the victim has stated quite candidly how she poured kerosene on her body and set herself on fire. The evidence of PW 13, the younger brother of the deceased, corroborates the story of the prosecution as to the manner in which the victim was treated by the petitioner, which triggered her immediate intention to commit suicide which was the culminating point of ill-treatment meted out to her by the petitioner and his mother. (Paras 22 to 24)

There is no reason to interfere with the judgments of the High Court or trial court. (Para 29). *Thanu Ram* v. *State of M.P.*, (2010) 10 SCC 353: (2010) 4 UPLJ 102 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 5-10-2010]

Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750: (2010) 1 SCC (Cri) 917; Randhir Singh v. State of Punjab, (2004) 13 SCC 129: 2005 SCC (Cri) 56; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; Amalendu Pal v. State of W.B., (2010) 1 SCC 707: (2010) 1 SCC (Cri) 896; Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281: 2005 SCC (Cri) 1473, distinguished

[10853] — Ss. 498-A and 306 — Cruelty — Hurting utterances — No word on record to prove — Deceased, in her suicide note, making allegation against appellant, regarding serious and hurting utterances made by appellant towards deceased — Suicide note not indicating any "hurting" utterances — *Court, held, must be in a position to hold that the words felt "hurting" were sufficient enough to amount cruelty under S. 498-A — Supreme Court, being helpless to judge whether the words used by appellant against deceased amounting to cruelty, acquitting the appellant of the charge under S. 498-A. Raj Rani* v. *State (Delhi Administration)*, (2000) 10 SCC 662: 2001 SCC (Cri) 1518.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 8-2-2000]

[10854] — Ss. 498-A & 306 — Cruelty — Suicide — Prosecution must prove that the victim was subjected to cruelty and harassment which fall under Expln. to S. 498-A — *Dowry demand and harassment by in-laws of deceased (father-in-law, mother-in-law and sister-in-law) and husband alleged — Prosecution witnesses all interested — Their testimony mostly based not on their personal knowledge but based on what they heard from others and also vitiated by material contradictions and improvements — Hence held, neither admissible nor reliable — Circumstances pointed out against the accused persons not incriminatory — That the accused in the face of murder charge did not attend the funeral of the deceased not unexpected — Letters written by deceased to her mother and that written by deceased's brother to deceased's husband also not showing any dowry demand by the accused — Held, prosecution failed to establish dowry demand and harassment leading to cruelty on the deceased — Hence trial court erred in convicting the accused-appellants — High Court also erred in confirming the judgment and order of trial court without applying its independent mind — Hence appellants entitled to acquittal*

Allowing the appeal and setting aside the conviction and sentence,

Held :

In this case the letter written by the deceased to her mother, relied on by prosecution, though indicates that the deceased's relationship with her mother-in-law was not good but it does not, in any manner, either indicate that there was any unlawful demand from her in-laws or pursuant to such demand there was any harassment leading to cruelty. Two other letters brought on record by the defence, one written by the deceased's brother to the deceased's husband and the other written by the deceased to her husband, do not also indicate that there was any demand from the accused-appellants for TV, scooter, fridge, etc. (Paras 11 and 12)

Among the prosecution witnesses, the mother of the deceased, had nowhere stated that the deceased at any point of time had personally told her about demands for TV, scooter, fridge, money and share in father's property. In the absence of such material, more so because of the fact that this witness herself does not say that the deceased told her orally about these demands, and the alleged letters having not been produced, this part of her evidence will have to be treated as not based on personal knowledge but as an opinion of hers, and as such the same is inadmissible in evidence. Therefore, the prosecution cannot rely upon such evidence to base a conviction. Her evidence is of no assistance to the prosecution to establish the fact that there was any demand, much less an unlawful demand at all by the appellants on the deceased. Defence also established omissions and improvements in the course of cross-examination. The trial court seriously erred in placing reliance on inadmissible part of her evidence and ignoring the omissions and improvements. (Para 16)

The allegations of deceased's brother that none of the appellants including the deceased's husband had visited the deceased for nearly seven months after the birth of her second child, which indicated neglect or mental torture to the deceased by the indifferent attitude of her husband, was per se unbelievable having regard to the contents of the letter written by the said witness to the deceased's husband. Moreover, this witness was not very sure whether various demands made by the appellants were towards dowry or towards the birth of a male child. (Para 17)

The circumstance relied on by the prosecution about indifference and neglect on the part of the deceased's husband towards the deceased as made out by the deceased's mother and brother was factually incorrect. The prosecution also failed to establish allegation of pressurising the deceased into demanding a share in her father's property after her father's death. (Para 22)

From the fact that these accused persons did not attend the funeral of the deceased after the bodies of the deceased and her children were released from the hospital, the trial court erred in drawing an inference of guilty conscience of the accused. In such a situation when a murder charge is levelled against an accused, it is hardly possible to expect the accused to be present at such funeral. Therefore, this circumstance also cannot be taken as an incriminating circumstance or a circumstance which corroborates the other evidence led by the prosecution against the accused. (Para 22)

Based on these erroneous inferences drawn on unproved facts and placing reliance on statements of interested witnesses whose evidence has not stood the test of cross-examination, the trial court came to a wrong conclusion as to the guilt of the accused persons. The three letters which though not very proximate in time clearly show that there was no demand as alleged by the prosecution by the accused and the contents of the said letter clearly show that the allegation made after the death of the deceased, of dowry demand or harassment leading to cruelty is unsubstantiated. For all these reasons the trial court committed serious error in coming to the conclusion that the prosecution had established its case against the appellants. (Para 23). *Sakatar Singh* v. *State of Haryana*, (2004) 11 SCC 291: AIR 2004 SC 2570: 2004 Cri LJ 2076.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 13-4-2004]

[10855] — Ss. 498-A, 306 and 323 — Neither suicide nor harassment for dowry/unlawful demand for property made out — Conviction under S. 498-A not sustainable — *Deceased found unconscious in her matrimonial home and later dying in hospital — Post-mortem report showing that death was due to asphyxia which could be by opium poisoning — Six bruises also found on her body — High Court in appeal against acquittal, by impugned judgment, finding appellant (husband of deceased) guilty under S. 498-A, while upholding his acquittal in respect of offence punishable under S. 306 — Categorical finding of courts below that suicide was not established — Moreover, marriage of deceased had taken place in 1976, while incident occurred in 1988 i.e. after about twelve years, hence presumption under Ss. 113-A and 113-B, Evidence Act, 1872 not applicable — As far as S. 498-A Expln. (b) was concerned, unlawful*

(4)(v)1. Cruelty — Meaning of - Broadly *(contd.)*

demand for property or valuable security was not proved which is a statutory requirement thereunder — Hence, S. 498-A(b), inapplicable — Question whether S. 323 would be applicable not gone into taking into consideration the fact that appellant had already suffered custody of about six months — Evidence Act, 1872, Ss. 113-A and 113-B (Paras 9 to 14). *Gopal* v. *State of Rajasthan*, (2009) 11 SCC 314: (2009) 3 SCC (Cri) 1343: AIR 2009 SC 1928: (2009) 75 AIC 1 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 13-2-2009]

Balwant Singh v. State of H.P., (2008) 15 SCC 497; Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80, relied on
State v. Gopal, 2001 Cri LJ 3873 (Raj), reversed

[10856] — S. 498-A Expln. — Applicability — Cruelty — What constitutes — *Woman succumbing to burn injuries in her nuptial home — Trial court and High Court ruling out suicide and finding it to be a case of accidental death — Absence of evidence regarding "grave injury or danger to life, limb or health" of the woman as contemplated under cl. (a) of the Expln. — That being so, Expln. (a) not attracted to the facts of the case — Further, in absence of evidence regarding demand for dowry, harassment by itself would not constitute cruelty within the meaning of Expln. (b) — Thus "cruelty" on facts, not made out — There must be some cogent evidence to bring home the charge under S. 498-A — On facts held, in absence of such evidence, accused cannot be convicted under S. 498-A*

The basic purport of Section 498-A is to avoid "cruelty" which is defined by attributing a specific statutory meaning attached thereto. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (*a*) involves three specific situations viz. (*i*) to drive the woman to commit suicide or (*ii*) to cause grave injury or (*iii*) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (*b*) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A. (Para 3)

Section 498-A is attributed only in the event of proof of cruelty by the husband or the relatives of the husband of the woman. Admittedly, the finding of the trial court as regards the death negated suicide with a positive finding of accidental death. If suicide is left out, then in that event question of applicability of Explanation (*a*) would not arise — neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the wilful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498-A and not dehors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. (Paras 16 and 18)

Explanation (*b*) of Section 498-A in no uncertain terms records harassment of the woman and the statute itself thereafter clarifies it to the effect that it is not every such harassment but only in the event of such a harassment being with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand — there is total absence of any of the requirements of the statute in terms of Section 498-A. (Para 16)

In this case there was inherent contradiction inter se in the evidence of the brother and the cousin of the deceased and as such the same was not reliable. The other piece of evidence viz. three letters written by the deceased to her brother and her cousin, relied on by the courts below in order to come to a finding as regards the guilt under Section 498-A also did not fulfil the requirements of the provisions of Explanation (*b*) or even a simple demand for dowry. The legislative intent is clear enough to indicate in particular reference to Explanation (*b*) that there shall have to be a series of acts in order to be a harassment within the meaning of Explanation (*b*). The letters by themselves though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the accused. (Para 18)

The statement before the Executive Magistrate by way of a declaration did not lend any assistance in the matter in issue. Dying declarations shall have to be dealt with due care and upon proper circumspection. Though corroboration thereof is not essential as such, but its introduction is otherwise expedient to strengthen the evidential value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of the dying declaration as a trustworthy piece of evidence. (Paras 14 and 13)

Charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other. But in order to justify a conviction under Section 498-A there must be available on record some material and cogent evidence. Presently, there are on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon — the documentary evidence (namely, those three letters), falls short of the requirement of the statute: even on an assumption of the fact that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in-laws' place and requests the husband to treat her well — at best some torture and a request to treat her well. This by itself would not bring home the charge under Section 498-A. Demand for dowry has not seen the light of day. (Para 17)

There was an inherent contradiction inter se leading to the term of credibility of the oral evidence and it is in this perspective that reliance thereon by both the trial court and the High Court stands totally misplaced resulting in utter perversity. Other evidence also did not fulfil the requirements of Section 498-A. Therefore, conviction as recorded by the trial Judge as also by the High Court cannot be sustained. (Paras 13 and 19)

Appreciation of evidence cannot be had under Article 136 but it would be a travesty of justice in our justice delivery system if such a bar is to linger on even on total misappreciation of evidence leading to utter perversity. (Para 13). *Girdhar Shankar Tawade* v. *State of Maharashtra*, (2002) 5 SCC 177: 2002 SCC (Cri) 971: AIR 2002 SC 2078: 2002 Cri LJ 2814: (2002) 4 MPLJ 5: (2002) 4 Mah LJ 5.

Bench Strength 2. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 24-4-2002]

[10857] — S. 498-A Expln. — "Cruelty" — Concept and effect of, held, varies from individual to individual depending upon his social and economic status — *"Cruelty" for the purpose of S. 498-A need not be physical — In a given case, even mental torture or abnormal behaviour may amount to cruelty and harassment*

The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the said section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case. (Para 7). *Gananath Pattnaik* v. *State of Orissa*, (2002) 2 SCC 619: 2002 SCC (Cri) 461.

Bench Strength 2. Coram: **R.P. Sethi** and *B. P. Singh*, JJ. [Date of decision: 6-2-2002]

[10858] — S. 498-A Expln. — Ingredients of, explained/interpreted — "Cruelty", meaning of — Husband living with another woman, whether commits "cruelty" under S. 498-A — *Held, living with another woman may be an act of cruelty for the purpose of judicial separation or dissolution of marriage but it cannot be stretched to amount to "cruelty" under S. 498-A — Hindu Marriage Act, 1955, S. 13(1)(i-a)*

The word "cruelty" having been defined in terms of the Explanation appended to Section 498-A, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same would not attract the wrath of Section 498-A IPC. An offence in terms of the said provision is committed by the persons specified therein. They have to be the "husband" or his "relative". Either the husband of the woman or his relative must have subjected her to cruelty within the aforementioned provision. If the appellant had been instigating the husband of the first informant to torture her, as has been noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the Penal Code and the appellant may be held guilty for abetment of commission of such an offence but not an offence under Section 498-A of the Penal Code. (Paras 8 and 9). *U. Suvetha* v. *State*, (2009) 6 SCC 757: (2009) 3 SCC (Cri) 36: 2009 Cri LJ 2974: (2009) 2 KLT 686.

Bench Strength 2. Coram: **S.B. Sinha** and *R.M. Lodha*, JJ. [Date of decision: 6-5-2009]

[10859] — S. 498-A Expln. (a) — 'Cruelty' — Includes mental cruelty also — 'Wilful conduct' in Expln. (a) — Meaning — *Can be inferred by direct or indirect evidence*

Cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Sections 304-B and 498-A IPC. Explanation (*a*) to Section 498-A itself refers to both mental and physical cruelty. Again wilful conduct means, conduct wilfully done; this may be inferred by direct or indirect evidence which could be construed to be such. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for any bride. *Pawan Kumar* v. *State of Haryana*, (1998) 3 SCC 309: 1998 SCC (Cri) 740: AIR 1998 SC 958: 1998 Cri LJ 1144.

Bench Strength 2. Coram: *M.M. Punchi, C.J.* and **A.P. Misra**, J. [Date of decision: 9-2-1998]

(4)(v)1. Cruelty — Meaning of - Broadly *(contd.)*

[10860] — S. 498-A and Expln. (a) thereto — Applicability — Conviction under S. 498-A, justified — Torture of deceased at the hands of appellant-accused (husband and in-laws of deceased) resulting in her committing suicide — *Reiterated, for application of S. 498-A, consequences of cruelty [defined in Expln. (a) to S. 498-A], which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman, are required to be established — Herein, there were materials to show that deceased was being tortured and ill-treated by appellants — Hence, Expln. (a) to S. 498-A has definite application to the facts herein — Additionally, there was no rebuttal by appellants of presumption under S. 113-A, Evidence Act, where court may presume that suicide by woman was abetted by her husband or his relative — Hence, conviction, held, justified — Evidence Act, 1872, S. 113-A* (Paras 6 and 11 to 13). *Rajendran* v. *Commr. of Police*, (2008) 17 SCC 501: AIR 2009 SC 855: (2009) 74 AIC 234 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 2-12-2008]

Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016, followed

Balwant Singh v. State of H.P., (2008) 15 SCC 497: (2009) 3 SCC (Cri) 1094, relied on

[10861] — S. 498-A Explns. (a) and (b) — Applicability — Held, basic ingredients of S. 498-A are cruelty and harassment — *Further held, in Expln. (b) which relates to harassment there is absence of physical injury but it includes coercive harassment for demand of dowry — It deals with patent or latent acts of the husband or his family members* (Paras 14 to 22). *Undavalli Narayana Rao* v. *State of A.P.*, (2009) 14 SCC 588.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan, JJ.** [Date of decision: 24-7-2009]

S. Hanumantha Rao v. S. Ramani, (1999) 3 SCC 620; V. Bhagat v. D. Bhagat, (1994) 1 SCC 337; Mohd. Hoshan v. State of A.P., (2002) 7 SCC 414: 2002 SCC (Cri) 1765; Raj Rani v. State (Delhi Admn.), (2000) 10 SCC 662: 2001 SCC (Cri) 1518; Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281: 2005 SCC (Cri) 1473; Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177: 2002 SCC (Cri) 971, considered and relied on

[10862] — S. 498-A Explns. (a) and (b) — Conviction — Sustained — Appellant and his mother alleged to have harassed the deceased for bringing in more dowry — *Deceased found dead in her matrimonial home and she was cremated hurriedly without informing her parents about her death — Trial court found that: (i) DW 1 (child of the appellant and the deceased) was a tutored witness; (ii) the child was in bed with her grandmother, and not with her mother, when the deceased was allegedly complaining of a stomach ache; (iii) no medical evidence was led to establish that the deceased was ailing so seriously from before; (iv) independent witness deposed that the room in which her dead body was found, had been opened by lifting the lever from inside and therefore, inferred that it was a case of suicide as otherwise, there was no occasion to bolt the room from inside; (v)*Khararunama *executed between appellant and wife showed that the relations between the husband and the wife were not cordial, and that she had been harassed to meet the unlawful demand of the appellant and deceased was compelled to fetch more money from her parents; and (vi) Ext. P-1 showed that it had been executed in order to restrain the family members of the deceased from launching criminal prosecution against the appellant — Hence, charge under S. 498-A held to have been proved against the appellant* (Paras 27 to 36)

A complaint was filed by PW 1 complainant (mother of the deceased) against appellant and his mother (husband and mother-in-law of deceased) that they harassed and ill-treated the deceased for bringing more dowry. The relations between the husband and wife were strained and an agreement "khararunama" was executed restraining each of them from alienating immovable property owned by them and the same was to be preserved for their children. However, they had a right to enjoy it usufruct. Subsequent to the execution of the said "khararunama" the deceased restored marital relations with the appellant and they lived together for nine years. During this period the deceased persistently complained about the behaviour of the appellant and his mother, to her mother *U*, PW 1 and other relatives and the continuation of harassment at the hands of the appellant and his mother.

Deceased was found dead on 5-6-1999. She was cremated on 6-6-1999 hurriedly without being subjected to any post-mortem autopsy and without any information to the family members of the deceased. However, an agreement was reached between parents of the deceased and family members of the appellant that they would not report the matter to the police and for that consideration, the appellant and his mother agreed to transfer the immovable property of the appellant in the name of the only child of the deceased. As a consequence Ext. P-2 dated 15-6-1999 was executed and registered purporting to be a partition deed between the appellant and his minor daughter DW 1.

After some time, it came to the knowledge of the family members of the deceased that the child was not being treated properly, therefore, they approached the appellant's family and made an attempt to take the child in their custody but the appellant did not agree for it. Thus, the mother of the deceased filed the criminal complaint and in exercise of the power under Section 156(3) CrPC, the court directed for investigation. Legal proceedings had also been initiated by the family members of the deceased seeking custody of the child. A civil suit was also filed to restrain the appellant from transferring the immovable property in favour of any other person by any means.

Charges under Section 302 read with Section 34 IPC against the appellant and his mother. Trial court found that charges under Section 302 read with Section 34 were not proved. Appellant alone was held guilty under Section 498-A IPC and sentenced to 2 years' RI. High Court by impugned judgment affirmed the conviction and the sentence. Hence, the present appeal.

Dismissing the appeal, the Supreme Court held as above. *Undavalli Narayana Rao* v. *State of A.P.*, (2009) 14 SCC 588.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 24-7-2009]

[10863] — S. 498-A Explns. (a) & (b) — Inapplicability — No ingredients of offence allegedly made out on face of the record — *Respondent 2 alleged that she was married to the appellant who worked in Saudi Arabia and who had come home on leave for four months and Rs 5 lakhs was given to him as dowry which he spent in buying properties for his family; that initially for about 2-3 months he sent her money for household expenses and was affectionate towards her, but later believing his family members who were spreading wrong information about her conduct stopped to do so — It was further alleged that when he came to India on leave he stayed with his younger brother and when Respondent 2 went there she was driven out, and hence, because of such treatment meted out to her she was suffering both mentally and physically — Held, for application of Expln. (a) of S. 498-A IPC there has to be such conduct on the part of the appellant which could be said to be amounting to cruelty of such a nature as is likely to cause Respondent 2 to commit suicide or to cause any injury to her life — Said ingredients not mentioned either in the FIR or in the charge-sheet and in absence thereof, no case made out — As far as Expln. (b) of S. 498-A is concerned in order to constitute cruelty under the said provision there has to be harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there was a failure by her or any person related to her to meet such demand — When the allegation made in the FIR and the charge-sheet is examined in the present case in the light of the aforesaid provision, no prima facie case even under the aforesaid provision is made out to attract a case of cruelty — Marriage of Respondent 2 had taken place in 1997 when Rs 5 lakhs was alleged to have been given as dowry and in the FIR filed in 2002 there was no allegation that subsequent thereto any harassment was made by the appellant with a view to coercing her or any person related to her to meet any unlawful demand for any property — Thus, neither Expln. (a) nor Expln. (b) of S. 498-A IPC attracted in the present case — Hence, both the FIR as also the charge-sheet liable to be quashed — High Court failed to appreciate the facts in proper perspective, and erred in rejecting appellant's petition for quashing FIR/charge-sheet — CrPC, 1973, S. 482* (Paras 27 to 33). *Shakson Belthissor* v. *State of Kerala*, (2009) 14 SCC 466: (2009) 80 AIC 192 (SC).

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 6-7-2009]

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513, followed

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Drugs Inspector v. Dr. B.K. Krishnaiah, (1981) 2 SCC 454: 1981 SCC (Cri) 487; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567, considered and relied on

Chunduru Siva Ram Krishna v. Peddi Ravindra Babu, (2009) 11 SCC 203: (2009) 3 SCC (Cri) 1297; V.V.S. Rama Sharma v. State of U.P., (2009) 7 SCC 234: (2009) 3 SCC (Cri) 356, relied on

2. Wilful conduct likely to drive woman to commit suicide

See also under Ss. 304-B and 306, above

[10864] — S. 498-A — Applicability — Suicide attempt by complainant — Inference of cruelty or harassment — *Complainant (PW 1) alleging that A-1 (her husband) was pressurising her to bring Rs 50,000 as additional dowry for purchase of lorry and that he used to beat, scold, shout and threaten to kill her, and on certain occasions he had also pressed her neck saying that he would kill her — It was further alleged that A-1's mother (A-2), his*

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second brother's wife (A-3) and her husband's third brother's wife (A-4) also used to help her husband in beating and harassing her and forced her to consume poison twice — It was only after second incident which occurred on 19-4-1996 that FIR was lodged by complainant on 22-5-1996 — Version of complainant that A-1 was pressurising her to bring additional dowry of Rs 50,000 not supported even by her father PW 3 — So far as the allegation of poisoning by the accused to kill the complainant is concerned, the trial court had found the evidence of PWs unreliable — Besides none of the accused attempted to escape after the incident which corroborates the anxiety of Accused A-1 to A-4 about the life of the complainant — Rejecting the prosecution version based on the complaint, Accused A-2 to A-4 were acquitted by the trial court while A-1 was convicted only under S. 498-A but acquitted for S. 307 — Further, as observed by trial court there was no direct evidence, other than the self-serving testimony of PW 1 regarding the alleged beatings or scolding — If really the version of PW 1 that all the accused attempted to kill her by forcibly pouring poison in her mouth, not once but twice, was true she would not have kept quiet without reporting the matter to the police; even after the second incident she kept quiet for a period of one month — Contents of the complaint clearly showed that PW 1 (the complainant) wanted to see that the respondent loses his job in the Police Department, and that merely because PW 1 attempted to commit suicide, it cannot be presumed that it was only on account of harassment or cruelty meted out to her that she made an attempt to commit suicide — Testimony of PW 1 was found unreliable more so, when her relations with the husband were very much strained — Held, in the light of the overall evidence, analysed by the High Court, the order of acquittal of the respondent is well merited and does not call for interference, particularly when the FIR was lodged by the complainant more than one month after the alleged incident of forcible poisoning (Paras 3, 4, 6 to 8 and 26 to 31). *State of A.P.* v. *M. Madhusudhan Rao*, (2008) 15 SCC 582: (2009) 3 SCC (Cri) 1123: (2009) 1 ECrN 489 (SC): (2008) 71 AIC 8 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 24-10-2008]

[10865] — S. 498-A — Circumstantial evidence — Death of a housewife by drowning in a well in the courtyard of her in-laws' house — *Ill-treatment of the deceased by her in-laws for not bringing sufficient dowry and also for not giving birth to children established — Despite giving birth to two children such ill-treatment continued — Husband also contemplating to remarry — Deceased earlier trying to commit suicide by jumping in the same well but saved by the neighbours — At the time of incident only deceased and the accused were in the house — Sound of quarrelling and shouting of a woman heard by the neighbours — Held, in the circumstances of the case, circumstances clinchingly establish the culpability of the accused — Death by accidentally falling in the well ruled out*

The prosecution evidence clearly indicates beyond shadow of reasonable doubt that because of the mistreatment by the accused and the consistent course of cruelty perpetrated on her, she had on the fateful night suffered from the last straw that broke the camel's back. Earlier she had jumped in the same well to put an end to her miserable existence but was saved by the neighbours. Yet the life for her in the household of the accused did not improve subsequently. She was, therefore, driven to once again try to commit suicide by jumping in the very same well in which she had earlier jumped. But on the second occasion on that fateful night when she jumped in the well there was no neighbour to save her and her life got extinguished. Under these circumstances it cannot be said that the accused were not responsible for bringing to a tragic end the life of this young housewife aged 28 years, mother of two children, who having suffered in such a drastic manner at the hands of the accused was driven to take the extreme step of committing suicide. This is neither the case of murder nor the case of accident. On the facts of the present case the prosecution has been able to bring home to the accused beyond shadow of reasonable doubt offence under Section 498-A IPC read with Explanation (*a*). When she was driven to take such a drastic step all the accused including acquitted accused mother-in-law were in the house and along with them resided the victim and her two minor children. Hence the accused alone must be held responsible for driving her to commit suicide by their misconduct which had led to a quarrel and shouting revealing the voice of a woman as admitted even by the hostile witness who actually heard the same being the next door neighbour. All the circumstances proved by the prosecution clinchingly establish the culpability of the accused themselves and no one else. These established circumstances wholly rule out any reasonable possibility of innocence of the accused from any viewpoint. In other words the chain in the circumstantial evidence is so complete against the accused as to rule out any other hypothesis about their innocence. *Balram Prasad Agrawal* v. *State of Bihar,* (1997) 9 SCC 338: 1997 SCC (Cri) 612: AIR 1997 SC 1830: 1997 Cri LJ 1640.

Bench Strength **2**. Coram: *G.N. Ray* and **S.B. Majmudar**, JJ. [Date of decision: 10-12-1996]

[10866] — S. 498-A — Death of housewife by drowning in a well — Ill-treatment meted out to the deceased by her in-laws spreading over years established — *Held, in the circumstances of the case, it can be presumed that such ill-treatment continued till she was forced to commit suicide — Evidence Act, 1872 — S. 114*

The evidence of the father of the deceased shows that his daughter's married life in the household of the accused had undergone rough weather all throughout. She was ill-treated both for not bringing dowry amount to the satisfaction of the accused and also for not giving birth to children. Her husband was also contemplating to remarry. The deceased had earlier tried to commit suicide but was saved by neighbours. Even after birth of two sons ill-treatment of his deceased daughter and quarrels with her in-laws continued till the fateful night. It can, therefore, safely be presumed under Section 114 of the Evidence Act that the cruel treatment meted out to the deceased by the accused earlier had continued unabated till the very last when she was forced to commit suicide on that fateful night. Such a presumption of continuance of cruel treatment which is established on record necessarily points an accusing finger to the accused. Such presumption under Section 114 of the Evidence Act has remained unrebutted on record.

It is easy to visualize the unbearable state of affairs on that night when a young housewife having two minor children, the younger one only four and a half years of age, had to jump in the well to end her miserable existence in the house of the accused. Unless the torture to her had become unbearable in the common course of human conduct such a young housewife having commitments to life could not have taken the drastic step to end her life, leaving her infant sons in the lurch and at the mercy of the accused especially when her husband was contemplating a remarriage. *Balram Prasad Agrawal* v. *State of Bihar,* (1997) 9 SCC 338: 1997 SCC (Cri) 612: AIR 1997 SC 1830: 1997 Cri LJ 1640.

Bench Strength **2**. Coram: *G.N. Ray* and **S.B. Majmudar**, JJ. [Date of decision: 10-12-1996]

[**Ed.**: The presumption under S. 113-A could not be raised in this case as the alleged suicide took place seven years after the marriage.]

[10867] — S. 498-A — Ingredients — Suicide by married woman — *Prosecution must establish that the accused committed acts of harassment or cruelty as contemplated by the section and such harassment or cruelty was reason for the suicide — No specific charge framed against the accused — Evidence of harassment or cruelty not sufficient for holding that the deceased was driven to commit suicide because of harassment or cruel treatment by the accused — Order of acquittal passed by the High Court upheld — Evidence Act, 1872, S. 113-A. State of Maharashtra* v. *Ashok Chotelal Shukla,* (1997) 11 SCC 26: 1997 SCC (Cri) 1186: AIR 1997 SC 3111: 1997 Cri LJ 3761.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 1-8-1997]

[10868] — Ss. 498-A, 107 and 306 and S. 113-A, Evidence Act, 1872 — Abetment of suicide and cruelty — Element of instigation — Establishment of — Conviction confirmed — *In appeal High Court acquitting father of husband but confirming conviction of petitioner husband and his mother under Ss. 498-A and 306 — Sustainability — Held, victim committed suicide in 4th year of marriage when she was six months' pregnant — Ordinarily, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty — Only in extreme circumstances may a woman decide to take her life and that of her unborn child when she reaches a point of no return and is in a mental state to take her own life — This proved the element of instigation — Further, S. 113-A, Evidence Act establishes link between offence under Ss. 498-A, 107 and 306 IPC, permitting presumption of commission of an offence under S. 107 on basis of evidence adduced to prove an offence under S. 498-A — Evidence of PWs sufficient to establish prosecution case against petitioner and his mother under Ss. 498-A and 306 r/w S. 113-A, Evidence Act, 1872 — No interference with High Court order called for*

Dismissing the appeal,

Held :

There is sufficient evidence to bring home the charge under Section 498-A IPC. The question arising is whether there is sufficient evidence on record to indicate that by any of the acts of cruelty attributed to the petitioner, there was an intention to instigate the victim into committing suicide. There

(4)(v)2. Cruelty — Meaning of - Wilful conduct likely to drive woman to commit suicide *(contd.)*

is no getting away from the fact that the victim committed suicide in the 4th year of marriage when she was six months' pregnant. Ordinarily, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty. It is only in extreme circumstances that a woman may decide to take her life and that of her unborn child when she reaches a point of no return and is in a mental state to take her own life. (Paras 19 and 21)

Section 113-A of the Evidence Act establishes a link between an offence under Sections 498-A, 107 and 306 IPC, thereby permitting the court to presume the commission of an offence under Section 107 IPC on the basis of evidence adduced to prove an offence under Section 498-A IPC. Evidence of PWs 2, 3, 7, 9, 11 and 13 sufficient to establish prosecution case against petitioner under Ss. 498-A and 306 IPC. (Para 28)

The element of instigation as understood within the meaning of Section 107 IPC is duly satisfied in this case in view of the provisions of Section 113-A of the Evidence Act, 1872. Since the victim committed suicide in the 4th year of her marriage, such condition is duly satisfied. The second condition is that the husband or such relative of the husband had subjected the victim to cruelty which led to the commission of suicide by the victim. Section 113-A indicates that in such circumstances, the court may presume, having regard to all the circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. (Para 25)

In the Explanation to Section 113-A it has also been indicated that for the purpose of the said section, the expression "cruelty" would have the same meaning as in Section 498-A IPC. Accordingly, if the degree of cruelty is such as to warrant a conviction under Section 498-A IPC, the same may be sufficient for a presumption to be drawn under Section 113-A of the Evidence Act in harmony with the provisions of Section 107 IPC. (Para 26)

The dying declaration of the victim can be relied upon, notwithstanding the objections raised regarding its veracity. There is no reason to disbelieve either PW 9, Naib Tahsildar and Executive Magistrate, or PW 11, the doctor who attended to victim in the hospital. A dying declaration has to be treated with caution, since the accused does not get a chance to cross-examine the victim. There is no ambiguity or irregularity as far as the dying declaration is concerned and it has been stated in clear and simple language that the victim had been treated with both mental and physical cruelty and the victim has stated quite candidly how she poured kerosene on her body and set herself on fire. The evidence of PW 13, the younger brother of the deceased, corroborates the story of the prosecution as to the manner in which the victim was treated by the petitioner, which triggered her immediate intention to commit suicide which was the culminating point of ill-treatment meted out to her by the petitioner and his mother. (Paras 22 to 24)

There is no reason to interfere with the judgments of the High Court or trial court. (Para 29). *Thanu Ram* v. *State of M.P.*, (2010) 10 SCC 353: (2010) 4 UPLJ 102 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 5-10-2010]

Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750: (2010) 1 SCC (Cri) 917; Randhir Singh v. State of Punjab, (2004) 13 SCC 129: 2005 SCC (Cri) 56; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; Amalendu Pal v. State of W.B., (2010) 1 SCC 707: (2010) 1 SCC (Cri) 896; Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281: 2005 SCC (Cri) 1473, distinguished

[10869] — S. 498-A & S. 306 — Applicability — Deceased found dead early morning in the verandah of her matrimonial home — Unnatural death of deceased — *Evidence proving physical and mental cruelty meted out to her — She driven out of her matrimonial house and could return only after settlement had been arrived at wherefor intervention of the members of the Panchayat had been sought for — Letters written by deceased expressing her anguish and desire to commit suicide because of abuses and insults heaped upon her, not disputed — PW 1 definitely opining that death was due to poisoning but he was not sure as regards nature of poison — Accidental consumption of poison ruled out on facts, because in case had it been so accused would not have fled from the house and an attempt would have been made to take the deceased to hospital — Held, death by itself may not lead to an inference that cruelty was meted out to the deceased, but in the instant case there were specific allegations which were proved by PWs — Ingredients of offences under S. 498-A and S. 306 having been proved, High Court's judgment convicting the accused for said offences calls for no interference* (Paras 25, 27, 28, 29, 30 and 40). *Ananda Mohan Sen* v. *State of W.B.*, (2007) 10 SCC 774: (2007) 3 SCC (Cri) 678: 2007 Cri LJ 2770: (2007) 56 AIC 171 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 16-5-2007]

Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417; Wazir Chand v. State of Haryana, (1989) 1 SCC 244: 1989 SCC (Cri) 105, relied on

[10870] — Ss. 498-A, 306 and 109 r/w S. 34 — Cruelty and abetment of suicide — Whether offences of, made out — Proof of — *Extreme mental cruelty meted out to deceased wife (serving as a Lecturer) by economically dependent advocate husband (not settled in practice) — Number of instances of mental torture proved from the evidence of PWs 6, 7 and 8 (neighbour, sister and father of the deceased respectively) — Suicide note/letter written to the father of deceased giving graphic description of the number of instances of constant extreme mental torture and appellant's deriving sadistic pleasure in torturing the deceased — Courts below relying on circumstances enumerated in the suicide note and testimony of PWs 6, 7 and 8 and giving concurrent finding regarding extreme mental cruelty — Appellant created circumstances which left no option for the wife but to take an extreme step of putting an end to her life — Therefore, conviction under Ss. 498-A, 306 and 109 r/w S. 34, upheld* (Paras 14 to 17 and 21 to 24). *Milind Bhagwanrao Godse* v. *State of Maharashtra*, (2009) 3 SCC 699: (2009) 2 SCC (Cri) 182: AIR 2009 SC 1828: (2009) 76 AIC 224 (SC): 2009 Cri LJ 1736.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 12-2-2009]

[10871] — Ss. 498-A and 306/34 — Suicide by a married woman in her in-laws' house within 10 months of her marriage — Cruelty by her husband and mother-in-law alleged — *Mother-in-law of deceased telling her that she was a woman of evil luck and had swallowed her baby and she should commit suicide — Husband of the deceased physically assaulting her — On facts, deceased was subjected to abuses, humiliation and mental torture from the very beginning of her married life which forced her to commit suicide — Offence under S. 498-A established — Absence of suicidal note not material — However, accused persons entitled to benefit of doubt as regards charge under S. 306*

The deceased committed suicide by hanging in the house of her husband and the in-laws within a year from the date of marriage. It is the case of the prosecution that it was a negotiated marriage and according to the demand of the accused persons and other members of the family of in-laws sufficient dowry including colour T.V., motor cycle, gold ornaments etc. had been given at the time of marriage. The prosecution case is that the deceased who was only 20 years old had been treated cruelly and had been tortured both mentally and physically by the accused. It has been alleged that within a few days after the marriage, the father-in-law of her husband's mother had died and she had treated the deceased cruelly by telling her that she was a woman of evil luck (*alakshmi*) and because of her evil luck, the father-in-law had died shortly after the marriage. It has also been alleged that after the marriage, the deceased had conceived but there had been an abortion after being admitted in the hospital. The mother-in-law of the deceased caused severe mental pain by telling her in the hospital itself that she was a woman of evil luck and that she had swallowed her baby and she should commit suicide. It has also been alleged that the husband of the deceased often used to come home drunk and physically assault the deceased. Both the husband and his mother had also caused severe mental torture to the deceased by telling that she had brought bridal presents of sub-standard quality and such articles should be taken back and dowry gifts of good quality should be brought. It has been alleged by the prosecution that as a result of such physical and mental torture by the accused persons, the deceased became unhappy and on several occasions when she had come to her father's house, she complained that she had been maltreated and tortured both physically and mentally with cruelty by the husband and mother-in-law in the manner aforesaid. The trial court convicted both the accused persons under Ss. 306/34 IPC and under Ss. 498-A/34 IPC. On appeal the High Court reversed the conviction order and summed up the following circumstances for the purpose of holding that a grave doubt has been raised against the prosecution story:

(*i*) There is no satisfactory explanation of delay in lodging the FIR.

(*ii*) There is no dying declaration or suicidal note.

(*iii*) There is no letter during the subsistence of marriage.

(*iv*) There is no letter addressed to the mother who used to live outside Calcutta most of the time.

(*v*) There is no complaint either by the father or father-in-law of the victim.

(*vi*) There is no evidence regarding the injuries received by the deceased or the maltreatment.

(*vii*) No specific date has been given when the deceased had allegedly told her mother about the demand for dowry or the maltreatment and no specific date or time has been given for making such demand.

(4)(v)2. Cruelty — Meaning of - Wilful conduct likely to drive woman to commit suicide *(contd.)*

(*viii*) Although the adult members of the family of the deceased consisting of four brothers, sisters and brothers-in-law and father are the residents of Calcutta, the deceased had never complained anything to them.

(*ix*) The neighbour or tenants have not also been examined.

Held :

In the instant case the trial court has come to the finding that the charges levelled against the accused have been proved by indicating cogent reasons therefor. The circumstances stated by the High Court do not stand scrutiny and they are against the weight of the evidence. The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. But in the facts and circumstances of the case, there is no material worthy of credence to hold that the deceased was hypersensitive and that for other reasons and not on account of cruelty she had lost normal frame of mind and being overcome by unusual psychic imbalance, decided to end her life by committing suicide. The evidence in the case reveals an act of extreme form of cruelty by telling the unfortunate mother that she was vile enough to swallow her own baby and she should commit suicide. There is also evidence in the case that the husband used to come home drunk and abuse her and also used to assault her on occasions. The bridal presents brought by her were branded as goods of inferior quality and she was asked to take the said articles back to her parental home. Such acts, to say the least, were very unkind and a newly married woman is bound to suffer a great mental pain and humiliation. The evidence of the mother clearly establishes that the deceased had been subjected to physical and mental torture all throughout. The husband, instead of giving her solace against the humiliation and abuses hurled by the mother-in-law, either kept silent or expressed his inability to give good counselling to the mother and to protest against act of mental torture and humiliation. On the contrary, he also treated the wife with cruelty by telling her to take the bridal gifts back to her parental home and also by physically assaulting her. Such acts, were quite likely to destroy the normal frame of mind of the deceased and to drive her to frustration and mental agony and to end her life by committing suicide.

Although there are materials on record to indicate that both the accused were also guilty under S. 306 IPC but we are inclined to give them benefit of doubt so far as the charge under S. 306 IPC is concerned and they are acquitted of the said charge. *State of W.B.* v. *Orilal Jaiswal*, (1994) 1 SCC 73: 1994 SCC (Cri) 107: AIR 1994 SC 1418: 1994 Cri LJ 2104: (1994) 1 BLJR 267: (1994) 1 Guj LH 537. Bench Strength 2. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 23-9-1993]

[10872] — Ss. 498-A Expln. (a) and 511 — Cruelty driving the woman to commit suicide — *Accused (husband, mother-in-law and father-in-law) asking the victim to end her life by throwing herself in front of running train — Victim attempting to commit suicide accordingly — But that attempt instead of resulting in her death, maiming her — On facts, accused persons' conviction under S. 498-A upheld — S. 511 not attracted — But while reducing the sentence of imprisonment to the period already undergone, fine enhanced to Rs 1 lakh each for all the three accused, payable by way of compensation to the victim*

PW 5, daughter of PW 6, was married to A-1 and was living in her husband's house. A-2 and A-3, parents of A-1, were also living in the same house. According to prosecution, though dowry was given at the time of marriage the appellants started harassing the bride after about 4 or 5 months of the wedding for not giving a car and a house as part of the dowry. They used to hurl taunts on her pertaining to the subject, including telling her that she had brought rags instead of wedding costumes. After about a year i.e. on 12-11-1993 a male child was born to her and one and a half years thereafter i.e. on 10-6-1995, she gave birth to another male child. In the month of Nov. 1995, PW 6 paid Rs 20,000 to A-1. On the night of 16-6-1996, when food was served to A-1, it was noticed that one of the items in the meals (salad) contained excessive salt which made A-1 furious and he unleashed abuses on his wife and then he was profusely supported by his mother and later they were reinforced by his father. They went to the extent of suggesting to her "why not end your life in front of one of the trains as many such trains are running nearby". On 17-6-1996, PW 5 went to the railway track and ran into the rail in front of a running train to end her life. But instead of getting killed she was devastatingly maimed. As the doctors expressed the opinion that her testimonial capacity was not seriously impaired, the prosecution examined her as the prime witness in the case. A-1, A-2 and A-3 were convicted by the Sessions Court under Section 116 read with Section 306 IPC, besides Section 498-A. On the first count they were sentenced to rigorous imprisonment for two and a half years and a fine of Rs 10,000 each, and on the second count they were sentenced to imprisonment for two years and a fine of Rs 5000 each. But the High Court while concurring with the findings made by the Sessions Judge, made an alteration by substituting Section 306 IPC with Section 304-B IPC to be read with Section 116 IPC. Commensurate alteration was made in the quantum of sentence by escalating it to RI for five years each.

Held :

Section 511 makes attempt to commit an offence punishable. The offence attempted should be one punishable by the Code with imprisonment. The conditions stipulated in the provision for completion of the said offence are: (*1*) The offender should have done some act towards commission of the main offence. (*2*) Such an attempt is not expressly covered as a penal provision elsewhere in the Code. Thus, "attempt" on the part of the accused is the sine qua non for the offence under Section 511. (Paras 10 and 11)

In this case the act attributed to the appellants was that they asked the victim PW 5 to go to the rail track and commit suicide and that act was alleged to have driven her to proceed to the railway line on the next morning to be run over by the train. This act is expressly made punishable under Section 498-A IPC. That being so, the act involved therein stands lifted out of the purview of Section 511 IPC. The very policy underlying Section 511 seems to be for providing it as a residuary provision. The corollary, therefore, is that the accused, in this case, cannot be convicted under Section 511 on account of the acts alleged against him. (Para 12)

There is no reason to interfere with the conviction passed on the appellants under Section 498-A IPC. A-1 has undergone the substantial portion of the sentence of imprisonment imposed on him and the remaining appellants have also undergone a long period of imprisonment by now in connection with this case. But the fine portion of the sentence imposed on the appellants is too insufficient, particularly when such fine was intended to be disbursed as compensation to PW 5. PW 5 should get at least three lakhs of rupees as compensation from the appellants. A-2 and A-3 have now become aged as both have crossed the age of 70. Therefore, the sentence under Section 498-A is modified in the following terms: The sentence of imprisonment imposed on the appellants shall stand reduced to the period which they have already undergone. But the fine part of the sentence is enhanced to Rs one lakh each for all the three appellants. They shall remit the fine amount in the trial court, within three months from today, failing which each of the defaulters shall undergo imprisonment for a further period of nine months. (Para 27). *Satvir Singh* v. *State of Punjab*, (2001) 8 SCC 633: 2002 SCC (Cri) 48: AIR 2001 SC 2828.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 27-9-2001]

3. *Wilful conduct likely to cause grave injury or danger to health (mental or physical) of woman*

[10873] — S. 498-A — Absence of pain or distress — Effect — *Held, High Court was not right in sustaining appellant's conviction under S. 498-A IPC, when there was no specific evidence that deceased wife was subjected to pain or distress — Hindu Marriage Act, 1955, S. 13(1)(i-a)*

The world "cruelty" in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent in Section 498-A is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband, which can be attributed to be painful or distressing, the same would be within the meaning of the section. In the instant case, there is no evidence to support the appellant's conviction under Section 498-A. No outside person has been called to give evidence. The persons who deposed, though interested witnesses, did not suggest cruelty. (Para 25)

Torture is a question of fact. There must be a proper effort to prove it. Even an attempt has not been made in the present case, nor is there any evidence, except an interpolation in the FIR which has already been disbelieved by the High Court. The appellant's conviction under Section 498-A cannot therefore stand. (Paras 26 and 27). *Arvind Singh* v. *State of Bihar*, (2001) 6 SCC 407: 2001 SCC (Cri) 1148: AIR 2001 SC 2124: 2001 Cri LJ 2556.

Bench Strength **2**. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 26-4-2001]

(4)(v)3. Cruelty — Meaning of - Wilful conduct likely to cause grave injury or danger to health (mental or physical) of woman *(contd.)*

[10874] — S. 498-A — Cruelty — *Teasing of the deceased wife by appellant husband, ill-treating her for her mistakes which could were pardonable and turning her out of the house, once beating her inside the house at the odd hours of night, held on facts, amounted to cruelty within the meaning of S. 498-A — Hence conviction of appellant under S. 498-A upheld* (Para 8). *Ramesh Kumar* v. *State of Chhattisgarh*, (2001) 9 SCC 618: AIR 2001 SC 3837.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti** and *K.G. Balakrishnan*, JJ. [Date of decision: 17-10-2001]

[10875] — S. 498-A — "Cruelty" — What amounts to — *Deceased wife's annoyance due to a relative's children being looked after in the husband's home, held, does not amount to her being treated cruelly or being harassed* (Para 14). *Lella Srinivasa Rao* v. *State of A.P.*, (2004) 9 SCC 713: 2004 SCC (Cri) 1479: AIR 2004 SC 1720.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-2-2004]

[10876] — S. 498-A — Husband or relatives subjecting woman to cruelty — Complaints to Women's Protection Cell — Mental cruelty — Hypersensitivity and panic reaction of complainant-spouse cannot be used to cast blame on and make out a case of mental cruelty — *Wife's parents seeking help of Women's Protection Cell in bringing about reconciliation between estranged spouses — No evidence of harassment by the Cell — However in panic husband and family members seeking anticipatory bail — Held, representation made by wife's parents to Women's Protection Cell did not amount to mental cruelty — Hindu Marriage Act, 1955, S. 13(1)(ia). S. Hanumantha Rao* v. *S. Ramani*, (1999) 3 SCC 620: AIR 1999 SC 1318.

Bench Strength **2**. Coram: **V.N. Khare** and *R.P. Sethi*, JJ. [Date of decision: 31-3-1999]

[10877] — Ss. 498-A Expln. and 306 — Mental cruelty — Determination of — *Necessary factors that should be taken into account in respect thereof, stated — In the instant case, the continuous taunting or teasing of the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life*

Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. Each case has to be decided on its own facts to decide whether the mental cruelty was established or not. In the facts and circumstances of the case, the High Court rightly concluded that the continuous taunting or teasing of the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life. (Para 6). *Mohd. Hoshan* v. *State of A.P.*, (2002) 7 SCC 414: 2002 SCC (Cri) 1765: AIR 2002 SC 3270.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Shivaraj V. Patil**, JJ. [Date of decision: 16-9-2002]

[10878] — S. 498-A Expln. (a) — 'Cruelty' — Includes mental cruelty also — 'Wilful conduct' in Expln. (a) — Meaning — *Can be inferred by direct or indirect evidence*

Cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Sections 304-B and 498-A IPC. Explanation (*a*) to Section 498-A itself refers to both mental and physical cruelty. Again wilful conduct means, conduct wilfully done; this may be inferred by direct or indirect evidence which could be construed to be such. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for any bride. *Pawan Kumar* v. *State of Haryana*, (1998) 3 SCC 309: 1998 SCC (Cri) 740: AIR 1998 SC 958: 1998 Cri LJ 1144.

Bench Strength **2**. Coram: *M.M. Punchi, C.J.* and **A.P. Misra**, J. [Date of decision: 9-2-1998]

4. Harassment to meet unlawful demand for property or valuable security — Dowry demand

See also under Ss. 304-B and 306, above

[10879] — S. 498-A — Applicability — "Cruelty" — Dowry demand if covered — Acquittal under Dowry Prohibition Act — Effect — *A-1 (mother-in-law of deceased) alleged to have set the deceased on fire with the help of appellant-accused (husband of the deceased) and his brother resulting in her death, for non-fulfilment of dowry — To substantiate plea of dowry demand three letters exhibited (Exts. P-2 to P-4) — Submission by appellant that when the High Court had directed* *acquittal from the charges relatable to Ss. 3, 4 and 6 of Dowry Prohibition Act, on the selfsame evidence, the High Court could not have held him guilty under S. 498-A and further, letters on which the trial court and the High Court placed reliance did not, in any event, show demand of dowry or any valuables — Held, S. 498-A does not specifically speak of a dowry demand but only of unlawful demand for property and valuable articles — In the instant case, there is no evidence on record on this aspect of any such demand — Even in the letters, on which prosecution placed heavy reliance, there is no reference to any demand of dowry — On the contrary, the deceased had objected to her parents not paying for something for which A-1 had spent the money — Evidence also showing that half of the marriage expenses were borne by the appellant-accused and his family — Ext. P-4, on which strong reliance was placed by prosecution not showing any dowry demand but only apprehension of a second marriage — Moreover, said letter was written three years prior to the occurrence — Hence, appellant-accused cannot be held guilty under S. 498-A — Dowry Prohibition Act, 1961, Ss. 3, 4 and 6* (Paras 2, 5, 8 and 10). *Shivanand Mallappa Koti* v. *State of Karnataka*, (2007) 13 SCC 68: AIR 2007 SC 2314: (2007) 57 AIC 140 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-6-2007]

[10880] — S. 498-A — Applicability — Deceased when returned to her parental home six months after "gauna" ceremony informing PW 1 that if he did not give ring and chain to her, accused would kill her — *Held, appellant rightly convicted under S. 498-A and sentenced to 3 years' RI and fine of Rs 2000* (Paras 21, 22 and 32). *Suresh Kumar Singh* v. *State of U.P*, (2009) 17 SCC 243: (2009) 3 ECrN 451 (SC): (2009) 4 All LJ 662.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[10881] — S. 498-A — Conviction of husband under — Propriety — *Husband constantly teasing and harassing his wife as he was wholly dissatisfied with the dowry given at the time of marriage — Demanding more money and some other articles from her parents — Held, charge under S. 498-A fully established — Conviction thereunder upheld* (Para 10). *Dalbir Singh* v. *State of U.P.*, (2004) 5 SCC 334: 2004 SCC (Cri) 1592: AIR 2004 SC 1990: 2004 All LJ 1448: 2004 Cri LJ 2025.

Bench Strength **3**. Coram: *S. Rajendra Babu, Dr. Ar. Lakshmanan* and **G.P. Mathur**, JJ. [Date of decision: 8-4-2004]

[10882] — S. 498-A — Cruelty — Ingredients — Restated — *Further held, for the purpose of S. 498-A IPC, harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property, etc. that it amounts to "cruelty" punishable under S. 498-A IPC* (Paras 16 to 18). *State of A.P.* v. *M. Madhusudhan Rao*, (2008) 15 SCC 582: (2009) 3 SCC (Cri) 1123: (2009) 1 ECrN 489 (SC): (2008) 71 AIC 8 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 24-10-2008]

[10883] — S. 498-A — "Cruelty" (as a ground for divorce) — Meaning and proof of — Continuous demands of dowry made on wife in her matrimonial house with the connivance of husband, held on facts, constituted cruelty on the wife entitling her to decree for divorce — *Evidence of harassment or of intention to treat with cruelty not essential to establish cruelty — Court would draw inference and decide on the basis of preponderance of probabilities having regard to the nature of conduct of the other spouse and its impact on the complaining spouse in the context of their standard of life — Dowry Prohibition Act, 1961, S. 4 — Dowry Prohibition (Amendment) Act, 1984 — Hindu Marriage Act, 1955 — S. 13(1)(i-a). Shobha Rani* v. *Madhukar Reddi*, (1988) 1 SCC 105: 1988 SCC (Cri) 60: AIR 1988 SC 121: (1988) 1 HLR 169: 1988 BLJR 138.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 12-11-1987]

[10884] — S. 498-A — Demand by husband of some money from wife having money and assets purely for personal expenses for himself would not constitute a demand for dowry amounting to "cruelty" — *Dowry Prohibition Act, 1961. Shobha Rani* v. *Madhukar Reddi*, (1988) 1 SCC 105: 1988 SCC (Cri) 60: AIR 1988 SC 121: (1988) 1 HLR 169: 1988 BLJR 138.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 12-11-1987]

[10885] — S. 498-A — "Dowry" — Demand of son in adoption — *Held, would not amount to dowry demand so as to attract provisions of S. 498-A* (Para 20). *Bhaskar Ramappa Madar* v. *State of Karnataka*, (2009) 11 SCC 690: 2009 Cri LJ 2422.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 31-3-2009]

(4)(v)4. Cruelty — Meaning of - Harassment to meet unlawful demand for property or valuable security — Dowry demand *(contd.)*

[10886] — S. 498-A — Dowry demand — When demand was made — Evidence — *Contradiction in evidence as regards timing of the demand held is a material contradiction which goes to the root of the prosecution case*

There was also contradiction between the statements of the deceased's mother and deceased's brother in regard to the timing of the demand which is a material contradiction which goes to the root of the prosecution case. (Para 17). *Sakatar Singh* v. *State of Haryana*, (2004) 11 SCC 291: AIR 2004 SC 2570: 2004 Cri LJ 2076.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 13-4-2004]

[10887] — S. 498-A — Ill-treatment of wife by husband for getting money from her mother — Evidence as to — *Rejection of, due to inconsistency as to exact demand made by husband — Propriety — Evidence indicating that husband had been making demands and the quantum differed from time to time — Held, it was wholly unreasonable to reject the evidence of witnesses merely on the ground that there was no consistency as to the exact amount demanded by the husband* (Paras 10 and 9). *State of Karnataka* v. *K. Gopalakrishna*, (2005) 9 SCC 291: 2005 SCC (Cri) 1237: AIR 2005 SC 1014: 2005 Cri LJ 1436.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 18-1-2005]

[10888] — S. 498-A — Settlement of dowry dispute through Panchayat — Culpability under S. 498-A — *Dispute between the deceased and family of the appellants for non-fulfilment of dowry and consequent maltreatment, initially settled through a Panchayat and later through a senior SP by recording a compromise wherein it was stated that "the accused and his family would be responsible for any loss caused to the lady" — Demand for dowry and deliberations before the Panchayat proved — Conviction of appellants under S. 498-A upheld* (Paras 31 to 34). *Balbir Singh* v. *State of Punjab*, (2006) 12 SCC 283: (2007) 1 SCC (Cri) 715: AIR 2006 SC 3221: 2006 Cri LJ 4646: (2006) 47 AIC 600 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 26-9-2006]

[10889] — S. 498-A — Subjecting woman to cruelty by husband and his relatives — Absence of proof of demand of dowry or harassment by accused — *High Court found that only allegation made in FIR was that appellant-accused and his family members started harassing appellant's wife for not bringing more dowry — But there was no demand for dowry, nor was there any specific entrustment of dowry articles to accused as alleged in FIR — Held, offence under S. 498-A not made out* (Para 12). *Pashaura Singh* v. *State of Punjab*, (2010) 11 SCC 749: AIR 2010 SC 922: (2009) 4 APLJ 122 (SC): 2010 Cri LJ 875: (2010) 2 Guj LR 1817: (2010) 1 ECrN 708 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **R.M. Lodha**, JJ. [Date of decision: 13-11-2009]

[10890] — Ss. 498-A, 306 and 304-B — Conviction of appellant under — Sustainability — Dowry death — *On facts, originally five accused faced trial under Ss. 498-A, 306 and 304-B, but trial court convicted only A-3 (mother-in-law of the victim), while acquitting appellant A-1 (husband of the victim) and other co-accused — However, High Court while dismissing appeal of A-3, allowed appeal by State, thereby convicting appellant husband under aforementioned sections — Conviction by High Court rested on the letter written by the deceased to her father, PW 1, referring to the demand of gold ring by her mother-in-law, and that according to High Court, it also related to demand of Rs 10,000 by appellant husband — Validity of — Held, sentence in the letter was read out of context — Deceased had written in the letter that she may have to get a gold ring but wherefrom will she get the money for buying it — There was no reference to any demand of money by the appellant — That being so, High Court was not justified in upsetting the acquittal by trial court*

In the letter on which both the trial court and the High Court have relied upon to conclude one way or the other, reference is made to several earlier letters. It specifically refers to the demand by mother-in-law of a gold ring. There is no reference to the present appellant in the letter. (Para 9)

The evidence of PWs 1 to 3 (father, mother and elder sister of the deceased, respectively), is also relevant. PW 1 has stated that except Ext. 19 (letter of the deceased to PW 1), he had not received any letter and the statement in the letter to the effect that the deceased had earlier sent 2/3 letters is correct. If on one hand he says that he had not received any letter, the question of not replying to them does not arise. Similarly, PW 2 has stated that she cannot say whether there was any demand of Rs 10,000 in Ext. 19. PW 3 has accepted that the deceased had written to her father that her mother-in-law was demanding a gold ring in the letter (Ext. 19). (Para 10)

State submitted that there is some reference to money in the letter. The sentence is being read out of context. The deceased had written in the letter that she may have to get a gold ring but wherefrom will she get the money for buying it. Therefore, there is no reference to any demand of money by the appellant. That being so, the High Court was not justified in upsetting the judgment of the trial court. The impugned judgment of the High Court is set aside and that of the trial court is restored. (Para 11). *Vijay* v. *State of Maharashtra*, (2009) 2 SCC 87: (2009) 1 SCC (Cri) 674: AIR 2009 SC 1217: (2009) 75 AIC 135 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-12-2008]

[10891] — S. 498-A Explns. (a) and (b) — Applicability — Held, basic ingredients of S. 498-A are cruelty and harassment — *Further held, in Expln. (b) which relates to harassment there is absence of physical injury but it includes coercive harassment for demand of dowry — It deals with patent or latent acts of the husband or his family members* (Paras 14 to 22). *Undavalli Narayana Rao* v. *State of A.P.*, (2009) 14 SCC 588.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 24-7-2009]

S. Hanumantha Rao v. S. Ramani, (1999) 3 SCC 620; V. Bhagat v. D. Bhagat, (1994) 1 SCC 337; Mohd. Hoshan v. State of A.P., (2002) 7 SCC 414: 2002 SCC (Cri) 1765; Raj Rani v. State (Delhi Admn.), (2000) 10 SCC 662: 2001 SCC (Cri) 1518; Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281: 2005 SCC (Cri) 1473; Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177: 2002 SCC (Cri) 971, considered and relied on

[10892] — S. 498-A Expln. (b) — Repeated dowry demands made and harassment meted out to deceased housewife by accused husband and father-in-law proved — *Minor inconsistencies as to precise nature of articles demanded as dowry not significant — Hence conviction and sentence under S. 498-A upheld*

In this case there was ample evidence that repeated demands were made inter alia by the accused husband and his father on the deceased wife, her parents and her brother for articles of dowry and money. There is also evidence that deceased made statements after her marriage and right up to the time when she died that she and her parents were being harassed by her husband and his father and his family members for various dowry articles and also for money. There were some inconsistencies regarding the precise nature of the articles demanded but these inconsistencies are of little importance, considering the volume of evidence showing that repeated demands were made for various articles of dowry and money on deceased and her parents. The most telling circumstance was that after the death of the deceased a large number of dowry articles had been taken back by deceased's family members from accused's residence which were admittedly being given as dowry. There is also substantial evidence to show that an amount of Rs 20,000 to Rs 25,000 was demanded from the brother of deceased and her mother by the accused husband for setting up the accused husband in business and they were unable to satisfy these demands. Therefore, the conviction and sentence imposed on the father-in-law and the husband of the deceased under S. 498-A, IPC are confirmed. *Wazir Chand* v. *State of Haryana*, (1989) 1 SCC 244: 1989 SCC (Cri) 105: AIR 1989 SC 378: 1989 Cri LJ 809.

Bench Strength **2**. Coram: *B.C. Ray* and **M.H. Kania**, JJ. [Date of decision: 1-12-1988]

5. Presumption under Ss. 113-A/113-B, Evidence Act

See also under Ss. 304-B and 306, above

[10893] — S. 498-A — Cruelty — Degree and standard of proof — *Held, requirement of proof beyond all reasonable doubts not altered even after introduction of S. 498-A IPC and S. 113-A of Evidence Act — Before recording a finding of guilt court must satisfy itself that deceased was not hypersensitive — Also exaggerated devotion to rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence — Evidence Act, 1872, S. 113-A*

The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of S. 498-A IPC and S. 113-A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. The doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter. *State of W.B.* v. *Orilal Jaiswal*, (1994) 1 SCC 73: 1994 SCC (Cri) 107: AIR 1994 SC 1418: 1994 Cri LJ 2104: (1994) 1 BLJR 267: (1994) 1 Guj LH 537.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 23-9-1993]

(4)(v)5. Cruelty — Meaning of - Presumption under Ss. 113-A/113-B, Evidence Act *(contd.)*

[10894] — S. 498-A — Evidence Act, 1872 — S. 113-A — Both these provisions include in their amplitude past events of cruelty

Section 498-A IPC and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-A of the Evidence Act is seven years; presumption arises as to dowry death when a woman committed suicide within a period of seven years from the date of marriage. (Para 11). *Hira Lal* v. *State (Govt. of NCT of Delhi)*, (2003) 8 SCC 80: 2003 SCC (Cri) 2016: AIR 2003 SC 2865: (2003) 105 DLT 705: 2003 Cri LJ 3711.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-7-2003]

[10895] — S. 498-A — S. 113-A, Evidence Act — Both the provisions include in their amplitude past events of cruelty — *Evidence Act, 1872, S. 113-A*

Section 498-A IPC and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. The period of operation of Section 113-A of the Evidence Act is seven years; presumption arises as to dowry death when a woman committed suicide within a period of seven years from the date of marriage. (Para 7). *Kaliyaperumal* v. *State of T.N.*, (2004) 9 SCC 157: 2004 SCC (Cri) 1417: AIR 2003 SC 3828: 2003 Cri LJ 4321.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-8-2003]

[10896] — S. 498-A — Relevant evidence for — Presumption under S. 113-B, Evidence Act, when arises — Dowry death — Statement of deceased about circumstances relating to cause of her death relevant under S. 32(1) Evidence Act — *Deceased's statement before her father and sister about dowry demand of her husband and ill-treatment meted out to her on her inability to satisfy the demand would indicate under S. 32(1) Evidence Act the motive for her murder — However, even assuming it to be not covered by S. 32(1) Evidence Act evidence of father and sister of the deceased would be a relevant fact under S. 8 and would raise presumption under S. 113-B for deciding commission of the offence under S. 498-A IPC — Evidence Act, 1872 — Ss. 32(1), 8, 113-B*

Section 32(1) of the Evidence Act, 1872 is wide enough to include statements of the deceased regarding circumstances of the transactions which resulted in his death, i.e., the motive behind the criminal act in question. But even if Section 32 does not cover such evidence, the evidence of these witnesses can certainly be treated to be relevant for deciding whether the accused was guilty of offence under Section 498-A of the Indian Penal Code. Thus, even assuming that Section 32 is inapplicable to the facts of this case the narration of the facts of demand for dowry of sofa, motor cycle etc. and non-supply thereof is a piece of evidence to prove motive for committing the offence of murder. Such evidence would be relevant and admissible under Section 8 of the Evidence Act. The deceased informed her father and sister of the ill-treatment meted out to her due to her inability to secure the articles demanded by her husband. Therefore, the evidence of these witnesses cannot be excluded. Further, Section 113-B of the Evidence Act would also apply. *State of U.P.* v. *Ramesh Prasad Misra*, (1996) 10 SCC 360: 1996 SCC (Cri) 1278: AIR 1996 SC 2766.

Bench Strength **2**. Coram: *K. Ramaswamy* and *S.B. Majmudar*, JJ. [Date of decision: 13-8-1996]

[10897] — Ss. 498-A, 107 and 306 — Presumption under — Criteria for invocation of, reiterated — Meaning of "cruelty" under — *In Expln. to S. 113-A expression "cruelty" has same meaning as in S. 498-A IPC — Thus, if degree of cruelty is such as to warrant a conviction under S. 498-A, it may be sufficient for a presumption to be drawn under S. 113-A, Evidence Act, 1872 in harmony with S. 107 IPC — Evidence Act, 1872, S. 113-A with Expln. thereto*

Dismissing the appeal,

Held :

There is sufficient evidence to bring home the charge under Section 498-A IPC. The question arising is whether there is sufficient evidence on record to indicate that by any of the acts of cruelty attributed to the petitioner, there was an intention to instigate the victim into committing suicide. There is no getting away from the fact that the victim committed suicide in the 4th year of marriage when she was six months' pregnant. Ordinarily, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty. It is only in extreme circumstances that a woman may decide to take her life and that of her unborn child when she reaches a point of no return and is in a mental state to take her own life. (Paras 19 and 21)

Section 113-A of the Evidence Act establishes a link between an offence under Sections 498-A, 107 and 306 IPC, thereby permitting the court to presume the commission of an offence under Section 107 IPC on the basis of evidence adduced to prove an offence under Section 498-A IPC. Evidence of PWs 2, 3, 7, 9, 11 and 13 sufficient to establish prosecution case against petitioner under Ss. 498-A and 306 IPC. (Para 28)

The element of instigation as understood within the meaning of Section 107 IPC is duly satisfied in this case in view of the provisions of Section 113-A of the Evidence Act, 1872. Since the victim committed suicide in the 4th year of her marriage, such condition is duly satisfied. The second condition is that the husband or such relative of the husband had subjected the victim to cruelty which led to the commission of suicide by the victim. Section 113-A indicates that in such circumstances, the court may presume, having regard to all the circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. (Para 25)

In the Explanation to Section 113-A it has also been indicated that for the purpose of the said section, the expression "cruelty" would have the same meaning as in Section 498-A IPC. Accordingly, if the degree of cruelty is such as to warrant a conviction under Section 498-A IPC, the same may be sufficient for a presumption to be drawn under Section 113-A of the Evidence Act in harmony with the provisions of Section 107 IPC. (Para 26)

The dying declaration of the victim can be relied upon, notwithstanding the objections raised regarding its veracity. There is no reason to disbelieve either PW 9, Naib Tahsildar and Executive Magistrate, or PW 11, the doctor who attended to victim in the hospital. A dying declaration has to be treated with caution, since the accused does not get a chance to cross-examine the victim. There is no ambiguity or irregularity as far as the dying declaration is concerned and it has been stated in clear and simple language that the victim had been treated with both mental and physical cruelty and the victim has stated quite candidly how she poured kerosene on her body and set herself on fire. The evidence of PW 13, the younger brother of the deceased, corroborates the story of the prosecution as to the manner in which the victim was treated by the petitioner, which triggered her immediate intention to commit suicide which was the culminating point of ill-treatment meted out to her by the petitioner and his mother. (Paras 22 to 24)

There is no reason to interfere with the judgments of the High Court or trial court. (Para 29). *Thanu Ram* v. *State of M.P.*, (2010) 10 SCC 353: (2010) 4 UPLJ 102 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 5-10-2010]

Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750: (2010) 1 SCC (Cri) 917; Randhir Singh v. State of Punjab, (2004) 13 SCC 129: 2005 SCC (Cri) 56; Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; Amalendu Pal v. State of W.B., (2010) 1 SCC 707: (2010) 1 SCC (Cri) 896; Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281: 2005 SCC (Cri) 1473, distinguished

[10898] — S. 498-A and S. 113-B, Evidence Act, 1872 — Scope — *Held, substantive S. 498-A IPC and presumptive S. 113-B of the Evidence Act, 1872 include in their amplitude past events of cruelty which need to be proved — Appellant was residing in Coimbatore for last 35 years, while the incident occurred at Pallapatti — Evidence inadequate to show that she was party to any demand for dowry or herself demanded any dowry — Rather, testimony of mother of deceased showing she made no dowry demand — In such circumstances, held, her conviction under S. 498-A cannot be maintained and hence set aside — Evidence Act, 1872, S. 113-B* (Paras 3 to 5, 13, 14, 18 and 19). *Noorjahan* v. *State*, (2008) 11 SCC 55: (2008) 3 SCC (Cri) 915: AIR 2008 SC 2131: (2008) 66 AIC 79 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 23-4-2008]

[10899] — Ss. 498-A, 306/304-B r/w S. 34 — Acquittal confirmed — Respondent *R*, with his father and mother acquitted by trial court from charges under Ss. 306/304-B r/w S. 34, while only accused *R* convicted under S. 498-A — Appeal against acquittal dismissed by High Court in limine — *In Supreme Court, acquittal from offence under S. 306 only challenged on grounds that trial Judge had not considered the ingredients of S. 113-A of Evidence Act, 1872 and further he had not given any reason as to why he had acquitted the accused persons under S. 306 IPC particularly when he had convicted Accused 1 for offence under S. 498-A of Penal Code — Held, reasoning of trial Judge that no demand of dowry proved as also no case of abetment to commit suicide is made out, was correct — High Court's approach to dismiss appeal in limine without assigning reasons, however disapproved — CrPC, 1973, S. 378 — Evidence Act, 1872, S. 113-A*

The Additional Sessions Judge had given good reasons as to why the presumption would not arise under Section 113-A, Evidence Act. The Additional Sessions Judge has recorded the finding that there was no material to prove that there was any demand of dowry made by the husband or by the father-in-law or by the mother-in-law. The Additional Sessions Judge has also further found that there was no material on record to prove that there was any cruelty meted out to the deceased to commit suicide. (Para 9)

(4)(v)5. Cruelty — Meaning of - Presumption under Ss. 113-A/113-B, Evidence Act *(contd.)*

The High Court had not given reasons and had chosen to dismiss the said appeal in limine refusing the leave to file appeal against the acquittal. The course adopted by the High Court cannot be appreciated. Ordinarily, the High Court should have given good reasons even before refusing the leave to file an appeal against the acquittal. That is the established law now. However, sending back the matter again to the High Court would be hazardous as about ten years have elapsed since the death of the deceased. (Para 10)

After overall consideration, the Additional Sessions Judge was correct in acquitting the respondent-accused under Section 306 IPC and the High Court was also correct to refuse the State to file an appeal against the acquittal although the High Court should have given reasons. (Para 11). *State of Punjab* v. *Rajwinder Singh*, (2009) 16 SCC 778.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and *R.M. Lodha*, JJ. [Date of decision: 26-5-2009]

[10900] — S. 498-A and Expln. (a) thereto — Applicability — Conviction under S. 498-A, justified — Torture of deceased at the hands of appellant-accused (husband and in-laws of deceased) resulting in her committing suicide *— Reiterated, for application of S. 498-A, consequences of cruelty [defined in Expln. (a) to S. 498-A], which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman, are required to be established — Herein, there were materials to show that deceased was being tortured and ill-treated by appellants — Hence, Expln. (a) to S. 498-A has definite application to the facts herein — Additionally, there was no rebuttal by appellants of presumption under S. 113-A, Evidence Act, where court may presume that suicide by woman was abetted by her husband or his relative — Hence, conviction, held, justified — Evidence Act, 1872, S. 113-A* (Paras 6 and 11 to 13). *Rajendran* v. *Commr. of Police*, (2008) 17 SCC 501: AIR 2009 SC 855: (2009) 74 AIC 234 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 2-12-2008]

Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016, followed

Balwant Singh v. State of H.P., (2008) 15 SCC 497: (2009) 3 SCC (Cri) 1094, relied on

(5) Implication of or relief to relative of husband

See also '(4)(iv) Relative of husband — Who is', above

See also under Ss. 304-B and 306, above

[10901] — S. 498-A — Avoidance of irreparable suffering to accused — Direction for — Appellant-accused, father-in-law of victim, was a foreign (British) citizen whose passport had been impounded — Held, High Court rightly dismissed appellant's application seeking to have the prosecution quashed *— However, in order to avoid irreparable suffering to him directions issued to ACJM to return passport to appellant on his executing a bond for a sum of Rs 3 lakhs with two solvent sureties to the satisfaction of the said court — Appellant also permitted to appear through counsel except on days when his presence indispensable — Constitution of India, Art. 136. Gian Singh* v. *State of Rajasthan*, (1999) 5 SCC 694: 1999 SCC (Cri) 1035.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 14-5-1999]

[10902] — S. 498-A — Complicity of father-in-law of deceased — If established *— Evidence only disclosing that A-1, husband of deceased used to harass the deceased as he entertained suspicion about her chastity — Held on facts, there was no material to connect appellant father of A-1 with the offence under S. 498-A — Hence appellant entitled to acquittal so far as charge under S. 498-A is concerned* (Para 7). *K.R. Soorachari* v. *State of Karnataka*, (2005) 11 SCC 214: AIR 2005 SC 2674: 2005 Cri LJ 3082.

Bench Strength **2**. Coram: *B.P. Singh* and *S.B. Sinha*, JJ. [Date of decision: 13-4-2005]

[10903] — S. 498-A — Cruelty — Participation in cruelty — On facts, held, proved *— Evidence Act, 1872 — S. 113-A*

PW 4 and PW 5 have deposed that there had been a demand of dowry by the mother-in-law, husband as well as by the father-in-law. PW 3, however, in her deposition, has stated that the deceased complained to her that the mother-in-law was demanding dowry and harassing her for the same and the other two were silent about it. Therefore, the inference is that connivance of the other two also was there when the deceased was being treated, accordingly. Therefore, the cruelty part of S. 113-A meted out to the deceased is proved. *Lakhjit Singh* v. *State of Punjab*, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 31-3-1993]

[10904] — **S. 498-A — Death of housewife by drowning in a well — Ill-treatment meted out to the deceased by her in-laws spreading over years established** — *Held, in the circumstances of the case, it can be presumed that such ill-treatment continued till she was forced to commit suicide — Evidence Act, 1872 — S. 114*

The evidence of the father of the deceased shows that his daughter's married life in the household of the accused had undergone rough weather all throughout. She was ill-treated both for not bringing dowry amount to the satisfaction of the accused and also for not giving birth to children. Her husband was also contemplating to remarry. The deceased had earlier tried to commit suicide but was saved by neighbours. Even after birth of two sons ill-treatment of his deceased daughter and quarrels with her in-laws continued till the fateful night. It can, therefore, safely be presumed under Section 114 of the Evidence Act that the cruel treatment meted out to the deceased by the accused earlier had continued unabated till the very last when she was forced to commit suicide on that fateful night. Such a presumption of continuance of cruel treatment which is established on record necessarily points an accusing finger to the accused. Such presumption under Section 114 of the Evidence Act has remained unrebutted on record.

It is easy to visualize the unbearable state of affairs on that night when a young housewife having two minor children, the younger one only four and a half years of age, had to jump in the well to end her miserable existence in the house of the accused. Unless the torture to her had become unbearable in the common course of human conduct such a young housewife having commitments to life could not have taken the drastic step to end her life, leaving her infant sons in the lurch and at the mercy of the accused especially when her husband was contemplating a remarriage. *Balram Prasad Agrawal* v. *State of Bihar*, (1997) 9 SCC 338: 1997 SCC (Cri) 612: AIR 1997 SC 1830: 1997 Cri LJ 1640.

Bench Strength 2. Coram: *G.N. Ray* and **S.B. Majmudar**, JJ. [Date of decision: 10-12-1996]

[**Ed.**: The presumption under S. 113-A could not be raised in this case as the alleged suicide took place seven years after the marriage.]

[10905] — **S. 498-A — Death of married woman in her matrimonial house due to extensive burn injuries** — *A-1, deceased's mother-in-law, her maternal grandmother, A-2 daughter of A-1, A-3 husband of A-2 and A-4 (acquitted) husband of deceased and her maternal uncle — No evidence to indicate that deceased was meted out any ill-treatment or there was any dowry demand — Only grievance made in the dying declaration was that she wanted to live separately but her husband was not prepared and on that score, the husband (acquitted) had beaten her in the afternoon on the previous day — It was then stated therein that her grandmother disliked her — These statements in the dying declaration, held, are not sufficient to substantiate the prosecution case that A-1 to A-3 committed offence under S. 498-A* (Para 12). *Paparambaka Rosamma* v. *State of A.P.*, (1999) 7 SCC 695: 1999 SCC (Cri) 1361: AIR 1999 SC 3455.

Bench Strength 3. Coram: **S.P. Kurdukar**, *K.T. Thomas* and *N. Santosh Hegde*, JJ. [Date of decision: 13-9-1999]

[10906] — **S. 498-A — Ingredients/prerequisites for presumption of offence under — Whether made out at stage of framing of charge against in-laws** — *No allegation of wilful conduct of harassment by Appellants 1 and 2 (in-laws) — Allegation that A-3 (husband) wanting the complainant wife to beg apology from, talk with and obey her in-laws as a condition to return back to her conjugal life — Admittedly after 3-7-1994 complainant had never lived with A-1 and A-2 — Complainant alleging dowry demand in her complaint dated 4-4-1995 — The allegation of misbehaviour on the part to A-1 and A-2 and demand of dowry by them, held, was an afterthought and not bona fide — Hence charges quashed against A-1 and A-2 — However, trial directed to continue against A-3 under S. 498-A*

Section 498-A IPC was introduced with the avowed object to combat the menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives. (Para 20)

In the complaint dated 8-11-1994 there was not even a whisper of a wilful conduct of Appellants 1 and 2 of harassment of the complainant at their hands with a view to coercing her to meet any unlawful demand by them so as to attract the provisions of Section 498-A read with Explanation thereto. The complaint referred to the talk the complainant purports to have had with her husband, Appellant 3, who is alleged to have told her to come to Bijnore; and if she apologised to his father, kept him happy, obeyed his sister and talked to her father (the complainant's) to give her Rs 50,000 and VCR and bring these articles to Bijnore. The allegation of misbehaviour on the part of Appellants 1 and 2 and the demand of Rs 50,000 and VCR by them made by the complainant in her subsequent statement, dated 4-4-1995, was an afterthought and not bona fide. (Paras 19 to 20 and 9). *Onkar Nath Mishra* v. *State (NCT of Delhi)*, (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507: (2008) 62 AIC 155 (SC): 2008 Cri LJ 1391.

Bench Strength 2. Coram: *Ashok Bhan* and **D.K. Jain**, JJ. [Date of decision: 14-12-2007]

[10907] — S. 498-A — Prima facie evidence of commission of offence under — Nature, scope and applicability of S. 319 CrPC — Quashment of process issued under S. 319 CrPC — When proper — *Magistrate finding prima facie evidence and issuing process under S. 319 CrPC against appellant-accused named in FIR but police in its charge-sheet dropping charges against said accused — High Court not finding any illegality or perversity in issuance of process under S. 319 CrPC — Legality — Held, the process issued under S. 319 is legal and could not be quashed under S. 482 CrPC on ground that police did not file charge-sheet — Prima facie evidence of commission of offence under — CrPC, 1898, S. 351 — CrPC, 1973, Ss. 319 and 482* (Paras 36 and 35). *Suman* v. *State of Rajasthan*, (2010) 1 SCC 250.

Bench Strength 2. Coram: *R.V. Raveendran* and **G.S. Singhvi**, JJ. [Date of decision: 13-11-2009]

[10908] — S. 498-A — Prima facie evidence of commission of offence under — Existence of — Applicability of S. 319 CrPC — *Complainant wife alleging that mother-in-law and appellant-accused (sister-in-law) castigating her for insufficient dowry and subjecting her to physical and mental harassment and that appellant-accused instigating complainant's husband to inflict physical torture, that only after about one week after marriage, mother-in-law and appellant telling her that in the marriage, items like scooter, fridge, air conditioner, etc. were not given and marriage party was not served well and that on instigations of mother-in-law and appellant, the husband gave beating with belan and appellant forcibly removed her rings — Complainant's allegations in FIR clearly corroborated in her S. 161 CrPC statement recorded by police and statement of witnesses — Effect — Held, there is prima facie evidence against appellant to proceed under S. 319 CrPC*

Respondent 2 wife lodged a complaint under Section 498-A against her in-laws. However, the police after investigation filed a negative final report in respect of the appellant (accused sister-in-law). The Magistrate took cognizance against the accused sister-in-law under Section 319 CrPC.

Dismissing the appeal of the accused sister-in-law,

Held :

A reading of the plain language of Section 319(1) CrPC makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) CrPC from which it can be inferred that a person who is named in the FIR or complaint but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the court finds that such person has committed any offence for which he could be tried together with the other accused. (Paras 17, 14 and 15)

The process issued against the appellant under Section 319 CrPC cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her. A person who is named in the FIR or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 CrPC if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. (Paras 27 and 21)

The Magistrate had objectively considered the entire matter and judiciously exercised discretion under Section 319 CrPC for taking cognizance against the appellant. The issue of summons against the appellant was not an abuse of the process of the court. While deciding the application filed under Section 319 CrPC, the Magistrate noticed the allegations made by Respondent 2 in the complaint that her mother-in-law and sister-in-law had castigated her for insufficient dowry and subjected her to physical and mental harassment and that the sister-in-law had instigated the complainant's husband to inflict physical torture upon her, which were supported by the statements recorded by the police under Section 161 CrPC and by the Magistrate under Section 164 CrPC. In her complaint Respondent 2 alleged that after one week of the marriage, her mother-in-law and sister-in-law (the appellant) told her that in the marriage, items like scooter, fridge, air conditioner, etc. were not given and the marriage party was not served well and that on the instigations of the mother-in-law and the appellant sister-in-law, the husband gave beating with the belan and the appellant forcibly removed the rings. (Paras 35, 34 and 32)

The complainant clearly spelt out the role played by the appellant and made a specific mention about this in the letters written to her parents and the Magistrate opined that a prima facie case was made out for issuing process against the appellant. The father and mother of Respondent 2 and four other persons, whose statements were recorded under Section 161 CrPC, clearly spelt out the role played by the appellant in harassing Respondent 2 and instigating the complainant's husband to inflict torture upon her. Despite this, the police did not file charge-sheet against the appellant thinking that she had no occasion to make demand for dowry or harass Respondent 2 because the appellant was living with her husband. Therefore, the trial of the appellant should proceed and should be decided expeditiously. (Paras 35, 33 and 37)

The High Court broadly referred to the factual matrix of the case and held that the orders passed by the Magistrate and Sessions Judge did not suffer from any illegality or perversity warranting interference under Section 482 CrPC. The approach adopted by the High Court is in consonance with the settled law. Although at one stage, the Sessions Judge allowed the revision filed by the appellant and declared that in view of the bar of limitation contained in Section 468 CrPC, the Magistrate could not have taken cognizance against the appellant, the said order was set aside by the High Court and the matter was remitted for fresh disposal of the revision petition. In the post remand order passed by him, the Sessions Judge independently examined the entire record and held that prima facie case was made out for initiating proceedings against the appellant herein under Section 498-A IPC. (Paras 36 and 35). *Suman* v. *State of Rajasthan*, (2010) 1 SCC 250.

Bench Strength **2**. Coram: *R.V. Raveendran* and **G.S. Singhvi**, JJ. [Date of decision: 13-11-2009]

Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532; Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Anil Singh v. State of Bihar, (2006) 13 SCC 421: (2008) 1 SCC (Cri) 708; Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544: (2009) 1 SCC (Cri) 889; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; CBI v. Ravi Shankar Srivastava, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, relied on

[10909] — S. 498-A — Quashing of charge under S. 498-A IPC against parents-in-law of complainant-wife by High Court on the basis of concession made by the Government Advocate without going through the record, held, was improper — *On facts, there was sufficient material on record to frame a charge under S. 498-A against them — Government Advocates must conduct the case in more responsible manner in such cases — High Court also should verify the record before accepting the concession — CrPC, 1973 — S. 482. Deepti* v. *Akhil Rai*, (1995) 5 SCC 751: 1995 SCC (Cri) 1020.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **G.T. Nanavati**, JJ. [Date of decision: 14-9-1995]

[10910] — S. 498-A — Relief — Acquittal of appellant — Case of co-accused, who had undergone sentence after the dismissal of her SLP by Supreme Court, standing on same footing — Acquittal therefore recorded in favour of co-accused also — *Constitution of India, Art. 136* (Para 14). *Lella Srinivasa Rao* v. *State of A.P.*, (2004) 9 SCC 713: 2004 SCC (Cri) 1479: AIR 2004 SC 1720.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-2-2004]

[10911] — S. 498-A — S. 113-B, Evidence Act, 1872 — Conviction of husband but acquittal of relatives of husband — *High Court by impugned judgment convicting Appellants 1, 2 and 3 (husband, mother-in-law and brother-in-law respectively) under S. 498-A, while acquitting remaining co-accused finding evidence against them insufficient to sustain conviction — Submission by appellants that there were lots of inconsistencies and improvements in testimonies of PWs, yet High Court chose to direct acquittal only of two persons while upholding the conviction on the self-serving evidence qua the appellants — In FIR thrust of allegations was primarily directed against the acquitted accused persons — Besides, lots of improvements in testimonies of PWs were noticed which primarily related to Appellants 2 and 3 — Hence held, acquittal as directed qua the co-accused persons should have also been done in the case of Appellants 2 and 3 — However, evidence of PWs clearly establishes allegations against Appellant 1 — No infirmity in judgment of High Court upholding his conviction — Considering the fact that he had already undergone custody for thirteen months, sentence reduced to period already undergone — Evidence Act, 1872, S. 113-B* (Paras 10 to 14). *Satish Kumar Batra* v. *State of Haryana*, (2009) 12 SCC 491: AIR 2009 SC 2180: 2009 Cri LJ 2447.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-4-2009]

Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281, followed

[10912] — Ss. 498-A, 302/34 and 304-B — Death of housewife by burning — Charge of murder against parents-in-law of the deceased not established — *Evidence on record showing that parents-in-law of the deceased subjected her to cruelty leading to the inference that she committed self-immolation unable to bear the cruelty of her in-laws any more — Circumstances probabilising the defence version that the deceased committed self-immolation — There being no allegation of harassment on account of demand of dowry S. 304-B would not apply — In the circumstances of the case, conviction of the appellants altered from Ss. 302/34 to S. 498-A and sentence reduced to the period already undergone. Kanchy Komuramma* v. *State of A.P.*, 1995 Supp (4) SCC 118: 1996 SCC (Cri) 31.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 24-2-1994]

[10913] — Ss. 498-A and 306 — Conviction justified under S. 498-A — Sentence warranted against aged parents-in-law of deceased — *Accused-appellants 1 to 4 (father-in-law, husband, brother-in-law and mother-in-law respectively of deceased) alleged to have harassed and ill-treated deceased over dowry demand — Deceased found lying dead in verandah of her matrimonial home, and none of the accused present — Trial court finding accused guilty under Ss. 498-A and 306 — In appeal filed thereagainst, High Court convicting them only under S. 498-A and imposing sentence of one year — Sustainability — Held, there is no material to establish guilt of A-3 i.e. brother-in-law of the deceased, and hence, he acquitted — So far as the other three accused persons are concerned, the accusations have been established by evidence of PWs 3, 4 and 5, documentary evidence, and exhibited letters and the convictions recorded so far as they are concerned, cannot be faulted — However, considering age of the father-in-law and mother-in-law (A-1 and A-4) and period of sentence already undergone by them, while upholding their conviction, sentence reduced to the period already undergone — Conviction and sentence of A-2 maintained* (Paras 3 and 11 to 13). *Balwant Singh* v. *State of H.P.*, (2008) 15 SCC 497: (2009) 3 SCC (Cri) 1094: (2008) 71 AIC 153 (SC): 2008 Cri LJ 4683.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 29-9-2008]

M. Srinivasulu v. State of A.P., (2007) 12 SCC 443: (2008) 3 SCC (Cri) 169; Kaliyaperumal v. State of T.N., (2004) 9 SCC 157, relied on

Balwant Singh v. State, (2001) 1 Shim LC 446 (HP), partly affirmed

[10914] — Ss. 498-A, 306 and 304-B — Conviction of appellant under — Sustainability — Dowry death — *On facts, originally five accused faced trial under Ss. 498-A, 306 and 304-B, but trial court convicted only A-3 (mother-in-law of the victim), while acquitting appellant A-1 (husband of the victim) and other co-accused — However, High Court while dismissing appeal of A-3, allowed appeal by State, thereby convicting appellant husband under aforementioned sections — Conviction by High Court rested on the letter written by the deceased to her father, PW 1, referring to the demand of gold ring by her mother-in-law, and that according to High Court, it also related to demand of Rs 10,000 by appellant husband — Validity of — Held, sentence in the letter was read out of context — Deceased had written in the letter that she may have to get a gold ring but wherefrom will she get the money for buying it — There was no reference to any demand of money by the appellant — That being so, High Court was not justified in upsetting the acquittal by trial court*

In the letter on which both the trial court and the High Court have relied upon to conclude one way or the other, reference is made to several earlier letters. It specifically refers to the demand by mother-in-law of a gold ring. There is no reference to the present appellant in the letter. (Para 9)

The evidence of PWs 1 to 3 (father, mother and elder sister of the deceased, respectively), is also relevant. PW 1 has stated that except Ext. 19 (letter of the deceased to PW 1), he had not received any letter and the statement in the letter to the effect that the deceased had earlier sent 2/3 letters is correct. If on one hand he says that he had not received any letter, the question of not replying to them does not arise. Similarly, PW 2 has stated that she cannot say whether there was any demand of Rs 10,000 in Ext. 19. PW 3 has accepted that the deceased had written to her father that her mother-in-law was demanding a gold ring in the letter (Ext. 19). (Para 10)

State submitted that there is some reference to money in the letter. The sentence is being read out of context. The deceased had written in the letter that she may have to get a gold ring but wherefrom will she get the money for buying it. Therefore, there is no reference to any demand of money by the appellant. That being so, the High Court was not justified in upsetting the judgment of the trial court. The impugned judgment of the High Court is set aside and that of the trial court is restored. (Para 11). *Vijay* v. *State of Maharashtra*, (2009) 2 SCC 87: (2009) 1 SCC (Cri) 674: AIR 2009 SC 1217: (2009) 75 AIC 135 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-12-2008]

[10915] — Ss. 498-A & 306 r/w S. 34 — Conviction reversed — *A-1 to A-5 (father-in-law, mother-in-law, husband, brother-in-law and sister-in-law respectively) alleged to have meted out cruelty to deceased abetting her to commit suicide — High Court in appeal against their acquittal by impugned judgment convicted the accused under Ss. 498-A & 306 r/w S. 34 — No circumstance indicated by High Court to connect the appellants (A-2, A-4 and A-5) with alleged crime (A-1 died during pendency of appeal and SLP filed by A-3 was dismissed) — Hence held, their conviction cannot be sustained* (Paras 2, 3 and 7 to 9). *Shindhu* v. *State of Karnataka*, (2009) 7 SCC 246: (2009) 3 SCC (Cri) 367: (2009) 81 AIC 177 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-5-2009]

[10916] — Ss. 498-A & 406 — Quashing of criminal proceedings — Whether allegations in FIR made out the offence of which cognizance could be taken — *Allegations against appellant sister-in-law only relating to causing insult, making derogatory remarks and behaving rudely against informant and not pertaining to dowry demand or entrustment and misappropriation of property belonging to her — Allegations of abetment of alleged offences, also not made against this appellant — Held, alleged offences under Ss. 498-A and 406 IPC and S. 4, Dowry Prohibition Act on facts not made out from such allegations, hence Magistrate not justified in taking cognizance thereof — Proceedings liable to be quashed — Dowry Prohibition Act, 1961, S. 4 — CrPC, 1973 — S. 482* (Para 6). *Ramesh* v. *State of T.N.*, (2005) 3 SCC 507: 2005 SCC (Cri) 735: AIR 2005 SC 1989: 2005 Cri LJ 1732.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 3-3-2005]

[10917] — Ss. 498-A, 406 and 34 — Applicability — Cruelty to married woman — Allegations of — Ingredients for presumption of offence under — Whether made out — *Complaint filed by respondent against husband and his appellant parents — Summons and non-bailable warrants issued against appellants — High Court dismissing application for quashing summoning order — Appeal against — Held, allegations relating to place where marriage took place have nothing to do with offence under S. 498-A IPC — Allegations that A-2 (mother-in-law) kicked respondent and told her that her mother was a liar, may make out some other offence but not one punishable under S. 498-A — Allegations that A-2 poisoned ears of her son against respondent; she gave two used lady's suits of her daughter to complainant; giving perpetual sermons to complainant; threatening her son may be divorced for the second time, held, do not give rise to offences punishable under S. 498-A — No case made out under S. 498-A IPC — Hence, summoning order passed against appellants, except A-2 set aside as proceedings against her could continue under S. 406 IPC only — CrPC, 1973, S. 482* (Paras 32, 36, 37, 40 and 61)

Respondent *M* married *V*, son of the appellants. *V* was a divorcee who had two children from his first wife. The marriage with the respondent took place on 16-1-2004. Shortly thereafter the relationship between the parties deteriorated. During this entire period including the period after she left her matrimonial home in June 2004, the parties communicated with each other through e-mails.

M filed a complaint under Sections 498-A, 406 and 34 IPC against her husband *V* and the appellants. An application for grant of maintenance was also filed claiming maintenance of a sum of Rs 2 lakhs per month as also an order of interim maintenance of Rs 2 lakhs per month till the disposal of the case. Her application for grant of interim maintenance was allowed by the Metropolitan Magistrate at the rate of Rs 5000 per month. Non-bailable warrants of arrest were also issued against the appellants as also *V*. The respondent filed a revision application before the High Court seeking increase in the maintenance. The High Court enhanced the interim maintenance to Rs 50,000 per month. Subsequently the appellants as also *V* filed an application for quashing the order directing issuance of non-bailable warrants against them. The High Court stayed the order issuing non-bailable warrants against the appellants with an undertaking that *V* and the appellants would appear before the Magistrate.

The appellants along with *V* also filed an application for quashing of the summoning order passed by the Magistrate summoning them for attending the trial court. The appellants and their son came to India; they appeared before the Magistrate; they were admitted to bail.

The High Court in criminal revision directed impounding of the passport of *V* stating that efforts were being made for reconciliation. Talks of reconciliation failed. The High Court modified the said finding stating that the marriage seems to have broken down irretrievably and directed return of the passport to *V*. Pursuant to the liberty granted by the High Court, the appellants as also *V* filed an application for permission to go abroad, which was allowed subject to the condition that additional bank guarantees be furnished of Rs 1 lakh for each of the applicants. *M* filed a criminal complaint under Section 420 IPC against the appellants and *V* inter alia alleging all material facts relating to the first marriage and divorce, and in particular the fact that the first wife of *V* in her divorce suit alleged acts of cruelty on the part of her husband had not been disclosed.

For one reason or the other the appellants having failed to attend the Court of the Metropolitan Magistrate, *M* filed an application for attachment of the ancestral property of Appellant 1. Interpol also was sounded. Orders were passed for attachment of the property in terms of Section 83 CrPC situated both at Delhi as also the ancestral house of Appellant 1 at Jaipur.

The High Court dismissed the application for quashing the summoning order filed by the appellants. The appellants had thus filed the present appeal.

Allowing the appeal in terms below, the Supreme Court held as above.

Held :

Parliament by Act 46 of 1983 with a view to combat the menace of dowry deaths and harassment of woman at the hands of her husband or his relatives introduced Section 498-A and Section 304-B in IPC.

Thus, the essential ingredients of Section 498-A are:

1. A woman must be married.

2. She must be subjected to cruelty.

3. Cruelty must be of the nature of:

(*i*) any wilful conduct as was likely to drive such woman:

(*a*) to commit suicide;

(*b*) cause grave injury or danger to her life, limb, either mental or physical;

(*ii*) harassment of such woman,

(1) with a view to coerce her to meet unlawful demand for property or valuable security,

(2) or on account of failure of such woman or by any of her relation to meet the unlawful demand;

(*iii*) woman was subjected to such cruelty by:

(1) husband of that woman, or

(2) any relative of the husband.

For constitution of an offence under Section 498-A IPC, therefore, the ingredients thereof must be held to be existing. (Paras 27 and 29)

For proving the offence under Section 498-A IPC, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any wilful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. No such allegation has been made or otherwise can be found out so as to arrive at an opinion that the appellants prima facie have committed such an offence. The complaint petition must also be read with several other documents which form part of the complaint petition. The children from the first wife of *V* were with *M*. *V* affirmed an affidavit so as to enable *M* to apply for their passports. *V*, therefore, wanted to have children with them. (Paras 30 to 36)

Based on the e-mails exchanged between the couple and their parents it is evident that the couple had developed incompatibility in respect of various aspects of life including the one as to whether *M* did a favour to *V* by marrying him. They also include the children, her going out of the home without informing any senior member of the house, allegation of extramarital affairs against *V*; her taking of detergent powder evidently to commit suicide; they had been staying in separate rooms, differences in respect of carrying of business, her becoming hysterical at some point of time. *V* even thought that she had been trying to blackmail him by refusing to go back to India and threatening to commit suicide. The e-mails show allegations, counter-allegations and explanations by *M* in relation thereto. There are many more e-mails exchanged between the couple as also their parents. However, in none of them had any allegation with regard to cruelty or breach of trust been made. Such allegations are made for the first time in the complaint petition as also in the application for grant of maintenance. (Paras 32 and 36)

The correspondences exchanged between the spouses or by and between *V* and his in-laws do not disclose any allegation which would amount to criminal misconduct on the part of the appellants. (Para 55)

Ex facie no case has been made out under Section 498-A IPC so far as the appellants are concerned. The allegations relating to the place where the marriage took place have nothing to do with an offence under Section 498-A IPC. Allegations that Appellant 2 kicked the respondent with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498-A. Similarly her allegations that Appellant 2 poisoned the ears of her son against the respondent; she gave two used lady's suits of her daughter to the complainant and has been given perpetual sermons to the complainant could not be said to be offences punishable under Section 498-A. Even threatening that her son may be divorced for the second time could not make out the offence under Section 498-A IPC. (Paras 37 and 49)

The jurisdiction of the High Court to quash an order of summoning and/or a criminal proceeding as also the Supreme Court are well known. (Para 40)

Courts at all levels have made endeavours to bring about a settlement between the parties. The High Court in the earlier round of proceedings probably rightly observed that the marriage between *M* and *V* has irretrievably broken down. (Paras 49 and 60). *Bhaskar Lal Sharma* v. *Monica*, (2009) 10 SCC 604: (2009) 161 DLT 739.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 27-7-2009]

Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Noorjahan v. State, (2008) 11 SCC 55: (2008) 3 SCC (Cri) 915; Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281: 2005 SCC (Cri) 1473; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu, (2009) 11 SCC 203: (2009) 3 SCC (Cri) 1297; Kailashi Bai v. Aarti Arya, (2009) 13 SCC 548; Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507; Ramesh v. State of T.N., (2005) 3 SCC 507: 2005 SCC (Cri) 735; Devendra v. State of U.P., (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461, relied on

Mahila Vinod Kumari v. State of M.P., (2008) 8 SCC 34: (2008) 3 SCC (Cri) 414, distinguished

[10918] — S. 498-A and Ss. 406, 341, 323 & 120-B and Ss. 3 & 4, Dowry Prohibition Act, 1961 — Quashing of complaint under S. 498-A IPC, against appellants (unmarried brother and married sister of complainant's husband) who were neither residing with complainant in her matrimonial home nor visited her — *Demand of luxury car, passing of sarcastic remarks (without stating actual wordings), and physical assault alleged against parents-in-law, husband and appellants — Appellant 1 (married sister-in-law of complainant) residing in her own matrimonial home with her husband for more than 7 years, while Appellant 2 was permanent resident of Goregaon, Maharashtra — Appellants never visiting place where alleged occurrence had taken place, and neither living with complainant and her husband at any time — No specific allegation made against appellants in complaint, and none of the witnesses attributing any role to them — Held, their implication was only meant to harass and humiliate husband's relatives — Permitting complainant to pursue complaint would be abuse of process of law — Hence, complaint against appellants quashed — Courts cautioned to scrutinise such vexatious and frivolous complaints with great care and circumspection — CrPC, 1973, S. 482* (Paras 4, 27, 28, 35 and 38). *Preeti Gupta* v. *State of Jharkhand*, (2010) 7 SCC 667.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 13-8-2010]

(6) Trial, Proof and Other issues

See in detail under CRIMINAL TRIAL in Vols. 18, 19 and 20, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial*

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(i) Generally

[10919] — S. 498-A — Cruelty — Degree and standard of proof — *Held, requirement of proof beyond all reasonable doubts not altered even after introduction of S. 498-A IPC and S. 113-A of Evidence Act — Before recording a finding of guilt court must satisfy itself that deceased was not hypersensitive — Also exaggerated devotion to rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence — Evidence Act, 1872, S. 113-A*

The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of S. 498-A IPC and S. 113-A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. The doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter. *State of W.B.* v. *Orilal Jaiswal*, (1994) 1 SCC 73: 1994 SCC (Cri) 107: AIR 1994 SC 1418: 1994 Cri LJ 2104: (1994) 1 BLJR 267: (1994) 1 Guj LH 537.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 23-9-1993]

[10920] — S. 498-A — Ill-treatment of wife (deceased) by husband — Proof — Fact that in one of the letters written to her husband the deceased had not complained about ill-treatment — Effect — *Held, that was no ground to hold that the deceased was never ill-treated by her husband, particularly in view of the evidence of large number of witnesses in that regard*

The High Court observed that in the letter written by the deceased to her husband quite some time back, there is no mention of any ill-treatment meted out to her by the respondent husband, and that no other letter has been produced to show that she had even mentioned in any such letter that she was being ill-treated. This approach of the High Court is highly unreasonable. Merely because in one solitary letter there is no reference to ill-treatment by the respondent, would be no ground to arrive at the conclusion that the deceased was never ill-treated by her husband, particularly in the face of evidence of a large number of witnesses. Therefore, there is no justification for the finding of the High Court that the deceased was not ill-treated by the respondent, or that there was no motive to commit the offence. (Para 12). *State of Karnataka* v. *K. Gopalakrishna*, (2005) 9 SCC 291: 2005 SCC (Cri) 1237: AIR 2005 SC 1014: 2005 Cri LJ 1436.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 18-1-2005]

[10921] — Ss. 498-A and 304-B — Reason for dispute between husband and wife — Determination of — *Evidence of contemporaneous nature, held, plays an important role in such cases — Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature — Hence held, if really the respondent wife was subjected to cruelty and harassment in the manner alleged by her, she would have written about such treatment to her friends and relatives with whom she might have corresponded — But on facts it was not so — Hindu Marriage Act, 1955, S. 13(1)(i-a)*

In cases where there is a dispute between husband and wife it is very difficult to unravel the true reason for the dispute. After separation when the relationship turns sour, all sorts of allegations and counter-allegations are made against each other. Evidence of contemporaneous nature therefore plays an important role in such cases as it may reveal the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature. If really the respondent wife was subjected to cruelty and harassment in the manner alleged by her, she would have written about such treatment to her friends and relatives with whom she may have corresponded. The reports allegedly made by her to the police may have thrown some light on this aspect of the matter. Such evidence is completely absent in this case. It appears to us that the parties lived happily for many years after the marriage till about the year 1996, whereafter there was some misunderstanding which ultimately resulted in their separation. Why this happened, it is difficult to fathom, but the evidence on record does not convince the Court that the respondent was subjected to torture and harassment by the appellant, and certainly not for the reasons alleged by her. The court is not permitted to conjecture and surmise. It must base its findings on the evidence produced before it by the parties. The enquiry by the court is restricted to the evidence on record and the case pleaded by the parties. It is not permissible to the court to conjecture and surmise and make out a third case not pleaded by the parties only to answer the query such as the one raised herein. (Para 20). *Deb Narayan Halder* v. *Anushree Halder*, (2003) 11 SCC 303: 2004 SCC (Cri) 164: AIR 2003 SC 3174.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-8-2003]

[10922] — Ss. 498-A, 304-B and 306 — Relevancy of facts forming part of same transaction — Res gestae — Applicability — Death of deceased neither homicidal, nor suicidal, but accidental and occurring after about ten years of her marriage — *PWs 4 and 5 stating that their deceased sister had told them that her accused husband was torturing her because he wanted them to meet his certain demands — Relying on their evidence accused convicted under S. 498-A — Held, what res gestae means is that a fact which, though not in issue, is so connected with the fact in issue*as to form part of the same transaction *that it becomes relevant by itself — For a particular statement to form part of the same transaction utterances must be simultaneous with the incident or substantially contemporaneous, that is, made either during or immediately before or after its occurrence — S. 6 Evidence Act, in facts and circumstances of present case, insofar as admissibility of statements of PW 4 and PW 5 about what the deceased had told them against the accused of the treatment meted out to her is concerned, is not at all attracted — Evidence Act, 1872, S. 6* (Paras 18 to 21)

The dead body of deceased was found in well and cause of her death was asphyxia due to drowning. The deceased was married to accused about ten years before her death. Prosecution alleged that appellant subjected his wife to torture and harassment demanding her to ask her brothers PWs 4 and 5 to arrange a job for him, or to register a house in his name, or to bring Rs 1 lakh so as to enable him to start his business. The incidences of harassment and torture were communicated by deceased to her brothers.

The accused was charged under S. 304-B, S. 306 and S. 498-A IPC, and S. 3 of the Dowry Prohibition Act, 1961. The trial court found that death of deceased was neither homicidal, nor suicidal, but accidental. However, relying on testimonies of PWs 4 & 5 accused was found guilty under S. 498-A and S. 3, Dowry Prohibition Act and sentenced to RI for 3 years and fine of Rs 5000 for offence under S. 498-A, and RI for 5 years and fine of Rs 15,000 for offence under S. 3, Dowry Prohibition Act. The High Court in appeal filed thereagainst while maintaining his conviction under S. 498-A, set aside his conviction under S. 3, Dowry Prohibition Act. Hence, the present appeal.

The question that arose was in a case where the accused had been acquitted of the offence punishable under Sections 304-B and 306 IPC, and the death of the wife was neither homicidal nor suicidal but accidental, whether the oral evidence of witnesses about what the deceased had told them against the accused about the treatment meted out to her was admissible under Section 32(1) of the Evidence Act to sustain conviction under Section 498-A IPC.

Allowing the appeal, the Supreme Court held as above. *Bhairon Singh* v. *State of M.P.*, (2009) 13 SCC 80: AIR 2009 SC 2603: (2009) 79 AIC 80 (SC): 2009 Cri LJ 3738.

Bench Strength **2**. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 29-5-2009]

Sukhar v. State of U.P., (1999) 9 SCC 507: 2000 SCC (Cri) 419, considered and followed in law but distinguished on facts

Wigmore's Evidence Act; Sarkar on Evidence, 15th Edn., cited

[10923] — Ss. 498-A, 406 and 34 — Complaint petition under — E-mails between couple and parents forming part of — Evidentiary value and importance of — Non-consideration of, by High Court — Effect — *Whether correspondence showed any allegation of dowry demand or misappropriation of respondent's wife's stridhan — Held, complaint petition must also be read with several other documents which form part of the complaint petition — In none of them had any allegation with regard to cruelty or breach of trust been made — Allegations made for first time in complaint petition and application for grant of maintenance — Correspondence exchanged between the spouses and between the husband and his in-laws did not disclose any allegation which would amount to criminal misconduct on part of appellants — It was evident that the couple had developed incompatibility — Evidence Act, 1872, S. 3 — CrPC, 1973, Ss. 154 to 157 and 482* (Paras 32, 36, 49, 55 and 60)

For proving the offence under Section 498-A IPC, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any wilful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. No such allegation has been made or otherwise can be found out so as to arrive at an opinion that the appellants prima facie have committed such an offence. The complaint petition must also be read with several other documents which form part of the complaint petition. The children from the first wife of *V* were with *M*. *V* affirmed an affidavit so as to enable *M* to apply for their passports. *V*, therefore, wanted to have children with them. (Paras 30 to 36)

Based on the e-mails exchanged between the couple and their parents it is evident that the couple had developed incompatibility in respect of various aspects of life including the one as to whether *M* did a favour to *V* by marrying him. They also include the children, her going out of the home without informing any senior member of the house, allegation of extramarital affairs against *V*; her taking of detergent powder evidently to commit suicide; they had been staying in separate rooms, differences in respect of carrying of business, her becoming hysterical at some point of time. *V* even thought that she had been trying to blackmail him by refusing to go back to India and threatening to commit suicide. The e-mails show allegations, counter-allegations and explanations by *M* in relation thereto. There are many more e-mails exchanged between the couple as also their parents. However, in none of them had any allegation with regard to cruelty or breach of trust been made. Such allegations are made for the first time in the complaint petition as also in the application for grant of maintenance. (Paras 32 and 36)

The correspondences exchanged between the spouses or by and between *V* and his in-laws do not disclose any allegation which would amount to criminal misconduct on the part of the appellants. (Para 55). *Bhaskar Lal Sharma* v. *Monica*, (2009) 10 SCC 604: (2009) 161 DLT 739.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 27-7-2009]

(ii) Acquittal justified

[10924] — S. 498-A — Acquittal justified — Accused charged under Ss. 498-A and 306 IPC convicted by trial court under S. 498-A IPC — *High Court, not finding any sufficient material which could establish that the husband "treated his deceased wife with cruelty", acquitting the accused — In view of the absence of any complaint against the husband in the letters written by the deceased, held, oral evidence of the deceased's brother was not adequate to maintain the conviction, under S. 498-A, against the husband — Order of acquittal by High Court not interfered with — CrPC, 1973 — Ss. 374 and 386. State of Maharashtra* v. *Ashok Narayan Dandalwar*, (2000) 9 SCC 257: AIR 2000 SC 3568 (2).

Bench Strength **2**. Coram: *G.B. Pattanaik* and *S.N. Variava*, JJ. [Date of decision: 27-4-2000]

[10925] — S. 498-A — Appreciation of evidence — Death of housewife due to burn injuries — Acquittal justified — *Medical Officer attached to the hospital where deceased had been taken first deposed that the patient herself had stated that she received the injuries due to bursting of stove — Maidservant deposed in her evidence-in-chief that appellant husband of the deceased used to assault deceased almost daily on instigation of his sister, but in cross-examination it was elicited that she had not stated so in her statement to the police recorded under S. 161 CrPC — Held, such material omission would discredit her version in court — Evidence of other PWs being not of such nature which would establish the cruelty on the part of the husband, appellant cannot be convicted under S. 498-A. Tarun* v. *State of W.B.*, (2001) 10 SCC 754: 2001 Cri LJ 4937.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Doraiswamy Raju*, JJ. [Date of decision: 4-5-2000]

[10926] — Ss. 498-A and 304-B — Cruelty — Suicide — Conviction improper — *Deceased alleged to have committed suicide by setting herself ablaze because of persistent ill-treatment and cruelty meted out by Accused 1 (husband of deceased) and Accused 2 (mother-in-law of deceased) — Prosecution version primarily resting on three letters dated 3-1-1990, 20-6-1991 and 25-10-1990 written by deceased — However, no allegation of demand of dowry made by accused evident from those letters — On the contrary, letter dated 20-6-1991 showing that her grievance was not regarding demand for dowry but because she was forced to marry against her wish; that she was not willing to get married and wanted to continue her studies — Moreover, she had also stated that she did not want to go to her parental home for Gangamma festival as her husband was taking due care of her — In the other two letters she had written that she was happy and that her in-laws were taking good care of her but somehow she did not wish to live in the marital home — Held, trial court as well as High Court erred in convicting accused under Ss. 498-A & 304-B IPC — They appeared to have picked up one line from one place and another from another place and concluded that there was demand of dowry — Reading the letters in entirety shows that there was, in fact, no mention of any* *demand for dowry — Impugned judgment set aside — Evidence Act, 1872, Ss. 113-A and 113-B* (Paras 2, 8, 9 and 10). *M. Srinivasulu* v. *State of A.P.*, (2007) 12 SCC 443: (2008) 3 SCC (Cri) 169: AIR 2007 SC 3146: (2007) 58 AIC 65 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 10-9-2007]

[10927] — Ss. 498-A, 304-B and 306 — Conviction under S. 498-A reversed — Need for material to establish harassment or subjection to cruelty — *High Court finding that appellant husband was financing PW 1 father of the deceased, and hence, there was no question of demand of dowry, acquitting him of charges under S. 304-B — However, it convicting him under S. 498-A holding that after giving birth to a child in the normal course she could not have entertained the idea to commit suicide unless she was being harassed by appellant — Testimonies of PWs showing that they spoke about dowry to be basis for suicide — No other material to show as to how the deceased was being harassed or subjected to cruelty — Held, conclusion of High Court that because the deceased committed suicide there must be some harassment and cruelty is insupportable and indefensible — Merely on surmises and conjectures, conviction could not have been recorded — There is a vast difference between "could have been", "must have been" and "has been" — In the absence of any material, the case falls in the first category and as such conviction is impermissible* (Paras 5, 8 and 9). *Hazarilal* v. *State of M.P.*, (2009) 13 SCC 783: (2007) 56 AIC 256 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 20-6-2007]

[10928] — Ss. 498-A and 306/304-B r/w S. 34 — Acquittal confirmed — Respondent *R*, with his father and mother acquitted by trial court from charges under Ss. 306/ 304-B r/w S. 34, while only accused *R* convicted under S. 498-A — Appeal against acquittal dismissed by High Court in limine — *In Supreme Court, acquittal from offence under S. 306 only challenged on grounds that trial Judge had not considered the ingredients of S. 113-A of Evidence Act, 1872 and further he had not given any reason as to why he had acquitted the accused persons under S. 306 IPC particularly when he had convicted Accused 1 for offence under S. 498-A of Penal Code — Held, reasoning of trial Judge that no demand of dowry proved as also no case of abetment to commit suicide is made out, was correct — High Court's approach to dismiss appeal in limine without assigning reasons, however disapproved — CrPC, 1973, S. 378 — Evidence Act, 1872, S. 113-A*

The Additional Sessions Judge had given good reasons as to why the presumption would not arise under Section 113-A, Evidence Act. The Additional Sessions Judge has recorded the finding that there was no material to prove that there was any demand of dowry made by the husband or by the father-in-law or by the mother-in-law. The Additional Sessions Judge has also further found that there was no material on record to prove that there was any cruelty meted out to the deceased to commit suicide. (Para 9)

The High Court had not given reasons and had chosen to dismiss the said appeal in limine refusing the leave to file appeal against the acquittal. The course adopted by the High Court cannot be appreciated. Ordinarily, the High Court should have given good reasons even before refusing the leave to file an appeal against the acquittal. That is the established law now. However, sending back the matter again to the High Court would be hazardous as about ten years have elapsed since the death of the deceased. (Para 10)

After overall consideration, the Additional Sessions Judge was correct in acquitting the respondent-accused under Section 306 IPC and the High Court was also correct to refuse the State to file an appeal against the acquittal although the High Court should have given reasons. (Para 11). *State of Punjab* v. *Rajwinder Singh*, (2009) 16 SCC 778.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and *R.M. Lodha*, JJ. [Date of decision: 26-5-2009]

(iii) Appeal/Revision

[10929] — S. 498-A — Cruelty to married woman — Fact finding of absence of — Interference by High Court on presumptions — Not sustainable

The High Court has fallen in grave error while observing that the present appellants "could misappropriate" and "who can practise cruelty". The conclusions to say the least are presumptuous. The learned Additional Sessions Judge by a well-reasoned order had held that there was no material to show that demand for any dowry was made and an attempt was made to rope in many persons. When the High Court was interfering with such conclusions arrived at on facts it ought to have indicated the reasons necessitating such interference. That has not been done and on the contrary on presumptuous conclusions the order of the learned Additional Sessions Judge has been set aside. (Para 9)

(6)(iii) Appeal/Revision *(contd.)*

The High Court itself has held that there was an attempt to rope in many persons and it did not find any merit or challenge to the discharge of the married sister and the brother. (Para 11)

Hence impugned order of the High Court cannot be maintained and is set aside. (Para 12). *Ran Singh* v. *State of Haryana*, (2008) 4 SCC 70: (2008) 2 SCC (Cri) 182: AIR 2008 SC 1294: 2008 Cri LJ 1941: (2008) 1 KLT 803.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 30-1-2008]

[10930] — S. 498-A — Delay — Order of High Court reversing acquittal recorded by trial Judge — Inordinate delay in impugning legality of — *High Court, convicting the accused under S. 498-A IPC, remanding the matter to trial Judge for considering question of sentence — Accused not assailing the remand order of High Court until the sentence was passed by the trial Judge and thereafter affirmed against him by District Court as well as High Court — Delay in impugning High Court's order, held, not liable to be condoned — CrPC, 1973 — Ss. 378 and 386* (Para 1). *C. Gopinathan* v. *Krishnan Ayyappan*, (2000) 9 SCC 430: 2001 SCC (Cri) 413.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-3-2000]

[10931] — S. 498-A — Remand — Matter remitted again by High Court with same direction, if proper — *High Court convicting the accused remanding the matter to trial Magistrate to pass appropriate sentence exercising liberty in respect of the applicability of benevolent provisions of the Probation of Offenders Act and consideration of report of District Probation Officer — Magistrate, exercising discretion granted by High Court, sentencing the accused with three years' rigorous imprisonment — Sentence having been affirmed by the Sessions Court, matter remanded again by High Court with same direction — Having regard to the liberty granted by High Court to Magistrate while passing appropriate sentence, held that the Magistrate passed the sentence in accordance with the earlier direction of High Court — Order of High Court remitting the matter again, for considering the same issue, merely on ground of absence of District Probation Officer's report, held, was not justified — CrPC, 1973 — Ss. 386, 378 and 360* (Para 3). *C. Gopinathan* v. *Krishnan Ayyappan*, (2000) 9 SCC 430: 2001 SCC (Cri) 413.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-3-2000]

[10932] — S. 498-A — Suicide by housewife by sprinkling kerosene on her body and setting herself on fire — *Out of three relevant witnesses PWs 9, 10 and 11, High Court examining veracity of PW 9 with reference to his statement made to the police under S. 161 CrPC, and in view of material omission in the statement under S. 161 CrPC it coming to the conclusion that the witness was not reliable — High Court also brushing aside the evidence of PWs 10 and 11 on the ground that they were closely related and that evidence of PW 10 indicated that his wife and mother-in-law had no joint account in the bank from which the alleged amounts of dowry were drawn — Though High Court's discussion of evidence of PWs 10 and 11 were scrappy, but on being asked to place the evidence of those witnesses before Supreme Court, counsel for the State expressing his inability to procure a copy of the evidence of those witnesses — More than 7 years had elapsed since filing of appeal before Supreme Court — Held, it indicates the callousness with which the State has been pursuing the appeal in the Supreme Court in a matter like this — Though the counsel did pray for adjourning this case in the midst of hearing, but it would not be proper for the Supreme Court to do so because of the failure on the part of the prosecution to place a copy of the evidence before the Court for its appreciation to judge whether the appreciation of evidence made by the High Court was justified or not* (Para 6). *State of Haryana* v. *Jasvinder Singh*, (2000) 9 SCC 387: 2001 SCC (Cri) 402.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-3-2000]

[10933] — Ss. 498-A, 306 & 304-B r/w S. 34 — Powers of appellate court under S. 386(b)(i) CrPC — Restriction to appeals against convictions and sentence — *Held, S. 386(b)(i) CrPC is confined to cases of appeals against orders of conviction and sentence, and cannot be exercised for reversing an order of acquittal passed in respect of an offence charged, while dealing with an appeal preferred by him against the order of conviction in respect of another offence charged and found proved — Accused-appellant charged under Ss. 498-A, 306 & 304-B r/w S. 34 — However, they acquitted of charges under Ss. 498-A & 306 r/w S. 34 by the Sessions Judge, which order attained finality as no appeal was preferred thereagainst by the State — Appeal filed by the appellants challenging their conviction under S. 304-B r/w S. 34 — Supreme Court refraining from expressing any opinion as to whether the appellants could be held guilty of having committed the offence under S.*

498-A or S. 306 IPC on the basis of evidence available on record as their acquittal under the aforesaid charges had attained finality and could not be reversed in the appeal filed by the appellants challenging their conviction under S. 304-B IPC — CrPC, 1973, S. 386(b)(i) (Para 12). *Appasaheb* v. *State of Maharashtra*, (2007) 9 SCC 721: (2007) 3 SCC (Cri) 468: AIR 2007 SC 763: (2007) 50 AIC 1 (SC): (2007) 4 KLT 463.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 5-1-2007]

State of A.P. v. Thadi Narayana, AIR 1962 SC 240: (1962) 1 Cri LJ 207, relied on

[10934] — Ss. 498-A, 406, 323, 506, 148 and 149 — Revision — Reasoned order/Speaking order — Necessity of — *In a case pertaining to allegation of harassment for dowry, High Court partly allowing revision by complainant under S. 401 on presumptuous conclusions — Impropriety — On facts, revisional court below passing a well-reasoned order — High Court while interfering with such conclusions arrived at on facts, held, ought to have indicated reasons necessitating interference — That was not done and on the contrary on presumptuous conclusions order of revisional court below was partly set aside — Reasons, held, introduce clarity in an order — On plainest consideration of justice, High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind — Absence of reasons rendered High Court's judgment unsustainable — Dowry Prohibition Act, 1961, S. 2 — CrPC, 1973 — Ss. 399 to 401* (Paras 2 to 4, 9 and 10). *Ran Singh* v. *State of Haryana*, (2008) 4 SCC 70: (2008) 2 SCC (Cri) 182: AIR 2008 SC 1294: 2008 Cri LJ 1941: (2008) 1 KLT 803.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 30-1-2008]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547, relied on

(iv) Bail

[10935] — Ss. 498-A and 304-B — Anticipatory bail — Considerations for grant of — Complainant alleging harassment for bringing insufficient dowry — Protection against arrest sought by appellant in terms of S. 438 CrPC — Dismissal by High Court — Sustainability — *Held, on facts, High Court completely acted on materials which did not support the conclusions — Directions given by High Court like recovery of dowry articles, etc. need not have been given while dealing with application under S. 438 CrPC — Again, directions for seizing appellant's passport also could not have been given under S. 438 CrPC — Hence, relying on parameters highlighted in* Adri Dharan Das *case, (2005) 4 SCC 303, directions given that if appellant surrenders before the court concerned and moves for bail, the application shall be disposed of expeditiously preferably on the date it is filed — Dowry Prohibition Act, 1961, S. 4 — CrPC, 1973 — S. 438* (Paras 2, 3, 9 and 12). *Mohinder Kaur* v. *State of Punjab*, (2008) 4 SCC 580: (2008) 2 SCC (Cri) 462: AIR 2008 SC 2068: 2008 Cri LJ 2623.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 14-3-2008]

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, relied on

[10936] — Ss. 498-A and 304-B r/w S. 34 — Anticipatory bail — Cancellation of — Propriety — Alleged dowry related offences — *High Court by impugned judgment cancelling anticipatory bail granted to appellants (mother-in-law, father-in-law, younger brother of father-in-law and husband of deceased) who were accused of committing offences punishable under Ss. 498-A, 304-B r/w S. 34 IPC and Ss. 3 & 4, Dowry Prohibition Act, 1961 — Held, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted — In the instant case, nothing was brought on record from which it could be inferred that appellants had not cooperated in the investigation or had in any manner abused concession of bail granted to them — Hence, impugned order unsustainable and set aside — Dowry Prohibition Act, 1961, Ss. 3 and 4*

The High Court by the impugned judgment cancelled the anticipatory bail granted to the appellants (mother-in-law, father-in-law, husband and younger brother of father-in-law of the deceased) who were accused of committing offences punishable under Sections 498-A, 304-B read with Section 34 IPC and Sections 3 and 4, Dowry Prohibition Act, 1961.

It was alleged by the father of the deceased that the appellants were torturing the deceased for not meeting dowry demand of Rs 2 lakhs and earlier on 15-7-2006 she had left her matrimonial home intending to commit suicide because she was unable to bear it. However, on intervention of her relatives she was sent back to her matrimonial home.

On the day of occurrence the father-in-law of the deceased was stated to have heard cries of the deceased and on rushing there he found her burning. He tried to douse the fire and the deceased told

(6)(iv) Bail *(contd.)*

him that her child aged about fifteen months was lying in the bathroom with burns. Both of them were rushed to the hospital. The child expired on the same day, while the deceased died ten days later in the hospital. In the two dying declarations recorded by the Executive Magistrate the deceased stated that she and her son caught fire accidentally when she was pouring kerosene oil in the lamp which accidentally fell down.

The Sessions Judge taking into consideration the two dying declarations, statements of the complainant and the witnesses and after perusing the case-diary granted anticipatory bail to the appellants. The High Court by the impugned judgment cancelled the same. Hence, the present appeal.

Allowing the appeal,

Held :

Section 438 of the Code confers on the High Court and the Court of Session, the power to grant "anticipatory bail" if the applicant has "reason to believe" that he may be arrested on accusation of having committed a non-bailable offence. The expression "anticipatory bail" has not been defined in the Code. But it means "bail in anticipation of arrest". The expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. When a competent court grants "anticipatory bail", it makes an order that in the event of arrest, a person shall be released on bail. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative. The power being rather unusual in nature, it is entrusted only to the higher echelons of judicial service i.e. a Court of Session and the High Court. (Paras 14, 15 and 16)

The wide discretionary power conferred by the legislature on the higher echelons in the criminal justice-delivery system cannot be put in the form of straitjacket rules for universal application as the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. A circumstance which, in a given case, turns out to be conclusive, may or may not have any significance in another case. The imposition of unnecessary restrictions on the scope of the section which were not to be found in Section 438 of the Code, could make the provision constitutionally vulnerable, since the right of personal freedom, as enshrined in Article 21 of the Constitution, cannot be made to depend on compliance with unreasonable restrictions. The courts must keep in mind the guidelines while dealing with an application for grant of anticipatory bail laid down by the Constitution Bench in *Gurbaksh Singh case*, (1980) 2 SCC 565. Further, the amendment to Section 438 brought about by the CrPC (Amendment) Act, 2005, which is yet to be enforced is more or less in line with the parameters laid down in *Gurbaksh Singh case*. (Paras 21 to 27)

In the instant case, the High Court committed a serious error in reversing the order passed by the Sessions Judge, granting anticipatory bail to the appellants. The Sessions Judge passed the order after due consideration of the facts and circumstances of the case, in particular, the two dying declarations, one recorded in the presence of the parents of the deceased and the statements of the members of the Women Cell who had dealt with the case when on 15-7-2006, the deceased had left the house with intention to commit suicide and therefore, it cannot be said that the judicial discretion exercised in granting anticipatory bail was perverse or erroneous, warranting interference by the High Court. The order passed by the Sessions Judge was supported by reasons to the extent required for exercise of judicial discretion in the matter of grant of bail. (Para 28)

It may be true that some of the circumstances, noticed by the High Court in the impugned order viz. no reference to lantern in the spot panchnama or the necessity of cleaning the lantern at 4 p.m. and/or availability of an inverter in the house, etc., could have persuaded the Sessions Judge to take a different view but it cannot be said that the factors which weighed with the Sessions Judge in granting bail were irrelevant to the issue before him, rendering the order as perverse. Moreover, merely because the High Court had a different view on same set of material which had been taken into consideration by the Sessions Judge, in our view, was not a valid ground to label the order passed by the Sessions Judge as perverse. It also appears that the High Court has overlooked the distinction of factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted, which were missing in the instant case. Nothing was brought on record from which it could be inferred that the appellants had not cooperated in the investigations or had, in any manner, abused the concession of bail granted to them. (Paras 29 and 30)

Hence, impugned order setting aside anticipatory bail granted to the appellants unsustainable and set aside. (Para 32). *Savitri Agarwal* v. *State of Maharashtra*, (2009) 8 SCC 325: (2009) 3 SCC (Cri) 683: (2009) 80 AIC 116 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 10-7-2009]

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689, followed

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Dolat Ram v. State of Haryana, (1995) 1 SCC 349, relied on

Gurbaksh Singh Sibia v. State of Punjab, AIR 1978 P&H 1: 1978 Cri LJ 20, ***held, overruled***

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689, held, partly doubted

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, partly doubted

[10937] — Ss. 498-A, 406, 506 and 323 r/w S. 34 — Cancellation of bail — Grounds — Justifiability of grounds for — *High Court cancelling bail for sole purpose of police remand to recover marriage articles in a case of cruelty by in-laws under Ss. 498-A, 406, 506, 323 r/w S. 34 IPC — There being no allegation of misuse of bail granted by Magistrate, said ground for cancellation of bail, held, not sufficient — Therefore, bail granted by Magistrate restored — CrPC, 1973, Ss. 439(2) and 167(2)* (Paras 14 and 17). *Devender Kumar* v. *State of Haryana*, (2010) 6 SCC 753.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 5-5-2010]

CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554, followed

(v) Circumstantial evidence

See also CRIMINAL TRIAL — '34. Circumstantial Evidence', pp. 10 et seq. in Vol. 19, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 3 of *SC on CrPC and Criminal Trial* and under

PENAL CODE, 1860 — SECTIONS 299-304 — CULPABLE HOMICIDE AND MURDER 'D.7. Circumstantial Evidence', in Vol. 2

[10938] — **S. 498-A — Circumstantial evidence — Death of a housewife by drowning in a well in the courtyard of her in-laws' house** — *Ill-treatment of the deceased by her in-laws for not bringing sufficient dowry and also for not giving birth to children established — Despite giving birth to two children such ill-treatment continued — Husband also contemplating to remarry — Deceased earlier trying to commit suicide by jumping in the same well but saved by the neighbours — At the time of incident only deceased and the accused were in the house — Sound of quarrelling and shouting of a woman heard by the neighbours — Held, in the circumstances of the case, circumstances clinchingly establish the culpability of the accused — Death by accidentally falling in the well ruled out*

The prosecution evidence clearly indicates beyond shadow of reasonable doubt that because of the mistreatment by the accused and the consistent course of cruelty perpetrated on her, she had on the fateful night suffered from the last straw that broke the camel's back. Earlier she had jumped in the same well to put an end to her miserable existence but was saved by the neighbours. Yet the life for her in the household of the accused did not improve subsequently. She was, therefore, driven to once again try to commit suicide by jumping in the very same well in which she had earlier jumped. But on the second occasion on that fateful night when she jumped in the well there was no neighbour to save her and her life got extinguished. Under these circumstances it cannot be said that the accused were not responsible for bringing to a tragic end the life of this young housewife aged 28 years, mother of two children, who having suffered in such a drastic manner at the hands of the accused was driven to take the extreme step of committing suicide. This is neither the case of murder nor the case of accident. On the facts of the present case the prosecution has been able to bring home to the accused beyond shadow of reasonable doubt offence under Section 498-A IPC read with Explanation (*a*). When she was driven to take such a drastic step all the accused including acquitted accused mother-in-law were in the house and along with them resided the victim and her two minor children. Hence the accused alone must be held responsible for driving her to commit suicide by their misconduct which had led to a quarrel and shouting revealing the voice of a woman as admitted even by the hostile witness who actually heard the same being the next door neighbour. All the circumstances proved by the prosecution clinchingly establish the culpability of the accused themselves and no one else. These established circumstances wholly rule out any reasonable possibility of innocence of the accused from any viewpoint. In other words the chain in the circumstantial evidence is so complete against the accused as to rule out any other hypothesis about their innocence. *Balram Prasad Agrawal* v. *State of Bihar*, (1997) 9 SCC 338: 1997 SCC (Cri) 612: AIR 1997 SC 1830: 1997 Cri LJ 1640.

Bench Strength **2**. Coram: *G.N. Ray* and **S.B. Majmudar**, JJ. [Date of decision: 10-12-1996]

(6)(v) Circumstantial evidence *(contd.)*

[10939] — Ss. 498-A and 302 — Circumstantial evidence — Guilt not established — Deceased found hanging in a room which was bolted from inside — *A-1 (husband of deceased) not in the room — Variance in evidence of the doctor who had earlier given opinion that the deceased died due to asphyxia resulting from hanging and later on stated that the deceased died because of smothering and the dead body was hanged — PW 1 (father of deceased) stating that when they asked the respondent as to why he was demanding gold and motorcycle, he said that he had never asked anything — In cross-examination PW 1 categorically admitting that the deceased never personally informed him about the alleged harassment by the respondent and also that the respondent-accused never demanded any money or gold from him directly or personally — Moreover, he also accepting in the cross-examination that he presumed that the respondent-accused had killed the deceased — No evidence led by prosecution to show where the respondent and the deceased slept on 27-4-1996/28-4-1996 i.e. the intervening night of occurrence — Evidence of PWs not inspiring confidence — PW 3 (brother of father) fairly accepting that he presumed that the respondent-accused was making demands through his wife, the deceased — Further, in respondent's examination under S. 313 CrPC, no incriminating materials put to him — Held, in such circumstances impugned judgment acquitting respondent-accused calls for no interference* (Paras 7 and 18 to 26). *B. Venkat Swamy* v. *Vijaya Nehru*, (2008) 10 SCC 260.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 25-8-2008]

State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965; State of Haryana v. Jagbir Singh, (2003) 11 SCC 261: 2004 SCC (Cri) 126; Kusuma Ankama Rao v. State of A.P., (2008) 13 SCC 257, relied on

[10940] — Ss. 498-A and 302 r/w S. 34 — Dowry death — Circumstantial evidence — Conviction — Sustainability — *Deceased alleged to have been tortured and assaulted by her husband, mother-in-law and sister-in-law resulting in her death — Dead body of deceased found in her matrimonial home with bleeding injuries on various parts of her body — Death taking place within one year and four months of her marriage — Accused absconding since date of incident — Plea of alibi rejected in absence of any material to substantiate such plea — Held, as rightly noted by High Court, absence of any reasonable explanation for aforementioned circumstances was inculpatory evidence against appellants — Hence, impugned judgment upholding conviction of appellants under Ss. 498-A and 302 r/w S. 34, calls for no interference* (Paras 8 to 12). *Krishna Ghosh* v. *State of W.B.*, (2009) 12 SCC 413: AIR 2009 SC 2279: 2009 Cri LJ 2820.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 31-3-2009]

Bodhraj v. State of J&K, (2002) 8 SCC 45; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965; State of Haryana v. Jagbir Singh, (2003) 11 SCC 261: 2004 SCC (Cri) 126; Kusuma Ankama Rao v. State of A.P., (2008) 13 SCC 257: (2009) 2 SCC (Cri) 298; Manivel v. State of T.N., (2008) 12 SCC 748: (2009) 2 SCC (Cri) 924, relied on

Alfred Wills: Wills' Circumstantial Evidence, Chapter VI, cited

(vi) Cognizance, Summons, Investigation, Charge-sheet, etc.

[10941] — S. 498-A — Prima facie evidence of commission of offence under — Nature, scope and applicability of S. 319 CrPC — Quashment of process issued under S. 319 CrPC — When proper — *Magistrate finding prima facie evidence and issuing process under S. 319 CrPC against appellant-accused named in FIR but police in its charge-sheet dropping charges against said accused — High Court not finding any illegality or perversity in issuance of process under S. 319 CrPC — Legality — Held, the process issued under S. 319 is legal and could not be quashed under S. 482 CrPC on ground that police did not file charge-sheet — Prima facie evidence of commission of offence under — CrPC, 1898, S. 351 — CrPC, 1973, Ss. 319 and 482* (Paras 36 and 35). *Suman* v. *State of Rajasthan*, (2010) 1 SCC 250.

Bench Strength **2**. Coram: *R.V. Raveendran* and **G.S. Singhvi, JJ.** [Date of decision: 13-11-2009]

[10942] — S. 498-A — Prima facie evidence of commission of offence under — Existence of — Applicability of S. 319 CrPC — *Complainant wife alleging that mother-in-law and appellant-accused (sister-in-law) castigating her for insufficient dowry and subjecting her to physical and mental harassment and that appellant-accused instigating complainant's husband to inflict physical torture, that only after about one week after marriage, mother-in-law and appellant telling her that in the marriage, items like scooter, fridge, air conditioner, etc. were not given and marriage party was not served well and that on instigations of mother-in-law and appellant, the husband gave beating with belan and appellant forcibly removed her rings — Complainant's allegations in FIR clearly corroborated in her S. 161 CrPC statement recorded by police and statement of witnesses — Effect — Held, there is prima facie evidence against appellant to* *proceed under S. 319 CrPC — Therefore, trial of appellant-accused should proceed — Prima facie evidence of commission of offence under — Existence of — CrPC, 1973, S. 319*

Respondent 2 wife lodged a complaint under Section 498-A against her in-laws. However, the police after investigation filed a negative final report in respect of the appellant (accused sister-in-law). The Magistrate took cognizance against the accused sister-in-law under Section 319 CrPC.

Dismissing the appeal of the accused sister-in-law,

Held :

A reading of the plain language of Section 319(1) CrPC makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) CrPC from which it can be inferred that a person who is named in the FIR or complaint but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the court finds that such person has committed any offence for which he could be tried together with the other accused. (Paras 17, 14 and 15)

The process issued against the appellant under Section 319 CrPC cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her. A person who is named in the FIR or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 CrPC if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. (Paras 27 and 21)

The Magistrate had objectively considered the entire matter and judiciously exercised discretion under Section 319 CrPC for taking cognizance against the appellant. The issue of summons against the appellant was not an abuse of the process of the court. While deciding the application filed under Section 319 CrPC, the Magistrate noticed the allegations made by Respondent 2 in the complaint that her mother-in-law and sister-in-law had castigated her for insufficient dowry and subjected her to physical and mental harassment and that the sister-in-law had instigated the complainant's husband to inflict physical torture upon her, which were supported by the statements recorded by the police under Section 161 CrPC and by the Magistrate under Section 164 CrPC. In her complaint Respondent 2 alleged that after one week of the marriage, her mother-in-law and sister-in-law (the appellant) told her that in the marriage, items like scooter, fridge, air conditioner, etc. were not given and the marriage party was not served well and that on the instigations of the mother-in-law and the appellant sister-in-law, the husband gave beating with the belan and the appellant forcibly removed the rings. (Paras 35, 34 and 32)

The complainant clearly spelt out the role played by the appellant and made a specific mention about this in the letters written to her parents and the Magistrate opined that a prima facie case was made out for issuing process against the appellant. The father and mother of Respondent 2 and four other persons, whose statements were recorded under Section 161 CrPC, clearly spelt out the role played by the appellant in harassing Respondent 2 and instigating the complainant's husband to inflict torture upon her. Despite this, the police did not file charge-sheet against the appellant thinking that she had no occasion to make demand for dowry or harass Respondent 2 because the appellant was living with her husband. Therefore, the trial of the appellant should proceed and should be decided expeditiously. (Paras 35, 33 and 37)

The High Court broadly referred to the factual matrix of the case and held that the orders passed by the Magistrate and Sessions Judge did not suffer from any illegality or perversity warranting interference under Section 482 CrPC. The approach adopted by the High Court is in consonance with the settled law. Although at one stage, the Sessions Judge allowed the revision filed by the appellant and declared that in view of the bar of limitation contained in Section 468 CrPC, the Magistrate could not have taken cognizance against the appellant, the said order was set aside by the High Court and the matter was remitted for fresh disposal of the revision petition. In the post remand order passed by him, the Sessions Judge independently examined the entire record and held that prima facie case was made out for initiating proceedings against the appellant herein under Section 498-A IPC. (Paras 36 and 35). *Suman* v. *State of Rajasthan*, (2010) 1 SCC 250.

Bench Strength **2**. Coram: *R.V. Raveendran* and **G.S. Singhvi**, JJ. [Date of decision: 13-11-2009]

(6)(vi) Cognizance, Summons, Investigation, Charge-sheet, etc. *(contd.)*

Joginder Singh v. State of Punjab, (1979) 1 SCC 345: 1979 SCC (Cri) 295; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Lok Ram v. Nihal Singh, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532; Michael Machado v. CBI, (2000) 3 SCC 262: 2000 SCC (Cri) 609; Anil Singh v. State of Bihar, (2006) 13 SCC 421: (2008) 1 SCC (Cri) 708; Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544: (2009) 1 SCC (Cri) 889; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; CBI v. Ravi Shankar Srivastava, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, relied on

[10943] — **Ss. 498-A and 304-B — Charge-sheet — Filing of — Court cannot direct investigating officer to take opinion of Public Prosecutor for filing charge-sheet** — *Investigation and prosecution are two different aspects of administration of criminal justice — Formation of opinion as to whether on the material collected a case is made out to place the accused for trial is the exclusive function of the officer in charge of the police station and/or his superior officers — CrPC, 1973 — Ss. 169, 170, 173, 2(h), 24 and 482*

A young bride committed suicide in her nuptial home within seven months of her marriage. An inquiry under Section 174(3) CrPC was held. The Sub-Divisional Magistrate conducted the inquiry and submitted a report holding that it was conclusively proved that due to mental restlessness she had committed suicide and no one is responsible and hence it was informed that her death was not due to dowry harassment. However, the police continued with the investigation and submitted a challan against the deceased's husband and his mother for the offence under Sections 304-B and 498-A IPC. The deceased's father, the first respondent, was not satisfied with the challan as the deceased's husband's sister, the appellant, and her father were not arraigned as accused. Hence he moved the High Court under Section 482 CrPC. A Single Judge of the High Court disposed of the petition under Section 482 directing that the papers be placed before the Public Prosecutor "as it is without any further investigation and he shall render an impartial opinion on the matter and thereafter an amended charge-sheet shall be filed in the concerned court". The appellant's father filed a petition before the Single Judge for recalling it on the main ground that neither he nor his daughter (appellant) was heard nor were they made parties in the proceedings. But the Single Judge dismissed the petition on the main premise that Section 362 CrPC contains a bar against recalling any order passed under the Code. Hence the appellant filed the present appeal to challenge both the orders. Allowing the appeals,

Held :

In this case the High Court has committed an illegality in directing the final report to be taken back and to file a fresh report incorporating the opinion of the Public Prosecutor. Such an order cannot stand legal scrutiny. The formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the officer in charge of the police station and none else. There is no stage during which the investigating officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the superior police officer in the rank as envisaged in Section 36 of the Code. A Public Prosecutor is appointed, as indicated in Section 24 CrPC, for conducting any prosecution, appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus the Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the court. (Paras 19, 11, 10 and 12). *R. Sarala* v. *T.S. Velu*, (2000) 4 SCC 459: 2000 SCC (Cri) 823: AIR 2000 SC 1731: 2000 Cri LJ 2453.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 13-4-2000]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526; Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18: 46 Cri LJ 413; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: 1968 Cri LJ 97; R. v. Metropolitan Police Commr., (1968) 1 All ER 763: (1968) 2 QB 118: (1968) 2 WLR 893 (CA); Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307; State v. Raj Kumar Jain, (1998) 6 SCC 551: 1998 SCC (Cri) 1485, relied on

(vii) Conviction justified

[10944] — **S. 498-A — Dowry death — Conviction of deceased's husband A-4 — Whether justified** — *PW 7 deposing that deceased had told her that A-4 had demanded a scooter and had scolded deceased for not bringing a cot as dowry — PW 7 also deposing that deceased had shown her the injuries and complained that A-4 had inflicted the injuries on her failure to bring the scooter — PW 2 stating that deceased had told him that her husband and mother-in-law were beating her for not getting the scooter — Held on facts, conviction of A-4 under S. 498-A justified* (Para 7). *Asokan* v. *State*, (2000) 4 SCC 68: 2000 SCC (Cri) 749: AIR 2000 SC 3444: 2000 Cri LJ 2988.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *Shivaraj V. Patil*, JJ. [Date of decision: 5-4-2000]

[10945] — S. 498-A — Dowry death — Cruelty — Harassment of deceased bride by her husband, father-in-law and mother-in-law for dowry established beyond doubt — *Held on facts, deceased was subjected to cruelty within the meaning of S. 498-A and hence conviction thereunder and sentence of 2 years' RI imposed on each accused maintained. Akula Ravinder* v. *State of A.P.*, 1991 Supp (2) SCC 99: 1991 SCC (Cri) 990: AIR 1991 SC 1142.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 11-1-1991]

[10946] — S. 498-A — Husband subjecting his wife to cruelty — Conviction justified — *Victim was harassed and treated with cruelty by her husband about a month after their marriage as a result of which she was brought to her paternal house and thereafter, she was again treated with cruelty two months after she had gone back to her matrimonial home on the persuasion of Panchayat — Held on facts, husband liable to be convicted under S. 498-A and sentenced to the period of one year and nine months of imprisonment already undergone by him* (Paras 12 and 13). *Balwant Singh* v. *State of Punjab*, (2004) 7 SCC 724: 2004 SCC (Cri) 2057.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.P. Singh*, JJ. [Date of decision: 12-8-2004]

[10947] — Ss. 498-A and 302 — Conviction justified — Appreciation of evidence — Deceased found dead in her bedroom in matrimonial home — Acquittal of husband reversed by High Court — Sustainability — *Held, on appreciation of evidence it cannot be said that it is a case where two views are possible — Evidence of witnesses duly corroborated by medical evidence which opined death due to compression of neck — Plea of alibi of husband also found to be false — Conviction recorded by High Court, upheld — Evidence Act, 1872, S. 106*

Against an appeal against acquittal, the High Court found the appellant-accused guilty of offences punishable under Sections 498-A and 302 IPC. The deceased wife of appellant was done to death in the bedroom of the matrimonial home of the deceased.

Trial court found the evidence not to be cogent and directed acquittal. The accused took the plea that he had gone to another place for purchase of milk when the offence took place and therefore he was not in any way involved with the crime.

The High Court by the impugned order set aside the acquittal and found the appellant guilty of offences as aforesaid.

Appellant's contention was that two views are possible. On the evidence on record the trial court had taken a view which was a possible one. That taking into account the limited scope for interference with the judgment of acquittal, the High Court should not have interfered in the matter. That there was no motive, no torture or no demand of dowry.

Dismissing the appeal,

Held :

In the present case there are certain material aspects which were lost sight of by the trial court but have been noted by the High Court. The dead body was detected in the morning of 14-2-1994. The parents of the deceased informed the police and not the inmates. The parents were informed by the neighbours and not by the inmates. DW 2 has been disbelieved as he was nearly 70 years of age. It was highly improbable that he was in employment as a watchman. (Para 12)

The trial court had held that the evidence of PWs 6 to 8 regarding pressing marks on the neck and injuries on the forearms of the deceased are not corroborated by the medical opinion. This is factually incorrect. The doctor (PW 2) had categorically stated that he was of the opinion that death was due to result of compression of the neck, and the post-mortem report was accordingly issued. PW 6 has stated that second opinion was sought for and then the report was given. The falsity of alibi is an additional link. (Para 13). *Narendra* v. *State of Karnataka*, (2009) 6 SCC 61: (2009) 2 SCC (Cri) 929: AIR 2009 SC 1881: (2009) 79 AIC 129 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80, applied

[10948] — Ss. 498-A and 306 — Demand of additional dowry — *Ill-treatment and harassment of wife by appellant husband — Wife committing suicide by consuming poison — Prosecution case fully established — Concurrent findings of courts below, held, proper — Conviction upheld — Sentence of three years' RI under S. 498-A and seven years' RI under S. 306, held, required no further leniency* (Para 7). *Moti Lal* v. *State of M.P.*, (2004) 2 SCC 469: 2004 SCC (Cri) 573: 2004 Cri LJ 907.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *S.B. Sinha*, JJ. [Date of decision: 20-1-2004]

[10949] — Ss. 498-A and 306 r/w S. 34 — Abetment of suicide — Conviction confirmed — Appreciation of evidence — *Death of wife by drowning about one-and-a-half years after marriage — Evidence of brother, father and cousin of deceased regarding cruelty and harassment by* *accused husband — Photograph of appellant (husband) with a young girl — Trial court convicted appellant — Judgment affirmed by High Court — Appellant contending that deceased had drowned accidentally and mere illicit relationship of husband with another woman did not amount to cruelty to wife — Held, it is difficult to believe that a woman who had been living in the area would have gone to answer call of nature at a place where the water was 9 ft deep and at a confluence of two rivers — Courts below had found case of suicide on account of harassment meted out to deceased on a minute appreciation of evidence — No reason found to hold otherwise* (Paras 6 to 8). *Laxman Ram Mane* v. *State of Maharashtra*, (2010) 13 SCC 125.

Bench Strength 2. Coram: *H.S. Bedi* and *R.M. Lodha*, JJ. [Date of decision: 7-10-2010]

(viii) Dying declaration

See also under SECTIONS 299-304 — CULPABLE HOMICIDE AND MURDER 'D.15. Dying declaration', in Vol. 2

[10950] — S. 498-A and Ss. 302 r/w 34 — Dying declaration — Reliability — Reason for crime mentioned in declaration was demand for dowry which could not be met by the family of the deceased — *Acquittal of accused in relation to charge under S. 498-A IPC — Effect of — Held, though the prosecution was not able to sustain the charge under S. 498-A for which standard of proof required is high, the allegation of deceased about being harassed on account of demand for dowry could not be ignored — Dying declarations found to be reliable — On facts, conviction under S. 302 r/w S. 34 IPC based upon the same was proper — Evidence Act, 1872 — S. 32(1)* (Paras 3 and 5). *Shanti* v. *State of Haryana*, (2005) 12 SCC 287.

Bench Strength 2. Coram: *Arun Kumar* and *B.N. Srikrishna*, JJ. [Date of decision: 15-2-2005]

[10951] — Ss. 498-A and 304-B — Offence under S. 498-A — Evidence regarding — Admissibility — Dying declaration — *Prosecution witness deposing that prior to death, the deceased woman had stated to the witness that she (the deceased) was not treated well by her husband and in-laws for non-fulfilment of balance dowry amount — The said witness further mentioning certain specific acts of such ill-treatment allegedly stated to her by the deceased — Such evidence although admissible in respect of the offence under S. 304-B by virtue of S. 32(1) of Evidence Act, held, not admissible for the offence under S. 498-A — Evidence Act, 1872, S. 32(1)*

The appellant was tried for the offences punishable under Sections 304-B and 498-A IPC for allegedly subjecting his wife to cruelty and causing dowry death. The trial court acquitted him of the charge under Section 304-B for want of acceptable evidence but convicted him under Section 498-A. The trial court had, on evidence, found that the appellant-accused had taken away the child from the deceased, had disallowed her to sit on his scooter, remained frequently absent from the house and had illicit relationship with his sister-in-law. His acquittal of the charge under Section 304-B was not further challenged but his conviction under Section 498-A was, on being challenged, confirmed by the High Court. Before the Supreme Court, the appellant contended that the said circumstances did not constitute "cruelty" for the purposes of Section 498-A. He further contended that the findings of the trial court were not based on legal evidence. This contention involved the question whether the deposition of the deceased's sister before the trial court that the deceased had been telling her about: (*i*) ill-treatment given to her by her husband and in-laws for non-fulfilment of balance dowry, (*ii*) assaults by her husband, and (*iii*) taking away of the child from her, etc., was admissible in evidence.

Rejecting the first contention of the appellant but allowing the appeal on the second point,

Held :

The statement of the deceased's sister was taken on record with the aid of Section 32 of the Evidence Act at a time when the appellant was being tried for the offence under Section 304-B and such statement was admissible under Section 32(1) as it related to the cause of death of the deceased and the circumstances of the transaction which resulted in her death. Such a statement is not admissible in evidence for the offence punishable under Section 498-A IPC and has to be termed as only a hearsay evidence. Section 32(1) is an exception to the hearsay rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the hearsay rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused. (Para 10)

Thus, there was no legal evidence for returning a finding with respect to the alleged cruelty of the accused with the deceased. Therefore, it has to be held that the prosecution has failed to prove, beyond doubt, that the appellant had committed the offence under Section 498-A. It is further held that the present case is a fit one where he is entitled to be given the benefit of doubt. (Para 14). *Gananath Pattnaik* v. *State of Orissa*, (2002) 2 SCC 619: 2002 SCC (Cri) 461.

Bench Strength **2**. Coram: **R.P. Sethi** and *B. P. Singh*, JJ. [Date of decision: 6-2-2002]

[10952] — Ss. 498-A and 304-B — Principles governing, restated — *On facts, High Court upholding conviction of appellant-accused by trial court under Ss. 498-A and 304-B IPC — Conviction based on dying declarations — Sustainability — Before Supreme Court, respondent State submitting that statements made by deceased were consistent with regard to appellant-accused pouring acid in the mouth of deceased which resulted in her death — Relying on settled legal principles, held, courts below rightly convicted appellant under Ss. 498-A and 304-B IPC — Evidence Act, 1872, S. 32(1)* (Paras 2 and 10 to 12). *Varikuppal Srinivas* v. *State of A.P.*, (2009) 3 SCC 415: (2009) 2 SCC (Cri) 136: AIR 2009 SC 1487.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 28-1-2009]

Mohan Lal v. State of Haryana, (2007) 9 SCC 151: (2007) 3 SCC (Cri) 94, relied on

[10953] — Ss. 498-A, 304-B and 306 — Oral evidence of witness about what the deceased had said against accused about treatment meted out to her — Admissibility of, to sustain conviction under S. 498-A IPC — *Death of deceased neither homicidal, nor suicidal but accidental, and her marriage with accused taking place about ten years before her death — Only evidence to bring home charge under S. 498-A IPC against accused husband was that of PWs 4 and 5 who stated that their deceased sister had told them that accused was torturing her as he wanted her brothers to arrange job for him or to register a house in his name or cash of Rs 1 lakh to be given to him so that he could do some business — Trial court as well as High Court relying on their evidence to convict accused under S. 498-A — Held, statement of a dead person is admissible in law if the statement is as to cause of death or as to any circumstance of transactions which resulted in her death, in a case in which cause of death comes into question — In present case what was deposed by PW 4 and PW 5 had no connection with any circumstance which resulted in her death — Hence, their evidence about what the deceased had told them against the accused about torture and harassment is inadmissible under S. 32(1) and such evidence cannot be looked into for any purpose — Except S. 32(1) of Evidence Act, there is no other provision under which statement of a dead person can be looked into as evidence — Further, for offence under S. 498-A simpliciter, question of death is not and cannot be an issue for consideration — Hence, evidence of PW 4 and PW 5 cannot be evidence in law to establish such offence and S. 32(1) would not get attracted — Evidence Act, 1872, S. 32(1)* (Paras 2 to 4 and 11 to 17). *Bhairon Singh* v. *State of M.P.*, (2009) 13 SCC 80: AIR 2009 SC 2603: (2009) 79 AIC 80 (SC): 2009 Cri LJ 3738.

Bench Strength **2**. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 29-5-2009]

Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487; Inderpal v. State of M.P., (2001) 10 SCC 736: 2003 SCC (Cri) 1049, considered and followed

Woodroffe and Amir Ali: Law of Evidence, 14th Edn.; Ratanlal and Dhirajlal: Law of Evidence, 1982 Reprint, cited

[10954] — Ss. 498-A and 306 — Dying declaration — Admissibility of — *Held, unless the statement of deceased comes within the purview of S. 32(1) Evidence Act it cannot be admitted in evidence — Such statement must be regarding the cause of death of the deceased or as to any of the circumstances of the transactions which resulted in her death — Where the dying declaration was made to the effect that the deceased wife of appellant got burns accidentally from a stove and the High Court opined that it was not a case of suicide, held, by no stretch of imagination can the statements of the deceased contained in letters written by her earlier, where reference had been made regarding ill treatment in the house of her in-laws, and the statements quoted by the witnesses, who had not spoken of anything seen directly by them, be connected with any circumstance of the transaction which resulted in her death and thereby admitted under S. 32(1) Evidence Act — Order of High Court altering conviction from S. 306 to S. 498-A IPC set aside — Accused acquitted in absence of any evidence against him — Evidence Act, 1872 — S. 32(1)*

Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstances of the transactions which resulted in her death. (Para 7)

(6)(viii) Dying declaration *(contd.)*

The High Court while dealing with the appeal found that the offence under Section 306 IPC was not made out as it could not be held that death of the deceased was due to commission of suicide. Nonetheless, the High Court proceeded to consider whether any other offence has been made out and ultimately found the appellant guilty of the offence under Section 498-A IPC. (Para 1)

By no stretch of imagination can the statements of the deceased contained in letters, where reference had been made by her regarding her life in the house of her in-laws, and the statements quoted by the witnesses, who had not spoken of anything which they had seen directly, be connected with any circumstance of the transaction which resulted in her death. Even that apart, the matter herein is concerned with an offence under Section 498-A IPC disjuncted from the offence under Section 306 IPC the question of her death is not an issue for consideration and on that premise also Section 32(1) of the Evidence Act will stand at bay so far as these materials are concerned. (Paras 7, 4 and 5)

Thus, the appellant is acquitted as there is no single piece of evidence which can be admitted in law to be used against him. (Para 8). *Inderpal* v. *State of M.P.*, (2001) 10 SCC 736.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 6-12-2000]

[10955] — Ss. 498-A and 306 — Suicide by wife along with her 1½-year-old daughter — Two dying declarations — Inconsistency between — High Court acquitting appellant husband and his mother under S. 306, but convicting them under S. 498-A — Propriety of — *First dying declaration recorded by Magistrate implicating only the mother of appellant — Doctor certifying that wife was fit to make the statement — Wife admitting the correctness of declaration by affixing her thumb impression thereon — Second declaration (recorded only five minutes after the first one by a Head Constable) implicating appellant and his mother both — No allegation by father of wife and other family members to the effect that the accused treated his wife cruelly or harassed her — Wife was annoyed by the fact that her husband's deceased sister's children were being brought up in the family home — Held, said conduct could not be equated with cruelty or harassment — In view of the inconsistency between the two dying declarations and no other evidence to prove the charge under S. 498-A, husband and his mother acquitted thereunder*

In the first dying declaration there is no mention about the appellant having treated the deceased with cruelty or of his having caused harassment to the deceased. In fact, his name does not find place in the relevant portion of the first dying declaration. The first dying declaration was recorded by a Magistrate after taking all necessary precautions. The deceased was in a position to make a statement which was certified by the treating physician who was also present when the statement was recorded. Only five minutes thereafter another statement was recorded by the Head Constable and in that dying declaration allegations have been made against the appellant and facts stated relating to the immediate cause which led the deceased to commit suicide which are attributable to the appellant, though there is a statement that her mother-in-law also used to harass her. (Para 12)

However, the witnesses including the father of the deceased have not supported this case. In fact, the father of the deceased, namely, PW 1, in his deposition stated that misunderstandings arose between his daughter and her husband on account of the fact that the three children of the deceased sister of the appellant were being brought up in the house of the appellant which was objected to by the deceased. If in those unfortunate circumstances the three children of the deceased sister of the appellant were being brought up in his family, one cannot blame the appellant or his parents for having shown compassion towards the children of his deceased sister. If that is what caused annoyance to the deceased, one cannot equate such conduct with cruelty or harassment. Further, there is no reason why on this aspect of the matter the father of the deceased should not speak the truth. In any event, he and his family members were the only persons who could have deposed about the treatment meted out to the deceased. All of them have denied the suggestion that the appellant or his mother-in-law treated the deceased with cruelty. The fact that these witnesses have been declared hostile by the prosecution does not result in the automatic rejection of their evidence. Even the evidence of a hostile witness if it finds corroboration from the facts of the case may be taken into account while judging the guilt of an accused. In any event, if their evidence is kept out of consideration, there is no other evidence to prove the prosecution allegation of cruelty and harassment meted out to the deceased. Having regard to the inconsistency in the two dying declarations, it is not safe to act solely on them to convict the appellant, and for that reason even the mother of the appellant who has since served out her sentence. (Para 14). *Lella Srinivasa Rao* v. *State of A.P.*, (2004) 9 SCC 713: 2004 SCC (Cri) 1479: AIR 2004 SC 1720.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-2-2004]

(ix) FIR

[10956] — S. 498-A — Suicidal death of woman in her in-laws' house within ten months of marriage — Delay in lodging FIR — *Held on facts, not unjustified even though FIR could have been lodged by some other adult member of the family. State of W.B.* v. *Orilal Jaiswal*, (1994) 1 SCC 73: 1994 SCC (Cri) 107: AIR 1994 SC 1418: 1994 Cri LJ 2104: (1994) 1 BLJR 267: (1994) 1 Guj LH 537.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 23-9-1993]

(x) Jurisdiction

[10957] — S. 498-A — Pragmatic approach — Complaint filed before court lacking territorial jurisdiction — *Respondent wife filing complaint before CJM of Bankura, where she was living and mentioning own and brother's pitiable financial condition — Clear from complaint that beatings and other cruelty meted out in matrimonial home in Calcutta — Appellants filing criminal revision application before High Court challenging jurisdiction of CJM, Bankura to entertain complaint — High Court dismissing the same — Held, on facts, to meet the ends of justice, the complaint under S. 498-A should be treated as if it had been presented before appropriate court in Calcutta and had been transferred to Court of CJM, Bankura — Clarified that no opinion was being expressed on merits — CPC, 1908, S. 24 — CrPC, 1973, Ss. 7, 14 and 406, 410*

Even if the complaint had been lodged in the appropriate court in Calcutta, the respondent could have made application for transfer of the said case to Bankura which is her usual place of residence so that she can effectively pursue the case on the basis of the complaint lodged by her. In the facts of the case, it appears that such application for transfer, if made, deserves to be allowed. Taking a pragmatic view of the matter, it is felt that the complaint should not be dismissed on the score of jurisdictional impropriety. In the special facts of the case, it is directed that the complaint under Section 498-A would be treated as if the complaint was presented to the appropriate court in Calcutta and the same has been transferred to the Court of Chief Judicial Magistrate, Bankura. Such direction is given for ends of justice and to avoid dismissal of the complaint filed in Bankura for want of jurisdiction and filing another complaint in Calcutta and then to get the same transferred to Bankura. (Para 2). *Bhudeb Chandra Karmakar* v. *State of W.B.*, (2001) 9 SCC 226: 2001 SCC (Cri) 1571.

Bench Strength **2**. Coram: *G.N. Ray* and *B.L. Hansaria*, JJ. [Date of decision: 30-7-1996]

[10958] — Ss. 498-A and 323 — Quashing of proceedings — Ground — Lack of jurisdiction of the Magistrate concerned to deal with the matter — *Complaint filed under Ss. 498-A and 406 IPC and S. 4, Dowry Prohibition Act, 1961 against husband and his relations by the wife at place C where she came to stay after leaving her husband's house at place N — All the offences alleged to have taken place at N — Said offences not continuing ones — No part of cause of action arose at place C — Hence, considering Ss. 177 and 178 CrPC, held, the Magistrate at C had no jurisdiction to deal with the matter — Proceedings quashed — Complainant given liberty to file complaint in appropriate court — CrPC, 1973, Ss. 482, 177 and 178 — Dowry Prohibition Act, 1961, S. 4 — Ss. 498-A and 406 — Constitution of India, Art. 136*

Respondent 2 (wife of one of the appellants) filed a complaint in the Court of the Magistrate alleging commission of offences punishable under Sections 498-A and 406 IPC and Section 4 of the Dowry Prohibition Act, 1961. The Magistrate directed the police to investigate the case. After investigation, the police filed the charge-sheet. When the matter stood thus, the appellants filed an application under Section 482 CrPC before the High Court alleging that the Magistrate concerned had no jurisdiction even to entertain the complaint even if the allegations contained therein were accepted in toto as no part of the cause of action arose within the jurisdiction of the court concerned. The complaint itself disclosed that after 15-4-1997, the respondent left the place *N* (where she was residing with her appellant husband) and came to the city *C*. Since all the alleged acts as per the complainant took place at *N*, the courts at *C* did not have the jurisdiction to deal with the matter. On the other hand, Respondent 2 submitted that the offences were continuing in terms of Section 178(*c*) CrPC and, therefore, the court at *C* had jurisdiction to deal with the matter.

Allowing the appeal,

Held :

In the present case, the inevitable conclusion is that no part of cause of action arose in the city *C* and, therefore, the Magistrate concerned had no jurisdiction to deal with the matter. (Para 19). *Y. Abraham Ajith* v. *Inspector of Police*, (2004) 8 SCC 100: 2004 SCC (Cri) 2134: AIR 2004 SC 4286.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-8-2004]

(6)(x) Jurisdiction *(contd.)*

[10959] — Ss. 498-A, 506 and 323 — Territorial jurisdiction — Continuing offence committed in more local areas than one — *Complaint under Ss. 498-A, 506 and 323 IPC by wife against her husband, parents-in-law and two sisters-in-law — Allegation of dowry demand, maltreatment and humiliation at the house of her in-laws — Specific allegation against the husband that he had gone to the house of her parents and had assaulted her — Held, cl. (c) of S. 178 CrPC is attracted and the Magistrate at her parents' place also has jurisdiction to entertain the complaint — CrPC, 1973, S. 178(c)*

In the instant case the complaint reveals a continuing offence of maltreatment and humiliation meted out to the appellant in the hands of all the accused respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, clause (*c*) of Section 178 of the Code of Criminal Procedure is clearly attracted. *Sujata Mukherjee* v. *Prashant Kumar Mukherjee*, (1997) 5 SCC 30: 1997 SCC (Cri) 673: AIR 1997 SC 2465: 1997 Cri LJ 2985.

Bench Strength **2**. Coram: *G.N. Ray* and *G.T. Nanavati*, JJ. [Date of decision: 30-4-1997]

(xi) Limitation

[10960] — S. 498-A — Cruelty — Currency of offence under, starting point of limitation period for — *Held, subjection of a woman to cruelty by her husband or his relatives would cease as soon as she leaves the matrimonial home — Further held, starting point of limitation would be last act of cruelty — CrPC, 1973 — S. 368(2)(c)* (Paras 8 and 9). *Ramesh* v. *State of T.N.*, (2005) 3 SCC 507: 2005 SCC (Cri) 735: AIR 2005 SC 1989: 2005 Cri LJ 1732.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 3-3-2005]

Arun Vyas v. Anita Vyas, (1999) 4 SCC 690: 1999 SCC (Cri) 629, relied on

[10961] — S. 498-A — Matrimonial offences relating to cruelty of husband on wife are in the nature of continuing offences to which bar of S. 468 CrPC cannot be applied in the interest of justice

It is true that the object of introducing S. 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. But that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, courts while considering the question of limitation for an offence under S. 498-A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of S. 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interests of justice". If the power under S. 473 of the Code is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and inhuman treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end. The general rule of limitation is based on the Latin maxim: *vigilantibus, et non, dormientibus, jura subveniunt* (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women. *Vanka Radhamanohari* v. *Vanka Venkata Reddy*, (1993) 3 SCC 4: 1993 SCC (Cri) 571.

Bench Strength **2**. Coram: *Kuldip Singh* and **N.P. Singh**, JJ. [Date of decision: 20-4-1993]

[10962] — S. 498-A — Offence under — Nature of — Held, is continuing offence — *CrPC, 1973, S. 472*

The essence of the offence in Section 498-A is cruelty. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. *Arun Vyas* v. *Anita Vyas*, (1999) 4 SCC 690: 1999 SCC (Cri) 629: AIR 1999 SC 2071.

Bench Strength **2**. Coram: *K. Venkataswami* and **S.S.M. Quadri**, JJ. [Date of decision: 14-5-1999]

[10963] — S. 498-A and S. 113-B, Evidence Act, 1872 — Scope — *Held, substantive S. 498-A IPC and presumptive S. 113-B of the Evidence Act, 1872 include in their amplitude past events of cruelty which need to be proved — Appellant was residing in Coimbatore for last 35 years, while the incident occurred at Pallapatti — Evidence inadequate to* *show that she was party to any demand for dowry or herself demanded any dowry — Rather, testimony of mother of deceased showing she made no dowry demand — In such circumstances, held, her conviction under S. 498-A cannot be maintained and hence set aside — Evidence Act, 1872, S. 113-B* (Paras 3 to 5, 13, 14, 18 and 19). *Noorjahan* v. *State*, (2008) 11 SCC 55: (2008) 3 SCC (Cri) 915: AIR 2008 SC 2131: (2008) 66 AIC 79 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 23-4-2008]

[10964] — S. 498-A — S. 113-A, Evidence Act, 1872 — Both the provisions include in their amplitude past events of cruelty — *Evidence Act, 1872, S. 113-A*

Section 498-A IPC and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. The period of operation of Section 113-A of the Evidence Act is seven years; presumption arises as to dowry death when a woman committed suicide within a period of seven years from the date of marriage. (Para 7). *Kaliyaperumal* v. *State of T.N.*, (2004) 9 SCC 157: 2004 SCC (Cri) 1417: AIR 2003 SC 3828: 2003 Cri LJ 4321.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 27-8-2003]

[10965] — S. 498-A — Evidence Act, 1872 — S. 113-A — Both these provisions include in their amplitude past events of cruelty

Section 498-A IPC and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-A of the Evidence Act is seven years; presumption arises as to dowry death when a woman committed suicide within a period of seven years from the date of marriage. (Para 11). *Hira Lal* v. *State (Govt. of NCT of Delhi)*, (2003) 8 SCC 80: 2003 SCC (Cri) 2016: AIR 2003 SC 2865: (2003) 105 DLT 705: 2003 Cri LJ 3711.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-7-2003]

[10966] — Ss. 498-A and 406 — Belated complaint under Ss. 498-A and 406 IPC — Discharge — Legality — Liberal interpretation of S. 473 CrPC in case of offence under S. 498-A in favour of wife — *Wife allegedly beaten by husband and in-laws and turned out of matrimonial home on 13-10-1988 — Complaint under Ss. 498-A and 406 IPC filed on 18-10-1995 and charge-sheet filed by police (after investigation under Magistrate's order) on 22-12-1995 — Offence under S. 498-A IPC, being a continuing offence, in view of S. 468(3) of CrPC the limitation period for both the offences, held, commenced on 13-10-1988 and ended on 12-10-1991 under S. 468(2)(c) CrPC and the complaint was, therefore, time-barred — Hence, in absence of explanation for the delay, the Magistrate rightly discharged the accused for the offence under S. 406 IPC — However, in respect of offence under S. 498-A IPC, the provisions of S. 473 CrPC should have been liberally construed in favour of the wife — The Magistrate not having adverted to the question whether on the facts and circumstances of the case it was necessary in the interest of justice to take cognizance of the offence, his order of acquittal of the accused in respect of offence under S. 498-A IPC, held, unsustainable — High Court was right to that extent in setting aside the order of acquittal — Magistrate directed by Supreme Court to consider the question of limitation as explained herein — CrPC, 1973 — Ss. 468 and 473, 472*

On 18-10-1995, the respondent wife filed a complaint under, inter alia, Sections 498-A and 406 of IPC and Section 190(1) of CrPC alleging that she was beaten up by her husband, mother-in-law and sisters-in-law for want of dowry. Under the Magistrate's order, the police investigated the complaint under Section 156(3) CrPC and submitted charge-sheet (final report) under Section 498-A IPC on 22-12-1995. On that report the Magistrate took cognizance of the offence under Sections 498-A and 406 IPC and issued summons to the appellants. The case was posted on 23-4-1996 for framing charges. On that date the Magistrate found the complaint to be time-barred and discharged the appellants. The High Court set aside the Magistrate's order and directed the Magistrate to proceed with the case. In the instant appeal, the following two questions arose before the Supreme Court:

(*i*) whether the Magistrate can discharge an accused after taking cognizance of an offence by him but before the trial of the case; and

(*ii*) whether the Magistrate was right in discharging the appellants on the grounds that the complaint was barred by limitation under Section 468 CrPC.

Partly allowing the appeal,

Held :

The reason for engrafting the rule of limitation is that due to a long lapse of time necessary evidence will be lost and persons prosecuted will be placed in a defenceless position. This may even result in miscarriage of justice. (Para 10)

The essence of the offence in Section 498-A is cruelty. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on 13-10-1988. Having regard to the provisions of Sections 469 and 472, the period of limitation commenced for the offences under Sections 406 and 498-A from 13-10-1988 and ended on 12-10-1991. But the charge-sheet was filed on 22-12-1995. Therefore, it was clearly barred by limitation under Section 468(2)(*c*) CrPC. (Para 13)

But Section 473 of CrPC enables the court to take cognizance of an offence after the period of limitation, inter alia, if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. The expression "in the interest of justice" in Section 473 does not mean in the interest of prosecution. What the court has to see is "interest of justice". The interest of justice demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 CrPC in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying the rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of the period of limitation in the interests of justice. This is only illustrative, not exhaustive. (Para 14)

In the instant case, the complaint was clearly barred by limitation and no explanation was offered for the inordinate delay. Therefore, in regard to Section 406 IPC, the Magistrate rightly held the complaint to be barred by limitation. But regarding offence under Section 498-A the Magistrate did not advert to the second limb of the second part in Section 473 CrPC. The order of the Magistrate on that aspect is unsustainable. (Para 17). *Arun Vyas* v. *Anita Vyas*, (1999) 4 SCC 690: 1999 SCC (Cri) 629: AIR 1999 SC 2071.

Bench Strength **2**. Coram: *K. Venkataswami* and **S.S.M. Quadri**, JJ. [Date of decision: 14-5-1999]

Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4: 1993 SCC (Cri) 571, followed

[**Ed.**: The Supreme Court directed the Magistrate to consider the question of limitation taking note of Section 473 CrPC in the light of the observations made herein. (Para 17)]

(xii) Quashment

See also CrPC, 1973, Section 482 — Inherent Powers of High Court — '(11)(xxvii) Quashment re family/marital/dowry, etc. disputes', pp. 485 et seq. in Vol. 18, *Complete Digest of Supreme Court Cases*, 2nd Edn. or Vol. 2 of *SC on CrPC and Criminal Trial*

[10967] — S. 498-A — Petition for quashing complaint under S. 498-A IPC and S. 4, Dowry Prohibition Act, 1961 — Rejected by High Court — *Marriage between Appellant 1 and complainant taking place on 25-11-1998, and Appellant 1 leaving for USA six months later — Complaint filed on 6-2-2000 — Held, even a cursory perusal of the complaint shows that the case falls within Category (7) highlighted in*Bhajan Lal case, *1992 Supp (1) SCC 335, viz. "where, a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge" — Hence, said complaint liable to be quashed — Dowry Prohibition Act, 1961, S. 4 — CrPC, 1973, S. 482* (Paras 9, 7, 2, 3 and 5). *Sunder Babu* v. *State of T.N.*, (2009) 14 SCC 244.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 19-2-2009]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, considered and applied

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310; Priya Vrat Singh v. Shyam Ji Sahai, (2008) 8 SCC 232: (2008) 3 SCC (Cri) 463, relied on

[10968] — S. 498-A — Quashing of proceedings by High Court — Allegation of mala fides against informant — Effect of — Allegations of cruelty, dowry demand by appellant wife — *On facts, held, allegation of mala fides against informant are of no consequence and cannot by themselves be the basis for quashing the proceedings — Dowry Prohibition Act, 1961 — Ss. 3 and 4 — CrPC, 1973, S. 482* (Paras 10, 9 and 6)

The appellant wife, married Respondent 3, *R* on 1-7-1998, alleging mental and physical torture for dowry demands made a complaint alleging commission of offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (the Act). The police registered an FIR. In the suit for divorce filed by the husband, Family Court directed maintenance at the rate of Rs 2000 p.m. and the cost of litigation to be paid to the appellant. The appellant's father-in-law filed Miscellaneous Case No. 12 of 2001 questioning correctness of the maintenance order on the ground that the appellant's husband has no share in the ancestral property and maintenance cannot be paid out of it. Charge-sheet was filed on 12-8-2000. An application for discharge in terms of Section 239 CrPC was filed on 28-8-2001. The prayer was rejected on 7-9-2001 by SDJM. The Sessions Judge dismissed the revision application of the respondents. However, by the impugned order, the High Court quashed the proceedings initiated against Respondents 1 to 7, in purported exercise of power under Section 482 CrPC.

Allowing the appeal, the Supreme Court held as above. *Renu Kumari* v. *Sanjay Kumar*, (2008) 12 SCC 346.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 3-3-2008]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691: 2004 SCC (Cri) 353; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272, relied on

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, distinguished

[10969] — S. 498-A — Quashing of trial in a complaint alleging harassment by husband and his parents for more dowry — Absence of reasons — Sustainability — *Held, order indefensible since disposed of in casual manner without indicating any basis or reasons for exercising jurisdiction under S. 482 — Order set aside and matter remitted for consideration afresh — Dowry Prohibition Act, 1961, Ss. 3 and 4 — CrPC, 1973, S. 482* (Para 14). *Samira Khanum* v. *Mohd. Asfar Towheed*, (2009) 4 SCC 49: (2009) 2 SCC (Cri) 59: AIR 2009 SC 2149: (2009) 2 ECrN 1030 (SC): 2009 Cri LJ 2445.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-3-2009]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, impliedly relied on

[10970] — Ss. 498-A and 323 — Quashing of proceedings — Ground — Lack of jurisdiction of the Magistrate concerned to deal with the matter — *Complaint filed under Ss. 498-A and 406 IPC and S. 4, Dowry Prohibition Act, 1961 against husband and his relations by the wife at place* **C** *where she came to stay after leaving her husband's house at place* **N** *— All the offences alleged to have taken place at N — Said offences not continuing ones — No part of cause of action arose at place* **C** *— Hence, considering Ss. 177 and 178 CrPC, held, the Magistrate at* **C** *had no jurisdiction to deal with the matter — Proceedings quashed — Complainant given liberty to file complaint in appropriate court — CrPC, 1973, Ss. 482, 177 and 178 — Dowry Prohibition Act, 1961, S. 4 — Ss. 498-A and 406 — Constitution of India, Art. 136*

Respondent 2 (wife of one of the appellants) filed a complaint in the Court of the Magistrate alleging commission of offences punishable under Sections 498-A and 406 IPC and Section 4 of the Dowry Prohibition Act, 1961. The Magistrate directed the police to investigate the case. After investigation, the police filed the charge-sheet. When the matter stood thus, the appellants filed an application under Section 482 CrPC before the High Court alleging that the Magistrate concerned had no jurisdiction even to entertain the complaint even if the allegations contained therein were accepted in toto as no part of the cause of action arose within the jurisdiction of the court concerned. The complaint itself disclosed that after 15-4-1997, the respondent left the place *N* (where she was residing with her appellant husband) and came to the city *C*. Since all the alleged acts as per the complainant took place at *N*, the courts at *C* did not have the jurisdiction to deal with the matter. On the other hand, Respondent 2 submitted that the offences were continuing in terms of Section 178(*c*) CrPC and, therefore, the court at *C* had jurisdiction to deal with the matter.

Allowing the appeal,

Held :

In the present case, the inevitable conclusion is that no part of cause of action arose in the city *C* and, therefore, the Magistrate concerned had no jurisdiction to deal with the matter. (Para 19). *Y. Abraham Ajith* v. *Inspector of Police*, (2004) 8 SCC 100: 2004 SCC (Cri) 2134: AIR 2004 SC 4286.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-8-2004]

[10971] — Ss. 498-A, 323 and 506 — Quashment of proceedings under when found to have been initiated only to harass other party — Abuse of process — Family matter — Divorce petition — Conduct of appellant — Quashment of proceedings — *Appellant and respondents entering into compromise, on basis whereof appellant obtaining divorce from R-1 who then withdrawing his petition under S. 9, Hindu Marriage Act, 1955 — Appellant, however, partially performing her part of compromise by withdrawing case filed under S. 125 CrPC but not withdrawing petition filed under Ss. 498-A, 323 and 506 IPC and Ss. 3 and 4, Dowry Prohibition Act, 1961, as agreed in said compromise — Appellant coming before Supreme Court in appeal on High Court having quashed said petition on*

(6)(xii) Quashment *(contd.)*

ground of lack of territorial jurisdiction, and contending that said compromise had been obtained by coercion and under threats from respondents — Fact that while respondent had performed his part of compromise, appellant had partially performed her part and the fact that she had made a complaint in writing to Family Court where S. 125 CrPC proceedings were pending that said compromise was obtained by coercion and then had withdrawn said complaint, and obtained a divorce on basis of said compromise, held, indicate that criminal complaint from which this appeal arises was filed by appellant only to harass the respondents — In view thereof it would be an abuse of process of court if said criminal proceedings are allowed to continue — Hence, not only appeal dismissed, but said proceedings against respondents quashed — Dowry Prohibition Act, 1961, Ss. 3 and 4 (Paras 8 and 9). *Ruchi Agarwal* v. *Amit Kumar Agrawal*, (2005) 3 SCC 299: 2005 SCC (Cri) 719.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 5-11-2004]

[10972] — Ss. 498-A, 342, 506 and 406 r/w S. 34 — Quashing of criminal proceedings — Exercise of power under S. 482 CrPC after dismissal of SLP against framing of charges — Propriety — *On facts, proceedings initiated against respondents in accordance with law with the satisfaction of trial court about prima facie case being made out — Accordingly, charges framed against respondents and said action upheld by High Court and the Supreme Court — Respondents again moved High Court under S. 482 for quashing of criminal proceedings — Held, once order was passed by the Supreme Court dismissing SLP, upholding framing of charges against respondents, High Court could not have exercised power under S. 482 quashing criminal proceedings initiated by appellant — Observation of High Court that even after dismissal of SLP by the Supreme Court, it was open for it to consider prayer of accused to quash the proceedings in exercise of inherent powers because "the extraordinary jurisdiction under S. 482 of the Code may be exercised at any stage", not proper — In substance and reality, High Court exercised power of review not conferred by CrPC on a criminal court — Therefore, High Court was clearly in error in exercising power under S. 482 — Hence, without entering into the merits, order set aside with the matter to be decided in accordance with law by an appropriate court — Dowry Prohibition Act, 1961, Ss. 3 and 4 — CrPC, 1973 — S. 482*

Challan was filed against the respondents for offences punishable under Sections 498-A, 506, 406 read with Section 34 IPC and also under Sections 3 and 4, Dowry Prohibition Act, 1961. Charges were framed against Respondents 1 to 3 (husband, father-in-law and mother-in-law) and also against brother and sister of Respondent 1. All the accused challenged the action of framing of charge against them in the High Court by filing a revision petition. High Court partly allowed the revision and quashed charges against brother and sister of Respondent 1. It, however, held, that so far as the other respondents were concerned, charges could not be quashed and dismissed the petition.

Being aggrieved by the said order, the respondents approached the Supreme Court by filing special leave petition, but it was dismissed. The respondents then once again filed a petition in the High Court by invoking Section 482 CrPC. The High Court vide the impugned order, allowed the petition holding that there was abuse of process of law by the appellant in initiating criminal proceedings. The proceedings were, therefore, quashed. The said order was challenged in the present appeal.

Disposing of the appeal,

Held :

From the facts it is clear that a complaint was lodged by the petitioner against Respondents 1 to 3 as also against the other accused for offences punishable under Sections 498-A, 342 and 406 IPC and Sections 3 and 4 of the Dowry Prohibition Act. (Para 19)

The trial court was satisfied that *prima facie* case was made out and accordingly charges were framed against Respondents 1 to 3 as well as against the other accused. In a petition challenging that action, the High Court partly allowed the petition and quashed charges against brother-in-law and sister-in-law of the appellant herein but upheld the order of framing of charge against the remaining respondents i.e. Respondents 1 to 3 who, then, challenged the order of the High Court in the Supreme Court by filing SLP which was dismissed. It is thus clear that all the courts including the Supreme Court were of the view that there was *prima facie* case for framing of charge against the respondents herein. (Paras 20, 21 and 22)

After the order passed by the Supreme Court, Respondents 1 to 3 again moved the High Court under Section 482 CrPC for quashing of criminal proceedings. The High Court in the impugned order noted that earlier the respondents had approached it against framing of charge and the said action was not interfered with even by the Supreme Court. But observing that "a court of law cannot be expected to remain a silent spectator and cannot be made a tool of gratifying personal vengeance of any party", it held that the case in hand was a fit one to exercise inherent power under Section 482 CrPC and accordingly the proceedings were ordered to be quashed. But after the order had been passed by the Supreme Court dismissing the special leave petition, upholding framing of charge against Respondents 1 to 3, the High Court could not have exercised power under Section 482 CrPC quashing criminal proceedings initiated by the appellant. The High Court observed that even after dismissal of SLP by the Supreme Court, it was open for it to consider the prayer of the accused to quash the proceedings in exercise of inherent powers because "the extraordinary jurisdiction under Section 482 of the Code may be exercised at any stage". Thereby High Court exercised power of review not conferred by CrPC on a criminal court. (Paras 24, 29 and 30)

On the facts and in the circumstances of the case, the High Court was clearly in error in exercising power under Section 482 CrPC in quashing criminal proceedings against the respondents. The said order, hence, deserves to be set aside. The matter will be decided in accordance with law by an appropriate court. (Para 42)

Moreover, it is well settled that inherent power under Section 482 CrPC must be exercised in rarest of rare cases. (Para 39)

It is clarified that merits of the matter or allegations and counter-allegations by the parties has not been entered into. All observations made have been made only for the limited purpose of deciding the issue. As and when the matter will come before the court, it will be considered on its own merits without being inhibited or influenced by the observations made by the High Court or the Supreme Court in the present order. (Para 43). *Sunita Jain* v. *Pawan Kumar Jain*, (2008) 2 SCC 705: (2008) 1 SCC (Cri) 537: (2008) 64 AIC 212 (SC): (2008) 2 KLJ 304.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 25-1-2008]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[10973] — Ss. 498-A and 406 — Quashing of complaint — Considerations — Mala fides — Absurdity — *Allegation of theft of bangles by appellant (brother of daughter-in-law of Respondent 1) during raid by police at Respondent 1's house — Respondent 1 arrested on complaint of his daughter-in-law — Held, it is absurd to think that appellant, who was present with police party, would venture to pocket the bangles in their presence — Accompanying police officers have not been made accused in complaint — Complaint wholly lacks bona fides — Complaint has to be quashed if allegations are found absurd and without any basis — When complaint is seen in backdrop of prosecution of Respondent 1 for offences under Ss. 498-A, 406 IPC, absurdity becomes more prominent — Criminal complaint was in retaliation to criminal prosecution which was being faced by Respondent 1 — Complaint quashed — CrPC, 1973, S. 482* (Paras 2 to 6 and 9 to 13). *Manoj Mahavir Prasad Khaitan* v. *Ram Gopal Poddar*, (2010) 10 SCC 673.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 8-10-2010]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[10974] — Ss. 498-A & 406 — Quashing of criminal proceedings — Whether allegations in FIR made out the offence of which cognizance could be taken — *Allegations against appellant sister-in-law only relating to causing insult, making derogatory remarks and behaving rudely against informant and not pertaining to dowry demand or entrustment and misappropriation of property belonging to her — Allegations of abetment of alleged offences, also not made against this appellant — Held, alleged offences under Ss. 498-A and 406 IPC and S. 4, Dowry Prohibition Act on facts not made out from such allegations, hence Magistrate not justified in taking cognizance thereof — Proceedings liable to be quashed — Dowry Prohibition Act, 1961, S. 4 — CrPC, 1973 — S. 482* (Para 6). *Ramesh* v. *State of T.N.*, (2005) 3 SCC 507: 2005 SCC (Cri) 735: AIR 2005 SC 1989: 2005 Cri LJ 1732.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 3-3-2005]

[10975] — Ss. 498-A and 406 — Quashment of criminal proceedings on initiation of civil proceedings — Permissibility — *Held, filing of divorce petition in civil court cannot be a ground to quash criminal proceedings under S. 482 CrPC as it is well settled that criminal and civil proceedings are separate and independent and pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of same set of facts — Hindu Marriage Act, 1955, S. 13 — CrPC, 1973 — S. 482*

The present appeal was preferred against the judgment and order of the High Court whereby the High Court in the exercise of its inherent powers

(6)(xii) Quashment *(contd.)*

under Section 482 CrPC quashed FIR dated 31-12-2001 lodged at the instance of the appellant. The said FIR was registered by the appellant complainant against the respondent-accused for the alleged offences under Sections 498-A and 406 IPC.

In the facts of the case, the appellant had married Respondent 2 on 25-1-2000. Respondents 1, 3, 4 and 5 were the mother-in-law, brother-in-law, maternal father-in-law and the father-in-law of the appellant respectively. The appellant left her matrimonial home on 25-5-2001 with her father and brother. On 31-7-2001, the husband, Respondent 2, filed a petition before the Family Court praying for a decree of divorce on the ground of mental cruelty. On 31-12-2001, the appellant lodged an FIR against the respondents for the alleged offences under Sections 498-A and 406 IPC. The FIR was challenged by the respondents before the High Court under Section 482 CrPC praying for quashing of the same. While the petition under Section 482 CrPC was pending, a final investigation report was submitted on 13-2-2004 in the High Court.

The High Court by the impugned order quashed the FIR on the basis of the report of the investigating officer submitted before it and concluded that no offence under Sections 498-A and 406 IPC was made out by the appellant against the respondents. The High Court also observed that the FIR must be quashed to avoid undue harassment and mental agony to the respondents, more so when the divorce petition was still pending before the Family Court. Hence the present appeal.

Two questions arose in the present case:

(*i*) Whether the High Court while quashing the FIR in exercise of its inherent powers under Section 482 CrPC was entitled to go beyond the complaint filed by the complainant; and

(*ii*) Whether the High Court was entitled to look into and consider the investigation report submitted by four officers of the rank of Dy. Superintendent of Police, for quashing the FIR, even before the same could be filed before the Magistrate concerned.

Partly allowing the appeal,

Held :

In the facts and circumstances of the case, the High Court was not justified in drawing an adverse inference against the appellant wife for lodging the FIR on 31-12-2001 on the ground that she had left the matrimonial home at least six months before that. This is because the High Court had failed to appreciate that the appellant and her family members were during this period making all possible efforts to enter into a settlement so that Respondent 2, the husband, would take her back to the matrimonial home. If any complaint was made during this period there was every possibility of not entering into any settlement with Respondent 2, the husband. (Para 15)

The complaint was filed only when all efforts to return to the matrimonial home had failed and Respondent 2, the husband, had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. (Para 16)

Filing of a divorce petition in a civil court cannot be a ground to quash criminal proceedings under Section 482 CrPC as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. (Para 16)

From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court while exercising its inherent powers under Section 482 CrPC has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations. (Paras 14 and 16). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength **2**. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27, relied on

[10976] — Ss. 498-A and 406 — Quashing of FIR for alleged offences punishable under Ss. 498-A and 406 IPC — Factors to be considered — *Perusal of FIR revealing absence of allegation of torture for dowry so as to constitute offence under S. 498-A IPC — But FIR containing allegations relating to offence under S. 406 IPC — If ultimately prosecution is unable to substantiate the plea relating to S. 406 IPC the result would follow — Hence, proceedings so far as relating to offence under S. 498-A IPC only liable to be quashed in exercise of power under S. 482 CrPC — But power under*

S. 482 CrPC cannot be exercised in respect of allegations relating to S. 406 IPC — CrPC, 1973 — S. 482 (Paras 9 and 10). *Manjula Sinha* v. *State of U.P.*, (2007) 12 SCC 503: (2008) 3 SCC (Cri) 271: (2007) 5 All LJ 245.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 11-7-2007]

Minu Kumari v. State of Bihar, (2006) 4 SCC 359, relied on

[10977] — Ss. 498-A and 406 — Quashing of FIR for offences under Ss. 498-A and 406 IPC — Stage up to which possible — *Where charge-sheet already filed and charges also framed, held, question of quashing FIR does not arise — CrPC, 1973 — Ss. 482 and 154, 211 & 210* (Para 14). *Manjula Sinha* v. *State of U.P.*, (2007) 12 SCC 503: (2008) 3 SCC (Cri) 271: (2007) 5 All LJ 245.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 11-7-2007]

[10978] — S. 498-A and Ss. 406, 341, 323 & 120-B and Ss. 3 & 4, Dowry Prohibition Act, 1961 — Quashing of complaint under S. 498-A IPC, against appellants (unmarried brother and married sister of complainant's husband) who were neither residing with complainant in her matrimonial home nor visited her — *Demand of luxury car, passing of sarcastic remarks (without stating actual wordings), and physical assault alleged against parents-in-law, husband and appellants — Appellant 1 (married sister-in-law of complainant) residing in her own matrimonial home with her husband for more than 7 years, while Appellant 2 was permanent resident of Goregaon, Maharashtra — Appellants never visiting place where alleged occurrence had taken place, and neither living with complainant and her husband at any time — No specific allegation made against appellants in complaint, and none of the witnesses attributing any role to them — Held, their implication was only meant to harass and humiliate husband's relatives — Permitting complainant to pursue complaint would be abuse of process of law — Hence, complaint against appellants quashed — Courts cautioned to scrutinise such vexatious and frivolous complaints with great care and circumspection — CrPC, 1973, S. 482* (Paras 4, 27, 28, 35 and 38). *Preeti Gupta* v. *State of Jharkhand*, (2010) 7 SCC 667.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 13-8-2010]

[10979] — Ss. 498-A and 406 r/w S. 34 — Prima facie case under, when not made out — Quashment — Allegations in FIR not revealing offences under Ss. 498-A and 406 r/w S. 34 against respondent husband and his parents, and not being specific — *On facts, said offences, held, are not made out from allegations levelled — Therefore, quashment by High Court upheld — CrPC, 1973, S. 482* (Paras 79 to 81)

The High Court was justified in quashing the FIR filed by the appellant wife for offences punishable under Sections 498-A, 406 read with Section 34 IPC. (Paras 81 and 78)

The appellant-complainant is a citizen of USA and had all along lived in USA with her son and husband, away from her in-laws. The alleged scene of occurrence was in USA and her in-laws had no say in the matrimonial life of the couple. (Para 79)

The appellant's jewellery was lying in the couple's house in USA and no part of it was with her in-laws as was subsequently stated to be the position in the FIR lodged by the appellant. The particulars of the bank in which the alleged locker from where the husband took the appellant's jewellery were not given in the FIR. The High Court in that view held that no offence under Sections 498-A and 406 IPC was made out against her in-laws on the basis of the allegations made by the appellant in the FIR. (Para 80). *Ruchi Majoo* v. *Sanjeev Majoo*, (2011) 6 SCC 479.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and **T.S. Thakur**, JJ. [Date of decision : 13-5-2011]

[10980] — Ss. 498-A and 406 r/w S. 34 — Quashing of criminal proceedings initiated under Ss. 498-A and 406 r/w S. 34 IPC — Propriety of — *Where there were clear allegations of cruelty meted out to the appellant wife on demand of dowry, High Court's order quashing the proceedings by holding that prima facie no case for offence under S. 498-A IPC was made out against the respondent, held, not sustainable — CrPC, 1973 — S. 482* (Paras 4 and 5). *Banhisikha Roy* v. *Somnath Roy*, (2005) 12 SCC 500.

Bench Strength **2**. Coram: *D.M. Dharmadhikari* and *B.N. Srikrishna*, JJ. [Date of decision: 25-7-2005]

[10981] — Ss. 498-A and 494 — Exercise of jurisdiction under S. 482 CrPC — Consideration of admitted document — Quashing of FIR — Validity of — *On facts, appellant was married to Respondent 1 around 1-12-1993 — However, they were living separately since 1996 — Appellant entered into agreement for divorce as per custom around 24-7-1996, which was registered — She received permanent alimony of Rs 25,000 which was acknowledged by granting stamped receipt*

(6)(xii) Quashment *(contd.)*

therefor — Purported divorce took place accordingly — Respondent 1 married again in 1998 — Appellant filed complaint petition against Respondents 1 to 3 (husband and parents-in-law) in May 2006, inter alia, on premise that first respondent married for the second time — FIR lodged pursuant to the complaint resulted in arrest of respondents — Application for quashing FIR under S. 482 CrPC allowed by High Court — Sustainability — Respondents contending mala fide on appellant's part in view of the fact that complaint petition was filed ten years after divorce — Held, customary divorce may be legal or illegal but the fact that such an agreement was entered into and appellant had received Rs 25,000 by way of permanent alimony, stood admitted — Document was a registered one — Held, if contents of agreement are taken to be correct, indisputably parties were living separately for more than ten years — No case under S. 498-A IPC can be said to have been made out and that too at such a distant point of time is the question, particularly in view of bar of limitation as contained in S. 468 CrPC — Even otherwise it is unbelievable that appellant was really harassed by her husband or in-laws — Also, no allegation was made out in regard to commission of offence under S. 494 IPC so far as Respondents 2 and 3 were concerned — If for exercising its jurisdiction under S. 482 CrPC High Court took into consideration an admitted document, there was no legal infirmity therein — If it was a case of customary divorce, question in regard to existence of good custom may have to be gone into in a civil proceeding, but a criminal prosecution shall not lie — It was initiated mala fide — It was an abuse of process of court — Hence, FIR rightly quashed — CrPC, 1973 — Ss. 468 and 482 (Paras 2 to 7, 11, 12, 13 and 14). *M. Saravana Porselvi* v. *A.R. Chandrashekar*, (2008) 11 SCC 520: AIR 2008 SC 2462: (2008) 68 AIC 192 (SC): 2008 Cri LJ 3034.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 27-5-2008]

[10982] — S. 498-A r/w S. 34 — Disputed question of fact — Whether complainant was the legally wedded wife of appellant — Non-interference, in exercise of its inherent jurisdiction — *High Court by impugned judgment dismissing application of appellant for quashing complaint filed against him under S. 498-A r/w S. 34 IPC, on ground that it involved disputed question of fact — Appellant contending that complainant was not his legally wedded wife as he was already married, and therefore S. 498-A IPC had no application — Held, no interference with impugned judgment called for — CrPC, 1973, S. 482* (Paras 2, 3, 8 and 9). *Koppisetti Subbharao* v. *State of A.P.*, (2009) 12 SCC 331: AIR 2009 SC 2684: (2009) 2 KLT 531: 2009 Cri LJ 3480: (2009) 2 APLJ 114 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 29-4-2009]

Reema Aggarwal v. Anupam, (2004) 3 SCC 199: 2004 SCC (Cri) 699, followed

Mayne: Early History of Institution, p. 319; Banerjee: Marriage and Stridhan, p. 345; Mayne's Hindu Law and Usage, cited

[10983] — Ss. 498-A/323 and 406 — FIR lodged by wife (Respondent 2) under Ss. 498-A/323 and 406 against her husband (Appellant 4) and his relations (Appellants 1 to 3) — Quashing of sought due to settlement between the parties — Refusal by High Court — Propriety — *Appellants seeking quashing of FIR due to settlement of disputes between Respondent 2 and appellants as husband and wife agreeing to mutual divorce — Wife supporting quashing of the said proceedings — Thus, where there was almost no chance of conviction, held, it would be improper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences — Non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier and that would be against the object of S. 498-A — CrPC, 1973, S. 482 r/w Arts. 226 and 227 of the Constitution of India*

If for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power. Thus, the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code. (Paras 8 and 15)

It is, however, to be borne in mind that in the present case the appellants had not sought compounding of the offences. They had approached the Court seeking quashing of FIR. (Para 9)

It is well settled that the powers under Section 482 have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. (Para 6)

In the present case, the wife filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. In such eventuality, there would almost be no chance of conviction. So it would not be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides. Further, in *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692 it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes. (Paras 10, 11 and 12)

The object of introducing Chapter XX-A in IPC was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. A hypertechnical view would be counterproductive and would act against the interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of IPC. (Para 14). *B.S. Joshi* v. *State of Haryana*, (2003) 4 SCC 675: 2003 SCC (Cri) 848: AIR 2003 SC 1386: (2003) 2 KLT 1062: 2003 Cri LJ 2028.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 13-3-2003]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10, considered and explained

Surendra Nath Mohanty v. State of Orissa, (1999) 5 SCC 238: 1999 SCC (Cri) 998, distinguished

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693: 2000 SCC (Cri) 733, relied on

(xiii) Suicide note

See also under S. 306, above

[10984] — Ss. 498-A and 306 — Cruelty — Hurting utterances — No word on record to prove — Deceased, in her suicide note, making allegation against appellant, regarding serious and hurting utterances made by appellant towards deceased — Suicide note not indicating any "hurting" utterances — *Court, held, must be in a position to hold that the words felt "hurting" were sufficient enough to amount cruelty under S. 498-A — Supreme Court, being helpless to judge whether the words used by appellant against deceased amounting to cruelty, acquitting the appellant of the charge under S. 498-A. Raj Rani* v. *State (Delhi Administration)*, (2000) 10 SCC 662: 2001 SCC (Cri) 1518.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 8-2-2000]

[10985] — Ss. 498-A, 306 and 109 r/w S. 34 — Cruelty and abetment of suicide — Whether offences of, made out — Proof of — *Extreme mental cruelty meted out to deceased wife (serving as a Lecturer) by economically dependent advocate husband (not settled in practice) — Number of instances of mental torture proved from the evidence of PWs 6, 7 and 8 (neighbour, sister and father of the deceased respectively) — Suicide note/letter written to the father of deceased giving graphic description of the number of instances of constant extreme mental torture and appellant's deriving sadistic pleasure in torturing the deceased — Courts below relying on circumstances enumerated in the suicide note and testimony of PWs 6, 7 and 8 and giving concurrent finding regarding extreme mental cruelty — Appellant created circumstances which left no option for the wife but to take an extreme step of putting an end to her life — Therefore, conviction under Ss. 498-A, 306 and 109 r/w S. 34, upheld* (Paras 14 to 17 and 21 to 24). *Milind Bhagwanrao Godse* v. *State of Maharashtra*, (2009) 3 SCC 699: (2009) 2 SCC (Cri) 182: AIR 2009 SC 1828: (2009) 76 AIC 224 (SC): 2009 Cri LJ 1736.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 12-2-2009]

(xiv) Transfer of case

[10986] — S. 498-A — Transfer — Considerations — Impleadment of all parties — Right of accused to fair trial and opportunity to defend — Paramount consideration — Convenience of party — Irrelevant — *Proceedings under S. 498-A IPC against husband and five others — Only husband impleaded as respondent in transfer petition*

(6)(xiv) Transfer of case *(contd.)*

while others not made parties thereto — Held, transfer petition liable to be dismissed on that ground alone — Further held, in matrimonial proceedings indulgence is shown to wife and ordinarily proceedings may be transferred to suit her convenience — But a criminal case stands on different footing — Accused may not be able to attend court proceedings at transferred court for various reasons and consequences of non-appearance of accused would be drastic — In criminal proceedings, right of accused to fair trial and proper opportunity to defend himself cannot be ignored for convenience of complainant simply because she happens to be the estranged wife — CrPC, 1973, S. 406 (Paras 4 to 7). *Jyoti Mishra* v. *Dhananjaya Mishra*, (2010) 8 SCC 803: (2010) 3 SCC (Cri) 1107.

Bench Strength **2**. Coram: *Aftab Alam* and *R.M. Lodha*, JJ. [Date of decision: 27-8-2010]

[10987] — Ss. 498-A and 323 — Transfer of proceedings — Matrimonial disputes — Grounds for — *Wife seeking transfer of petition filed under S. 13 of Hindu Marriage Act by respondent husband, from Mumbai to Etawah on ground that she had a small child who required looking after by her, allowed — But transfer, sought by husband, of criminal case under Ss. 498-A and 323 IPC r/w Ss. 3 and 4 of Dowry Act, filed by wife in Etawah, rejected — Dowry Prohibition Act, 1961, Ss. 3 and 4 — CPC, 1908 — S. 25* (Paras 2 and 4). *Neelam Pravin Singh Bhadoria* v. *Pravin Singh Ramakant Bhadoria*, (2005) 11 SCC 394.

Bench Strength **2**. Coram: *S.N. Variava* and *H.K. Sema*, JJ. [Date of decision: 1-4-2005]

[10988] — Ss. 498-A and 406 — Transfer of case — *FIR registered, charge-sheet filed and cognizance of alleged offences under Ss. 498-A and 406 IPC and S. 4, Dowry Prohibition Act taken by Magistrate at Trichy — Acts, which were alleged to have constituted said offences, committed mostly in Mumbai and partly in Chennai but no acts constituting the alleged offences committed at Trichy — Informant also moved application for transfer of petition for dissolution of marriage filed by husband from Family Court, Mumbai, to Chennai — Having regard to relevant aspects, background facts and history of litigation, all cases, criminal and matrimonial, directed to be transferred from Trichy and Mumbai respectively to Chennai — Dowry Prohibition Act, 1961, S. 4 — CrPC, 1973 — Ss. 406 and 177* (Paras 10 to 14). *Ramesh* v. *State of T.N.*, (2005) 3 SCC 507: 2005 SCC (Cri) 735: AIR 2005 SC 1989: 2005 Cri LJ 1732.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 3-3-2005]

(xv) Witnesses

[10989] — S. 498-A — Cruelty by husband and mother-in-law of newly-wedded wife — Proof of — Related witnesses only — *Physical and mental torture proved by mother, elder brother and other close relations of deceased wife — Absence of evidence of neighbours and co-tenants — No adverse inference can be drawn — Testimony of close relations cannot be discarded simply on ground of absence of corroboration by independent witnesses*

The High Court has expressed doubts about the genuineness of the case of physical torture and abuses made by the husband and the deceased for the absence of any independent evidence given by the neighbours and co-tenants about such physical assault or the abuses hurled on the wife by the accused. Ordinarily it is not expected that physical torture or the abuses hurled on the wife by the husband and the mother-in-law should be made in such a way as to be noticed by the tenants living in the adjoining portions of the house. It is also not the case of the prosecution that the deceased was physically assaulted so violently that the neighbours came to know about such assault. It is also not the case that abuses used to be hurled loudly so that the tenants had occasions to hear them. It was therefore not necessary to examine neighbour or tenants to prove the prosecution case. In the instant case, the evidence about physical and mental torture of the deceased has come from the mother, elder brother and other close relations. Such depositions by close relations, who may be interested in the prosecution of the accused, need not be discarded simply on the score of the absence of corroboration by independent witness. Whether the evidence of interested witness is worthy of credence is to be judged in the special facts of the case. The acts of cruelty by the accused were expected to be known by the very close relations like mother, brother, sister, etc. The evidence of the mother has been accepted by the trial court as worthy of credence which cannot be discarded in the facts of the case. *State of W.B.* v. *Orilal Jaiswal*, (1994) 1 SCC 73: 1994 SCC (Cri) 107: AIR 1994 SC 1418: 1994 Cri LJ 2104: (1994) 1 BLJR 267: (1994) 1 Guj LH 537.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 23-9-1993]

[10990] — S. 498-A — Ill-treatment of wife (deceased) by husband to get money from her mother — Evidence — *Non-examination of any witness from the place where wife had her matrimonial home — Rejection of prosecution case as to ill-treatment on the basis of — Propriety — Held on facts, not proper — Evidence Act, 1872, S. 134*

The High Court observed that no neighbour from the place *G* was examined to prove the fact that the deceased was being ill-treated by her husband. The High Court completely lost sight of the fact that the matrimonial home of the deceased was at *G* and therefore, it was not possible for the prosecution to get witnesses from *G* who would have supported the case of the prosecution. Moreover, the deceased had gone to *G* as a newly married daughter-in-law and it was not expected, even if she was ill-treated, to go about in the neighbourhood complaining against her husband. In any event this is not a good enough reason to reject the testimony of such a large number of witnesses who have deposed on this aspect of the case. (Para 11). *State of Karnataka* v. *K. Gopalakrishna*, (2005) 9 SCC 291: 2005 SCC (Cri) 1237: AIR 2005 SC 1014: 2005 Cri LJ 1436.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 18-1-2005]

[10991] — Ss. 498-A and 306 — Suicide by wife — *Allegations against husband (H) regarding demand of money and physical ill-treatment of wife (W) — Glaring improvements made in evidence — PW 6 (nephew of W) alleged to have seen **H** beating **W** when he visited the house of **H** on the date of the incident — PW 6 informed the same to PW 2 (brother of W) — In complaint lodged by PW 2 after the suicide, no mention about monetary demand and beating — Evidence of PW 3 (neighbour of PW 2) insufficient to prove the case — Improvements made by PWs 3 and 6 in their evidence — No allegation about harassment or demand in letters written by PW 4 at the instance of **W** to her parents — Statement of PW 5 (wife of one of the brothers of W) was too general in nature to base a conviction or to treat the same as corroborating any other acceptable evidence — Evidence of PW 7 also not assisting the prosecution case — Held, conviction and sentence imposed on accused husband liable to be set aside* (Paras 7 to 15). *Ashok Vishnu Davare* v. *State of Maharashtra*, (2004) 9 SCC 431: 2004 SCC (Cri) 1468.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 10-2-2004]

(7) Sentence/Fine/Compensation/Other punishment/relief

[10992] — S. 498-A — Appropriate sentence — *High Court reducing sentence of one year's RI with fine of Rs 200 imposed by trial court to six months' RI with fine of Rs 1000 — Supreme Court reducing sentence further, to period of RI already undergone, of three months — Constitution of India, Art. 136.* *Suresh Damu Mistry* v. *State of Maharashtra*, (2005) 11 SCC 585.

Bench Strength **2**. Coram: *Ashok Bhan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 18-4-2005]

[10993] — S. 498-A — Cruelty by husband — Condonation — Sentence reduction — *Aggrieved wife forgiving convicted husband during pendency of appeal before Supreme Court — Expressing wish to live peaceably with him — She fearing that if husband forced to undergo sentence for remaining period compromise between them would fail — Held, on facts sentence already undergone by appellant could be treated as being sufficient — Sentence reduced to period already undergone* (Para 4). *Raghumunda Satya Narayana* v. *State of A.P.*, (2000) 9 SCC 59: 2000 SCC (Cri) 1161: AIR 2000 SC 3420 (2): 2000 Cri LJ 2779.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 10-1-2000]

[10994] — S. 498-A — Denial of benefit of remission scheme — Constitutionality — Remission of sentence — Power to grant remission is a matter of policy and no prisoner has absolute right to remission — *Andhra Pradesh Govt. issuing a GO granting remission to a category of prisoners and subject to certain conditions — GO excluding those prisoners who were convicted for life and for crimes against women — Held, GO valid — Further held, in such class or category of orders, there is no justification for any addition or subtraction to facilitate enlargement of the scope and applicability of the order beyond what was specifically intended in the order itself — Appellant, who was convicted under S. 498-A IPC not entitled to the benefit under the scheme — Constitution of India, Art. 15(3) — CrPC, 1973 — S. 432*

The Govt. of Andhra Pradesh in the 50th year of Independence issued a GO which inter alia granted remission to prisoners of certain categories and subject to certain conditions. The GO excluded inter alia those prisoners from the scheme of remission who had been convicted for "crimes against women such as Sections 376 and 354 IPC while being sentenced for life". The appellant had previously been convicted of offences under Sections 302, 201 and 498-A IPC and sentenced for life, 4 years and 3 years respectively and for which he was undergoing imprisonment. The appellant's brother filed a writ before the High Court challenging the said GO. Before the High Court the petitioner contended that since the present appellant has not committed a crime against women under Sections 376 or 354 IPC he should be given the benefit of the GO and granted remission. It was further contended that the condition stipulating the exclusion of prisoners having committed crimes against women was discriminatory and violated Article 14. The High Court rejected the contentions of the petitioner and before the Supreme Court the appellant advanced the same arguments.

Dismissing the appeals,

Held :

The rejection of the plea on behalf of the appellant by the High Court was well merited and supported by sound reasons. The remission to be granted was in respect of only a specified class of convicts and that too "subject to the conditions" specified in the very government order. (Para 7)

The claim for remission cannot be made or countenanced dehors the specific conditions subject to which only it has been accorded and inasmuch as the grant as well as the conditions formed a compendious single common pattern or scheme of concession by way of remission, impregnated with a policy designed in public interest and the safety and interests of the society, either the remission could be availed of only subject to the conditions stipulated or the entirety of the scheme fails as a whole, and there is no scope for judicial modification or modulating the same so as to extend the concession in excess of the very objective of the maker of the order who seems to have been guided by considerations of State policy. In such class or category of orders, there is no justification for any addition or subtraction to facilitate enlargement of the scope and applicability of the order beyond what was specifically intended in the order itself. (Para 7)

The Constitution of India itself has chosen to countenance the claims of women for favourable treatment and acknowledge the fact that sex is a sound classification. The issue in question being one pertaining purely to the area policy and political philosophy of the State, the courts except in the rarest of rare cases, cannot be called upon to adjudicate on the desirability or wisdom of such decisions. (Para 9)

The classification in this regard to keep away convicts of crimes against women from the benefits of remission under the order dated 25-1-2000 cannot be said to violate any reasonable principle or concept of law so as to call for its condemnation in exercise of the powers of judicial review. The classification therefore sounds just, reasonable, proper and necessitated in the larger interests of society and greater public interest and consequently, cannot by any stretch of imagination be branded to be invidious to attract the vice of Article 14 of the Constitution of India. A careful scrutiny of the various excepted class of convicts only shows that the real object is to ensure that those who prey on the community and violate fundamental values of mankind, society and national interest should not get undeserved benefit. (Para 9). *Sanaboina Satyanarayana* v. *Govt. of A.P.*, (2003) 10 SCC 78: AIR 2003 SC 3074: 2003 Cri LJ 3854.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *H.K. Sema*, JJ. [Date of decision: 29-7-2003]

[10995] — S. 498-A — Reduction of sentence — When warranted — *Sentence of six months' SI imposed against appellant — Appellant and victim found have since remarried and happily living with their families — In the facts and circumstances sentence reduced to period of imprisonment already undergone i.e. two months. B.T. Jayaram* v. *State of Karnataka*, (2008) 14 SCC 530: (2009) 2 SCC (Cri) 861: AIR 2006 SC 1799: (2006) 41 AIC 931(SC)(2).

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 6-3-2006]

[10996] — S. 498-A — Sentence — Reduction of, when not justified — *Merely because in revision before High Court, accused persons had not challenged their conviction and had argued only on the question of their sentence, held, High Court was not justified in reducing the sentence to the period accused had been in jail, without even verifying whether they had undergone any sentence at all and without applying its mind to the facts to ascertain whether it was a fit case for exercise of revisional jurisdiction and modifying the sentence — CrPC, 1973, S. 401*

The Additional Chief Judicial Magistrate convicted the respondents (husband and mother-in-law of the victim) for the offence punishable under Section 498-A IPC each and sentenced them to suffer RI for one year and to pay a fine of Rs 1000 and in default in payment of fine to further undergo RI for 3 months each, by holding that the accused persons asked the victim to bring money from her father's house and when she could not arrange for money, all the accused mercilessly beat her and planned to burn her with a burning wooden stick. Appeal preferred by the respondents was dismissed by the Additional Sessions Judge. The respondents then filed revision petition before the High Court. A Single Judge allowed the revision by a cryptic order holding that the counsel for the accused had not challenged the conviction and had argued only on the question of sentence and that in the circumstances, "by maintaining the conviction for the offence under Section 498-A IPC, I modify the sentence and they are sentenced to undergo RI for the period for which they had been in jail and a fine of Rs 1000 each. They shall be released forthwith on deposit of fine".

Allowing the appeal,

Held :

The High Court has modified the sentence without recording any reasons and without considering the crime prevalent in the society for unjustified demand of dowry. In any case, before exercising its revisional jurisdiction, the Court ought to have considered the facts and applied its mind as to whether it was a fit case for exercise of its revisional jurisdiction and for reducing the sentence. It has also been pointed out that without verifying the fact that the respondents have not undergone any sentence, the High Court had passed the order of reducing the sentence for the period for which they had been in jail. It is the duty of the court to pass appropriate order of sentence and not raising of any argument by counsel for the accused for acquittal is hardly any ground for reduction of sentence. (Para 7). *Narsingh Prasad Singh* v. *Raj Kumar*, (2001) 4 SCC 522: 2001 SCC (Cri) 757: AIR 2001 SC 1828: 2001 Cri LJ 2039.

Bench Strength **2**. Coram: **M.B. Shah** and *S.N. Variava*, JJ. [Date of decision: 4-4-2001]

[10997] — S. 498-A — Sentence reduced to that already undergone — *Appellants 2 to 5 sentenced to imprisonment for one year and to pay fine of Rs 2000 each — They had already been undergoing imprisonment for about 5/6 months and paying stipulated fine — Hence, sentence reduced to period already undergone considering circumstances of the case and fact that at least two of the accused were ladies* (Paras 2 to 4). *Santoshi* v. *State of M.P.*, (2009) 16 SCC 753: (2010) 3 SCC (Cri) 397.

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and *Dr. B.S. Chauhan*, JJ. [Date of decision: 20-5-2009]

[10998] — Ss. 498-A & 34 — Compromise — Effect — *Appellants along with other three accused convicted under S. 498-A r/w S. 34 by the trial court and sentenced to RI for 2 years — High Court in appeal confirming the said order — SLP filed by the three accused against conviction dismissed by the Supreme Court — No point of distinction in case of appellants vis-à-vis the other three accused — Submission that appellants have been in custody for more than two months and an affidavit has been field by the victim stating that the disputes have been amicably settled — Held, offence under S. 498-A is not compoundable and hence permission cannot be accorded to record the compromise, but effect of the same can be taken into consideration while awarding sentence — Sentence of imprisonment reduced to the period already undergone* (Paras 1 and 3). *Badal Deb* v. *State of Assam*, (2006) 10 SCC 540: (2007) 1 SCC (Cri) 139.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 2-3-2006]

[10999] — Ss. 498-A and 304-B — Conviction under — Sentence warranted — Factors to be considered — *Death of the deceased "otherwise than under normal circumstances" — Dowry demand, torture and harassment "soon before" death proved — Sentence of 10 years' RI for offence under S. 304-B but no separate sentence for offence under S. 498-A imposed by the trial court, and affirmed by the High Court — Accused having already undergone nearly eight years of sentence — Hence, while maintaining conviction, custodial sentence reduced to eight years* (Paras 3, 8, 11 and 13). *Kailash* v. *State of M.P.*, (2006) 12 SCC 667: (2007) 2 SCC (Cri) 359: AIR 2007 SC 107: (2006) 47 AIC 823 (SC).

Bench Strength **2**. Coram: **Arijit Pasayat** and *L. S. Panta*, JJ. [Date of decision: 9-10-2006]

[11000] — Ss. 498-A and 306 — Conviction justified under S. 498-A — Sentence warranted against aged parents-in-law of deceased — *Accused-appellants 1 to 4 (father-in-law, husband, brother-in-law and mother-in-law respectively of deceased) alleged to have harassed and ill-treated deceased over dowry demand — Deceased found lying dead in verandah of her matrimonial home, and none of the accused present — Trial court finding accused guilty under Ss. 498-A and 306 — In appeal filed thereagainst, High Court convicting them only under S. 498-A and imposing sentence of one year — Sustainability — Held, there is no material to establish guilt of A-3 i.e. brother-in-law of the deceased, and hence, he acquitted — So far as the other three accused persons are concerned, the accusations have been established by evidence of PWs 3, 4 and 5, documentary evidence, and exhibited letters and the convictions recorded so far as they are concerned, cannot be faulted — However, considering age of the father-in-law and mother-in-law (A-1 and A-4) and period of sentence already undergone by them, while upholding their conviction, sentence reduced to the period already undergone — Conviction and sentence of A-2 maintained* (Paras 3 and 11 to 13). *Balwant Singh* v. *State of H.P.*, (2008) 15 SCC 497: (2009) 3 SCC (Cri) 1094: (2008) 71 AIC 153 (SC): 2008 Cri LJ 4683.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 29-9-2008]

M. Srinivasulu v. State of A.P., (2007) 12 SCC 443: (2008) 3 SCC (Cri) 169; Kaliyaperumal v. State of T.N., (2004) 9 SCC 157, relied on

Balwant Singh v. State, (2001) 1 Shim LC 446 (HP), partly affirmed

[11001] — Ss. 498-A and 306 — Demand of additional dowry — *Ill-treatment and harassment of wife by appellant husband — Wife committing suicide by consuming poison — Prosecution case fully established — Concurrent findings of courts below, held, proper — Conviction upheld — Sentence of three years' RI under S. 498-A and seven years' RI under S. 306, held, required no further leniency* (Para 7). *Moti Lal* v. *State of M.P.*, (2004) 2 SCC 469: 2004 SCC (Cri) 573: 2004 Cri LJ 907.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *S.B. Sinha*, JJ. [Date of decision: 20-1-2004]

[11002] — Ss. 498-A and 306 — Sentencing — Non-compliance with S. 235(2) CrPC — Contention in respect of — *Order of sentence passed after hearing the counsel for the accused-appellant on the same date on which the verdict of the guilt was pronounced — Not that the appellant sought for an adjournment or grant of further time for making submission on the sentence but the same was refused — Further, no grievance in that behalf made before the High Court — On facts, held, contention as to alleged non-compliance with S. 235(2) CrPC liable to be rejected — CrPC, 1973 — S. 235(2)* (Paras 5 and 6). *Moti Lal* v. *State of M.P.*, (2004) 2 SCC 469: 2004 SCC (Cri) 573: 2004 Cri LJ 907.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *S.B. Sinha*, JJ. [Date of decision: 20-1-2004]

Santa Singh v. State of Punjab, (1976) 4 SCC 190: 1976 SCC (Cri) 546, explained and distinguished on facts

[11003] — Ss. 498-A and 323 — Non-compoundable offence — Modification of sentence — Effect of compromise regarding compoundable offence — *During pendency of appeal, parties entering into compromise and as a result appellants acquitted of offence under S. 323 — Affidavit of complainant, ex-wife of Appellant 1, clearly stating that she had no wish to pursue the case and that she had remarried by then — Held, conviction under S. 498-A to be maintained, but sentence of imprisonment (1 year) to be reduced to period already undergone (Appellants 1 & 2, 8 months and 21/2 months respectively); Appellant 3 to be released on probation under Probation of Offenders Act, so that his job may not be jeopardised — CrPC, 1973, S. 320 — Probation of Offenders Act, 1958, S. 4* (Para 6). *Ramchandra Singh* v. *State of Bihar*, (2003) 10 SCC 234.

Bench Strength **2**. Coram: *R.C. Lahoti* and *P. Venkatarama Reddi*, JJ. [Date of decision: 22-3-2002]

[11004] — Ss. 498-A, 406 and 120-B — Matrimonial dispute settled and proceedings quashed — *Petition disposed of on the following terms: on the payment of Rs 5,00,000 by respondent to petitioner the proceeding under Ss. 498-A, 406 and 120-B IPC and under S. 9 of Hindu Marriage Act, 1955 shall stand quashed — Joint petition for divorce by mutual consent shall be allowed — Rs 3000 per month shall be paid for the welfare of the son till the boy attains majority — On two consecutive defaults in making said payment, the criminal case shall stand revived — CrPC, 1973, S. 125 — CPC, 1908, S. 25. Navpreet Kaur* v. *Gurkirat Singh*, (2008) 17 SCC 485: (2009) 73 AIC 18 (SC).

Bench Strength **2**. Coram: *Dr. Arijit Pasayat* and *P. Sathasivam*, JJ. [Date of decision: 6-12-2008]

[11005] — Ss. 498-A and 500 — Punishment — Compromise — Husband suspecting wife of unchastity right from day of marriage and indulging in mud-slinging and character assassination thereafter and lodging false complaint of theft against her — *Pursuant to complaint made by respondent-wife, appellant-husband convicted under S. 498-A IPC with fine of Rs 30,000 and under S. 500 with sentence of two months' simple imprisonment and fine of Rs 6000 by High Court — Before the Supreme Court settlement arrived at between the parties whereunder appellant agreeing to pay rupees one lakh to respondent in addition to payment of fine of Rs 6000 under S. 500 as also to pay fine of Rs 30,000 under S. 498-A as ordered by High Court and to file an unqualified apology before the Supreme Court for the mental strain and stress caused by him to the respondent — Appellants' brother also to file an undertaking before the Court to the effect that he will take no proceedings, civil or criminal, against the respondent for any averments, allegations or statements made by her in any proceedings — Respondent would be entitled to withdraw the amounts deposited by appellant — Compliance with the terms of the settlement would conclude all the proceedings — High Court was justified in taking serious view of appellant's conduct towards respondent — This should prove to be an eye opener to those who believe that they can get away by casting aspersions on a woman to serve their ends and to silence her — CrPC, 1973, S. 320. Mukund Martand Chitnis* v. *Madhuri Mukund Chitnis*, 1991 Supp (2) SCC 359: AIR 1992 SC 1804.

Bench Strength **3**. Coram: *A.M. Ahmadi, V. Ramaswami* and *K. Ramaswamy*, JJ. [Date of decision: 23-4-1991]

(8) Other issues

[11006] — Ss. 498-A and 304 — Custody of minor — Who should be given — Matters to be taken into consideration in determination of — Effect of pendency of proceedings under Ss. 498-A and 304 IPC against father — *Paramount consideration, held, is the welfare of the child and not statutory rights of parents — Statutes and statutory rights although relevant, interpretation of statutory provisions cannot be made sole basis of decision in such cases — The problem has to be solved rather with a human touch — In dealing with such cases, the court is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents — Since in selecting a guardian, the court exercises* ***parens patriae*** *jurisdiction, it must give due weightage to child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings as well as physical comfort and moral values — Court must ascertain child's wishes — If the minor is old enough to form an intelligent preference, such preference must also be considered, although the final decision would rest with the court — Character of the proposed guardian also requires to be considered — Proper test to determine the suitability of the father to have the custody of the minor, held, is the positive test of welfare of the minor and not the negative test that the father was not unfit or disqualified to have the custody — In the present case, pendency of criminal case under Ss. 498-A and 304 IPC against the father charging him of causing the death of the minor's mother ought to have been taken into consideration by the courts below and then an appropriate order ought to have been passed — The minor son, aged six years, when called in chamber, found to be quite intelligent — He refusing to go or stay with his father and preferring to stay with his grandparents — In such circumstances, father's request for having custody of the minor son, rejected — Hindu Minority and Guardianship Act, 1956, Ss. 6, 13, 4 and 2 — Hindu Marriage Act, 1955, S. 26 — Guardians and Wards Act, 1890, Ss. 17(1), (2), (3), 7 and 4(1), (2) and (3)*

On the facts and circumstances of the case, both the courts were duty-bound to consider the allegations against the respondent herein and the pendency of the criminal case for an offence punishable under Section 498-A IPC. One of the matters which is required to be considered by a court of law is the "*character*" of the proposed guardian. A complaint against the father alleging and attributing the death of the mother, and a case under Section 498-A IPC is indeed a relevant factor and a court of law must address the said circumstance while deciding the custody of the minor in favour of such a person. The trial court erred in observing that if the father was convicted it would be open to the maternal grandparents to make an appropriate application for change of custody. Even at this stage, the said fact ought to have been considered and an appropriate order ought to have been passed. (Paras 63, 64 and 59). *Nil Ratan Kundu* v. *Abhijit Kundu*, (2008) 9 SCC 413.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 8-8-2008]

[11007] — Ss. 498-A, 406, 420 and 315 — Inherent powers of High Court under S. 482 CrPC — Scope — Power to award costs if included — Frivolous and vexatious petition — *Held, S. 482 CrPC is independent of other provisions — Where no express power is available to do a particular thing but the existence of such power is not negated by the express provisions either, held, High Court can exercise inherent powers for doing justice according to law — Hence, although under CrPC the specific provisions for awarding costs are only Ss. 148(3), 342 and 359 CrPC held, in appropriate cases High Court can award costs for the purposes of S. 482 CrPC albeit this jurisdiction is to be exercised sparingly and judiciously — Maxim "expressio unius est exclusio alterius" cannot be applied to deny such power to High Court — On facts, High Court's order imposing exemplary costs of Rs 10,000 on each of the applicants while rejecting their frivolous/vexatious application under S. 482, upheld — Dowry Prohibition Act, 1961, Ss. 3 and 4 — CrPC, 1973 — Ss. 482, 148(3), 342, 359, 357, 358 and 227*

Consequent to an FIR and investigation pursuant thereto, a charge-sheet was filed against the first informant's husband and five others under Sections 498-A, 406, 420, 315 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The case was committed to the Sessions Court. Four of the said five others were subsequently discharged by the trial court under Section 227 CrPC. In the revision case filed by the complainant, the High Court set aside the order of discharge and held that there was sufficient material to frame charges. Accordingly, the trial court framed charges against those four accused persons also. The said four persons then filed a revision case on the ground that there was no prima facie case for framing charges against them. While dismissing this revision case, the High Court observed that the proceedings had been dragged on for eight years and that the revisionists had suppressed the decision of the High Court in the complainants' revision case and had not, despite the High Court's direction to the trial court to finish the trial expeditiously, allowed the trial court to do so. The High Court, therefore, imposed costs of Rs 10,000 each on the appellants to be paid to the informant (complainant), and directed the trial court to dispose of the case within two months. In the instant appeal, the appellants (revisionists before the High Court) contended that the High Court had no jurisdiction to impose costs except as provided under Sections 148(3), 342 and 359 of the CrPC and that the inherent powers of the High Court could not be exercised contrary to the said provisions. Dismissing the appeal,

Held :

Section 482 CrPC stands independently from the other provisions of the Code and it expressly saves the inherent powers of the High Court. Therefore, to prevent abuse of the process of the court or otherwise to secure the ends of justice, the High Court is empowered to pass "such order" which may include order to pay costs to the informant (complainant) and the language of the section does not in terms place any fetter. This power is not conditioned or controlled by any other section nor is curtailed by any provisions which empower the court to award costs. (Paras 8 and 22)

If there is an express provision governing the particular subject-matter then there is no scope for invoking or exercising the inherent powers of the Court because the Court is required to apply, in the manner and mode prescribed, the provisions of the statute. But the highest court in the State could exercise inherent powers for doing justice according to law where no express power is available to do a particular thing and express power does not negative the existence of such power. It is true that under the CrPC, specific provisions for awarding costs are only Sections 148(3), 342 and 359 of the CrPC. At the same time, there is no specific bar that in no other case, costs could be awarded. Further, in view of provision for awarding costs under Section 59 in non-cognizable cases, it may be inferred that in a cognizable case and in an appeal or revision arising therefrom, the High Court cannot exercise its inherent power for awarding costs dehors the said provisions. But such an inference is not possible in cases where the High Court is exercising powers under Section 482. In cognizable cases also under Section 357 while awarding compensation out of the fine imposed on the accused, inter alia, the Court is required to take into consideration expenses properly incurred in the prosecution. Hence, exercise of such power would, on the contrary, be in conformity and not in conflict with the powers conferred under Sections 148(3), 342 and 357 or 359 of the CrPC. In appropriate cases, where it is necessary to pass such an order, the Court may award costs for the purposes mentioned in Section 482. (Paras 8, 12, 16 and 22)

The operation of the maxim "*expressio unius est exclusio alterius*" has to be restricted with regard to the sections which empower the Court to grant costs in certain cases by holding that for the cases mentioned in those sections, the Court cannot exercise its inherent jurisdiction of granting costs or pass an order of granting costs in a method and mode different from what is provided by the said sections. Application of this maxim in the present case would lead to inconsistency and injustice because in cases where the Court finds that a petition under Section 482 is an abuse of the process of law and an unjustifiable petition for some ulterior motive including dragging of the proceedings of the court, it can pass any other order, but not the order for costs. (Para 18). *Mary Angel* v. *State of T.N.*, (1999) 5 SCC 209: 1999 SCC (Cri) 1296: AIR 1999 SC 2245: 1999 Cri LJ 3513.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 13-5-1999]

*A.T. Sankaralinga Mudaliar v. Narayana Mudaliar, AIR 1922 Mad 502: 23 Cri LJ 583 (FB), **overruled***

*Lasu Janu Pawar v. Emperor, AIR 1948 Bom 169: 49 Cri LJ 203; P. Veerappa Naidu v. Avudayammal, AIR 1925 Mad 438: 26 Cri LJ 707, **impliedly overruled***

Pampapathy v. State of Mysore, AIR 1967 SC 286: 1966 Supp SCR 477; Raghubir Saran (Dr.') v. State of Bihar, AIR 1964 SC 1: (1964) 2 SCR 336; Guardians of West Ham Union v. Churchwardens of St. Matthew, Bethnal Green, 1896 AC 477: 75 LT 286; Bombay Civil Fund Act, 1882, Re, Pringle v. Secy. of State for India, (1888) 40 Ch D 288: 60 LT 796, relied on

State of Orissa v. Ram Chander Agarwala, (1979) 2 SCC 305: 1979 SCC (Cri) 462, explained and distinguished

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— S. 499 *See also* Ss. 81, 87, 88, 89, 91, 92, 93, 100, 104, 106, 415, 469 and 499

See also Ss. 500 and 499 Exception 8

See also Ss. 500/34 and S. 499 Exception 9

[11008] — S. 499 — "Acting or purporting to act in discharge of his official duty" — Defamatory language used by a Judge to an Advocate — *Held, not in discharge of his official duty — Hence S. 197 CrPC not applicable and Sanction for prosecution of the Judge not required — CrPC, 1973 — S. 197*

The District Court called for remarks from the appellant, a Munsif Magistrate, on certain allegations made by the respondent, an Advocate, in his application for transfer of a suit pending in the appellant's court. The appellant in his written remarks called the respondent as 'rowdy', 'a big gambler' and 'a mischievous element'. The District Judge read out the appellant's remarks in open court. The respondent then filed a criminal complaint alleging that the remarks amounted to his defamation under S. 499, IPC.

Held :

There was no reasonable nexus between the act complained of, i.e. the defamatory language used by the appellant in his remarks, and the discharge of official duty i.e. to offer his remarks regarding the allegations made in the transfer petition. Therefore, S. 197 was not attracted. *B.S. Sambhu* v. *T.S. Krishnaswamy*, (1983) 1 SCC 11: 1983 SCC (Cri) 125: AIR 1983 SC 64: 1983 Cri LJ 158.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *A. Varadarajan*, JJ. [Date of decision: 9-11-1982]

Matajog Dubey H.C. Bhari, (1957) 2 SCR 925: AIR 1956 SC 44, applied

[11009] — S. 499 — Constitutional validity — Defamation — *Constitutional validity of S. 499, Penal Code, 1860 in respect of statements made in relation to official conduct of public servants/functionaries — Rule issued — Constitution of India, Arts. 19(1)(a) & (2)* (Para 2). *N. Ravi* v. *Union of India*, (2007) 15 SCC 631.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 17-12-2004]

[11010] — S. 499 — Defamation — Acts prima facie not amounting to defamation — Complaint of such acts if mala fide — Determination of — *Accused in response to survey conducted by news magazine on subject of sexual habits of people residing in big cities, making a statement endorsing in general premarital sex and posing a question as to whether people in Tamil Nadu were not aware of incidence of sex or premarital sex — Statement not directed at any individual or even at a company or association or collection of persons — Such statement, held, did not constitute prima facie case of defamation of Tamil-speaking women — Moreover, complainants not having suffered any specific legal injury by said statement, held, were not "persons aggrieved" within the meaning of S. 199(1) CrPC, 1973 — Hence, complaints filed by them, held, mala fide — More so when most of them were associated with a particular political party — CrPC, 1973, S. 199(1)*

I, a news magazine conducted a survey on the subject of sexual habits of people residing in the bigger cities of India. One of the issues discussed therein was the increasing incidence of premarital sex. Thereafter, the magazine published the views expressed by various persons, including the appellant, a well-known actress. Expressing her personal opinion, she noted the increasing incidence of premarital sex, especially in the context of live-in relationships and called for societal acceptance of the same. Subsequently, *D*, a Tamil daily reproduced the appellant's statement published in the said magazine. It added that in a conversation with its correspondent, the appellant had defended her views and stated: "The persons who are protesting against my interview, are talking about which culture? Is there anyone who does not know about sex in Tamil Nadu? Is there anyone who does not know about AIDS? How many men and women do not have sex before marriage?" The appellant, however, in a legal notice to the editor of the said daily denied the said statement.

Several persons and organisations, particularly functionaries of a political party PMK filed as many as 23 criminal complaints against the appellant for the offences contemplated under Sections 499, 500, 509, 153-A and 292 IPC read with Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986. Most of the complaints were filed in various districts of T.N. State while one was filed in M.P.

The appellant then approached Madras High Court under Section 482 CrPC seeking quashment of said proceedings. Taking the view that the questions involved in the complaints required consideration by a trial Judge, the High Court rejected the plea of the appellant. However, the High Court directed all the complaints to be consolidated and tried by *CJM* at *E*. Aggrieved thereby, the appellant filed the present batch of appeals by special leave.

Before the Supreme Court, the appellant contended that: (*i*) the respondent complainants were not "persons aggrieved" within the meaning of Section 199(1) CrPC and could not therefore maintain the complaints; (*ii*) the opinion expressed by the appellant was protected by Article 19(1)(*a*) of the Constitution; (*iii*) the allegations made in the complaints, even if taken on their face value, did not disclose any offence under the provisions specified therein; and (*iv*) the criminal proceedings were instituted in a mala fide manner by workers of a particular political party to vilify the appellant and gain undue political mileage.

The respondents supported the order of the High Court.

Allowing the appeals,

Held :

The Framers of the Constitution recognised the importance of safeguarding the freedom of speech and expression since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a precondition for meaningful governance in the political sense, a culture of open dialogue must also be promoted when it comes to societal attitudes. (Para 45)

No doubt, in India, marriage is an important social institution, that there are certain individuals or groups who do not hold the same view. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not coextensive. (Paras 46 and 50)

If the complainants vehemently disagreed with the appellant's views, then they should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling effects on the freedom of speech and expression. Dissemination of news and views for popular consumption is permissible under our constitutional scheme. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalise the author. (Paras 47, 50 and 45)

References to sex cannot be considered obscene in the legal sense without examining the context of the reference. (Paras 25 and 32)

There are numerous decisions, both from India and foreign countries which mandate that "obscenity" should be gauged with respect to contemporary community standards that reflect the sensibilities as well as the tolerance levels of an average reasonable person. (Para 27)

In the present case, the appellant has merely referred to the increasing incidence of premarital sex and called for its societal acceptance. At no point of time the appellant described the sexual act or said anything that could arouse sexual desires in the mind of a reasonable and prudent reader. Furthermore, the statement has been made in the context of a survey which has touched on numerous aspects relating to the sexual habits of people in big cities. It was published in a news magazine thereby serving the purpose of communicating certain ideas and opinions on the abovementioned subject. In the long run, such communication prompts a dialogue within society wherein people can choose to either defend or question the existing social mores. It is not possible to hold that the statements published as part of the survey were in the nature of obscene communications. (Paras 28 and 24)

The respondents' claim that the appellant's remarks could have the effect of misguiding young people by encouraging them to indulge in premarital sex is a little far-fetched since the appellant had not directed her remarks towards any individual or group in particular. For the sake of argument, even if it were to be assumed that the appellant's statements could encourage some people to engage in premarital sex, no legal injury has been shown since the latter is not an offence. (Para 29)

"Offence" means "an act or instance of offending"; "commit an illegal act" and "illegal" means, "contrary to or forbidden by law". "Offence" has to be read and understood in the context as it has been prescribed under the provisions of Sections 40, 41 and 42 IPC which cover the offences punishable under IPC or under special or local law or as defined under Section 2(*n*) CrPC or Section 3(38) of the General Clauses Act, 1897. (Para 30)

There is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of "adultery" as defined under Section 497 IPC. (Para 31)

Moreover, it is necessary to fully understand the context and the purpose for which references to sex have been made in any given setting. (Paras 32 and 25)

There is no prima facie case of defamation in the present case. There was neither any intent on the part of the appellant to cause harm to the reputation of the complainants as contemplated by Section 499 IPC nor can one discern any actual harm done to their reputation. In short, both the elements i.e. mens rea and actus reus are missing. The appellant's statement published in *I* is a rather general endorsement of premarital sex and her remarks are not directed at any individual or even at a "company or an association or collection of persons". Even in the remarks published in *D* which have been categorically denied by the appellant, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. Even if those remarks are considered in their entirety, nowhere has it been suggested that all women in Tamil Nadu have engaged in premarital sex. (Paras 34 and 35)

The fact that most of the complainants are associated with PMK, a political party does add weight to the suggestion that the impugned complaints had been filed with the intention of gaining undue political mileage. (Para 36)

In respect of the offence of defamation, Section 199 CrPC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrates' Courts. In the given facts of the present case, the complainants cannot be properly described as "persons aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of them. (Para 37)

In the present case, the complainants have alleged defamation in respect of imputations against the character of Tamil-speaking women, which could perhaps be viewed as a class of persons. However, the appellant's remarks did not suggest that all women in Tamil Nadu have engaged in premarital sex. Even if it were assumed that the news item carried in *D* caused mental agony to some sections of women in Tamil Nadu, there is no prima facie case for any offence. (Para 43)

Thus, it has to be held that the institution of the numerous criminal complaints against the appellant was done in a mala fide manner. In order to prevent the abuse of the criminal law machinery, it would be appropriate to grant the relief sought by the appellant. In such cases, the proper course for Magistrates is to use their statutory powers to direct an investigation into the allegations before taking cognizance of the offences alleged. It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the freedom of speech and expression is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. (Para 44)

In conclusion, it is held that the various complaints filed against the appellant do not support or even draw a prima facie case for any of the statutory offences as alleged. Therefore, the impugned judgment and order of the High Court is set aside. (Para 54). *S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *Deepak Verma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-4-2010]

S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574; Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881: (1965) 2 Cri LJ 8; Samaresh Bose v. Amal Mitra, (1985) 4 SCC 289: 1985 SCC (Cri) 523; Gillick v. West Norfolk and Wisbech Area Health Authority, 1986 AC 112: (1985) 3 WLR 830: (1985) 3 All ER 402 (HL); M.S. Jayaraj v. Commr. of Excise, (2000) 7 SCC 552, followed

Proprietary Articles Trade Assn. v. Attorney General of Canada, AIR 1931 PC 94; Thomas Dana v. State of Punjab, AIR 1959 SC 375: 1959 Cri LJ 392; Jawala Ram v. State of Pepsu, AIR 1962 SC 1246: (1962) 2 Cri LJ 303; Standard Chartered Bank v. Directorate of Enforcement, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221; Lata Singh v. State of U.P., (2006) 5 SCC 475: (2006) 2 SCC (Cri) 478, relied on

G. Narasimhan v. T.V. Chokkappa, (1972) 2 SCC 680: 1972 SCC (Cri) 777; Knupffer v. London Express Newspaper Ltd., 1944 AC 116: (1944) 1 All ER 495 (HL), considered

[11011] — S. 499 — Defamation — Ingredients — Proof — *Held, there must be an imputation which must be made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made i.e. offence of defamation is the harm caused to the reputation of a person — Further held, it would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged* (Paras 28 and 29). *Jeffrey J. Diermeier* v. *State of W.B.*, (2010) 6 SCC 243.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 14-5-2010]

[11012] — S. 499 — Defamation — Where an attack on a Judge is libellous, though does not amount to contempt of court, held, it would be open to that Judge to proceed against libeller in an appropriate action

The offence of criminal contempt is vivisected into two categories. One is publication of any matter which scandalises or tends to scandalise the authority of any court etc. etc. Second is the doing of any act whatsoever, which scandalises or tends to scandalise the authority of any court. If an act is not a criminal contempt merely because there was no publication such act would automatically fall within the purview of the other category because the latter consists of "the doing of any other act whatsoever". The latter category is thus a residuary category so wide enough that no act of criminal contempt can possibly escape. The common denominator for both is that it scandalises or tends to scandalise any court. (Para 13)

A defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the libeller in a proper action if he so chooses. (Para 15). *S.K. Sundaram: In Re*, (2001) 2 SCC 171: 2001 SCC (Cri) 304: AIR 2001 SC 2374: (2001) 1 KLT 585.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 15-12-2000]

[11013] — S. 499 — Defamation vis-à-vis contempt — Libellous imputation against Judge — When amounts to contempt — Held, the same depends on the gravity of the allegations

Though certain imputations against the Judge may be only libellous against that particular individual, they may at times amount to contempt also depending upon the gravity of the allegations. Therefore, apart from the fact that a particular statement is libellous, it can constitute criminal contempt if the imputation is such that the same is capable of lowering the authority of the court. The gravity of the aforesaid statement must be such as would scandalise the court. (Para 26). *Haridas Das* v. *Usha Rani Banik*, (2007) 14 SCC 1: AIR 2007 SC 2688: (2007) 4 CHN 27 (SC): (2007) 3 KLT 587: (2007) 58 AIC 182 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 16-7-2007]

[**Ed.**: *See also* Contempt of Court "4.(a)(3)(ii) Defamation vis-à-vis contempt", pp. 382 et seq. in Vol. 12, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

[11014] — S. 499 — Facts judicially noticeable — Observation by High Court that *Crime* magazine was a "yellow journal" — *Held, is an opinion and not a fact which is judicially noticeable for purposes of Ss. 56 and 57 Evidence Act — Moreover, there was nothing in impugned judgment which indicates that any evidence was led, much less considered as to whether* ***Crime*** *magazine is a "yellow journal" and hence* ***Crime*** *magazine could not have been relied upon by appellant in forming a belief that contents thereof were not untrue — Evidence Act, 1872, Ss. 56 and 57* (Paras 62 to 65). *Joseph M. Puthussery* v. *T.S. John*, (2011) 1 SCC 503.

Bench Strength **2**. Coram: **J.M. Panchal** and *Gyan Sudha Misra*, JJ. [Date of decision: 1-12-2010]

Black's Law Dictionary, 6th Edn., considered

[11015] — S. 499 — Group libel — Forced resignation from office of Judge/Chief Justice of High Court on pressure from the Bar — What procedure to be adopted where Bar Council/Association reasonably and honestly believes the conduct of a Judge/Chief Justice of High Court bad — *While in case of proved misconduct or incapacity procedure for removal is provided under Art. 217(1) proviso r/w Art. 124(4) and (5) of constitution, no procedure laid down under the Constitution in case of bad conduct though it also produces deleterious effect on integrity or impartiality of the Judge/Chief Justice — Self-regulation through in-house procedure laid down — Resolution passed by Bar Council against Judge/Chief Justice of High Court alleging bad conduct — Held, Bar Council cannot make scurrilous criticism of conduct of the Judge/Chief Justice and pressurise or coerce him to demit his office — Such action would constitute contempt of court and affect independence of judiciary which is an essential attribute of rule of law and also affect judicial individualism — However, where the Bar honestly doubts the conduct of the Judge/Chief Justice and such doubt is based on authentic and acceptable material, the proper course would be for office- bearers of the Bar Association to meet the Judge in camera and apprise him or approach the Chief Justice of that High Court to deal with the matter appropriately — After due verification and confidential enquiry the Chief Justice of the High Court must consult the Chief Justice of India (CJI) by placing all information with him — Where imputations are against the Chief Justice of the High Court himself the Bar Association should directly approach the CJI — Thereupon the CJI, after taking the Judge/Chief Justice into confidence, if circumstances so permit, will take a decision in the matter which will be final — Until such decision is taken, the Bar should suspend all further action and await response for a reasonable period — Judges (Inquiry) Act, 1968 — Contempt of Courts Act, 1971, S. 2(c) — Constitution of India — Arts. 217(1) proviso (a) & (b) and 124(4) & (5) and 121. C. Ravichandran Iyer* v. *Justice A.M. Bhattacharjee*, (1995) 5 SCC 457: 1995 SCC (Cri) 953.

Bench Strength **2**. Coram: **K. Ramaswamy** and *B.L. Hansaria*, JJ. [Date of decision: 5-9-1995]

[11016] — S. 499 — Libel of court and contempt of court — Distinction — *Libellous reflection upon the conduct of the Judge, though punishable under the section, can also be proceeded against as contempt of court*

A libellous reflection upon the conduct of a Judge in respect of his judicial duties may certainly come under S. 499, Penal Code, and it may be open to the Judge to take steps against the libeller in the ordinary way for vindication of his character and personal dignity as a Judge; but such libel may or may not amount to contempt of court. What is made punishable in the Penal Code is the offence of defamation as defamation and not as contempt of court. It the defamation of a subordinate Court amounts to contempt of court, proceedings can certainly be taken under S. 2, Contempt of Courts Act, quite apart from the fact that other remedy may be open to the aggrieved officer under S. 499, Penal Code. But a libel attacking the integrity of a Judge may not in the circumstances of a particular case amount to a contempt at all, although it may be the subject-matter of a libel proceeding. *Bathina Ramakrishna Reddy* v. *State of Madras*, AIR 1952 SC 149: 1952 SCR 425: 1952 Cri LJ 832.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and *M.C. Mahajan*, **B.K. Mukherjea**, *S.R. Das* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 14-2-1952]

Surendra Nath v. Chief Justice, 10 Cal 109 and the Matter of Special reference from Bahama Islands, 1893 AC 138, followed

[11017] — S. 499 — Offence of defamation — Limitation of Magistrate's power to take cognizance of — Object of — *Requirement of taking cognizance of offence of defamation only upon receiving complaint by a person aggrieved — Object of, held, is to discourage filing of frivolous complaints — CrPC, 1973, S. 199*

In respect of the offence of defamation, Section 199 CrPC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrates' Courts. In the given facts of the present case, the complainants cannot be properly described as "persons aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of them. (Para 37). *S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *Deepak Verma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-4-2010]

[11018] — S. 499 — 'Public good'

Public good is a question of fact. *Chaman Lal* v. *State of Punjab*, (1970) 1 SCC 590: 1970 SCC (Cri) 253: AIR 1970 SC 1372: 1970 Cri LJ 1266.

Bench Strength **2**. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 6-3-1970]

[11019] — S. 499 — Publication — Standing message by telegram if — *Contention that sending a telegram does not amount to publication, held, not acceptable — Both before and after transmission message is read by telegraph office staff — It cannot be compared to a sealed letter — Contempt of Courts Act, 1971, S. 2(c)*

The contention of the learned counsel for the contemnor that sending such a telegram would not amount to publication is unacceptable. A telegraphic message can be transmitted only after the sender gives the contents of the message to the telegraph office which would invariably be manned by the staff of that office. The message after transmission reaches the destination office which also is manned by the members of the staff. From there only the message would be despatched to the sendee. At all those levels the message is open to be read by at least those who are engaged in the process of transmission. A telegraphic message is not like a letter handwritten by the sender and enveloped in a sealed cover to be opened only by the sendee for reading. (Para 24)

It is not now open to the contemnor to contend that there was no publication of the telegraphic communication despatched by him to the Chief Justice of India because when he filed the criminal complaint in the court in implementation of the telegraphic threat hurled to the CJI, he appended a copy of the telegram therewith. Thus, he made it public at his own volition. (Para 26). *S.K. Sundaram: In Re*, (2001) 2 SCC 171: 2001 SCC (Cri) 304: AIR 2001 SC 2374: (2001) 1 KLT 585.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 15-12-2000]

Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409; Gatley on Libel and Slander, "Publication" (Chap. 6); Harbhajan Singh v. State of Punjab, AIR 1966 SC 97: 1966 Cri LJ 82, relied on

[11020] — S. 499 — Publication of false statement in relation to the personal character or conduct of a candidate — Statement must be proved to have been reasonably calculated to prejudice the prospects of the defamed candidate's election — *Once it is proved the statement was likely to be construed by electorate as referring to personal character or conduct of the candidate, further proof that the electorate had understood the statement to be so not required — Representation of the People Act, 1951, S. 123(4)*

Section 123(4) of the Act states that the statement of fact in question must be "reasonably calculated to prejudice the prospects" of the complaining candidate's election. However, unless it is established that the words complained of were capable of being construed as referring to the personal character or conduct of the candidate because of some specific extrinsic facts or circumstances which are pleaded and proved, it is not possible to hold that they were reasonably calculated to prejudice his prospects in the elections. For, in the absence of the knowledge of the special facts on the part of the electorate, the words complained of cannot be held to be reasonably calculated to prejudice such prospects. Once, however, it is proved by laying the foundation of the facts that the words in question were, by virtue of the knowledge of the special facts, likely to be construed by the electorate as referring to the personal character or conduct of the complaining candidate, it may not further be necessary to prove that in fact the electorate had understood them to be so. That is because all that S. 123(4) requires is that the person publishing the complaining words must have intended and reasonably calculated to affect the prospects of the complaining candidate in the election. *M.J. Zakharia Sait* v. *T.M. Mohammed*, (1990) 3 SCC 396: (1990) 2 KLT 49.

Bench Strength **2**. Coram: *L.M. Sharma* and **P.B. Sawant**, JJ. [Date of decision: 25-4-1990]

[11021] — S. 499 — "Publication" under — Position under S. 123 RP Act distinguished from position under defamation law — Meaning — Republication of facts — *Held, publication is an act by which some information is exhibited, displayed, disclosed or revealed before public — In instant case, information about Respondent 1 of having misappropriated funds of a school was already exhibited, displayed, disclosed, made known, revealed and brought to notice of general public residing within constituency when* **Crime** *magazine containing such information was previously published and circulated in constituency — Reproduction and distribution of same information within space of a few months cannot amount to "publication" for the purposes of S. 123 RP Act — Representation of the People Act, 1951, S. 123(4)* (Paras 53 to 59). *Joseph M. Puthussery* v. *T.S. John*, (2011) 1 SCC 503.

Bench Strength **2**. Coram: **J.M. Panchal** and *Gyan Sudha Misra*, JJ. [Date of decision: 1-12-2010]

State of M.P. v. Ram Raghubir Prasad Agarwal, (1979) 4 SCC 686, relied on

Black's Law Dictionary, 6th Edn., relied on

[11022] — S. 499 — Quashing of proceeding — Application for — Rejection of, by High Court — Propriety — *High Court not interfering with the matter as the same was pending at the stage of charge — Accused challenging High Court's order by contending that taking into consideration the allegations as made in the complaint, no offence under S. 499 IPC was made out — Matter requiring detailed consideration — It was desirable that High Court should hear the parties and pronounce a reasoned order — Hence, matter remitted to High Court for disposal afresh — CrPC, 1973 — Ss. 482, 228 and 240* (Para 4). *Terumo Penpol Ltd.* v. *NCT of Delhi*, (2005) 10 SCC 273: 2005 SCC (Cri) 1513.

Bench Strength **2**. Coram: *B.P. Singh* and *S.B. Sinha*, JJ. [Date of decision: 6-4-2005]

[11023] — S. 499 — Quashing of prosecution — *Prosecution against Accused 1 and 4 directed to be proceeded with and it would be for them to show that they were protected under one of the exceptions contained in S. 499 the publication in question being undisputed — However, Accused 2 and 3 need not be retained in the array of the accused as their connection with the publication was too remote — Constitution of India, Art. 136* (Para 3). *Vivek Goenka* v. *Y.R. Patil*, (2000) 9 SCC 87: 2000 SCC (Cri) 1168: 2000 Cri LJ 2791.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 13-1-2000]

[11024] — S. 499 — Vulgar criticism of persons filling public position

"Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary, though unpleasant, appendage to his office.... Public men in such positions may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give an importance to the same by prosecuting the persons responsible for the same".

"Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time". *Kartar Singh* v. *State of Punjab*, AIR 1956 SC 541: 1956 SCR 476: 1956 Cri LJ 945, 947.

Bench Strength **2**. Coram: **N.H. Bhagwati** and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 26-4-1956]

Seymour v. Butterworth, (1862) 3 F & F 372, 376-77: 176 ER 166, 168-69; R. v. Sir R. Carden, (1879) 5 QBD 1 and Kelley v. Sherlock, (1866) 1 QB 686, 689, relied on

1969 Cri LJ 536 (All), approved

[11025] — Ss. 499 & 500 — Character assassination of a candidate — Doctrine of innuendo — Applicability — How to establish

Where the doctrine of innuendo is applied, it must be clearly proved that the defamatory allegation was made in respect of a person though not named yet so fully described that the allegation would refer to that person and that person alone. Innuendo cannot be proved merely by inferential evidence which may be capable of two possibilities. *Manmohan Kalia* v. *Yash*, (1984) 3 SCC 499: AIR 1984 SC 1161.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**, *A. Varadarajan* and *Ranganath Misra*, JJ. [Date of decision: 2-4-1984]

[11026] — Ss. 499 & 500 — Criminal proceedings when should not be quashed — Test — *Whether allegations prima facie established the offence and whether prosecution could be allowed to continue in the interest of justice — On facts held, test satisfied, hence High Court erred in allowing the petition for quashing the proceedings — CrPC, 1973 — S. 482*

According to the appellant the respondents made false and malicious allegations with intention or knowingly or having reasons to believe that such imputations would harm his reputation; due to these imputations made by them, the reputation of the appellant has been lowered in the eyes of his partners, the staff and the workers of the factory. Hence he prayed for punishing the respondents for the offence under Section 500 IPC. The Magistrate, on the complaint, after taking cognizance of the offence, recorded the sworn statement of the complainant (appellant herein) and held that "there were sufficient grounds to proceed the case against the accused persons for the offence punishable under Section 500 IPC". Hence he issued summons to Respondents 1 to 3. Allowing the appeal,

Held :

For deciding whether the criminal proceedings should be allowed to continue or the same should be quashed, two aspects are to be satisfied: (*1*) whether the uncontroverted allegations, as made in the complaint, prima facie establish the offence, and (2) whether it is expedient and in the interest of justice to permit a prosecution to continue. On a plain reading of the order of the Magistrate issuing summons to the respondents, keeping in view the allegations made in the complaint and sworn statement of the appellant, it appears that a prima facie case is made out at that stage. There are no special features in the case to say that it is not expedient and not in the interest of justice to permit the prosecution to continue. The Single Judge of the High Court failed to apply this test. The High Court could not say at that stage that there was no reasonable prospect of conviction resulting in the case after a trial. Assuming that the imputations made could be covered by Exception 9 of Section 499 IPC, several questions still remain to be examined — whether such imputations were made in good faith, in what circumstances, with what intention, etc. All these can be examined on the basis of evidence in the trial. Having regard to the facts of the case it must therefore, be held that the High Court committed a manifest error in quashing the criminal proceedings exercising jurisdiction under Section 482 CrPC. (Paras 8 and 11). *M.N. Damani* v. *S.K. Sinha*, (2001) 5 SCC 156: 2001 SCC (Cri) 823: AIR 2001 SC 2037: 2001 Cri LJ 2571.

Bench Strength 2. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 2-5-2001]

Sewakram Sobhani v. R.K. Karanjia, Chief Editor, Weekly Blitz, (1981) 3 SCC 208: 1981 SCC (Cri) 698; Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi, (1996) 6 SCC 263: 1996 SCC (Cri) 1310, relied on

Manjaya v. Sesha Shetti, ILR (1888) 11 Mad 477; Sayed Ally v. King Emperor, AIR 1925 Rang 360; Anthoni Udayar v. Velusami Thevar, AIR 1948 Mad 469: 49 Cri LJ 724: (1948) 1 MLJ 420; Baboo Gunnesh Dutt Singh v. Mugneeram Chowdry, (1872) 11 WR 283 SC; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234: AIR 1988 SC 709, distinguished

[11027] — Ss. 499 and 500 — Defamation by several persons

Where it is alleged that defamation was caused by several persons making different statements it is absolutely necessary that the complaint must specify the word spoken or the statements made by each of the accused. But where the complainant alleges that the several persons made allegations contained in a resolution and that he is prepared to go to trial on that footing the question of the complainant being made to state the statements alleged to have been made by the individual accused does not at all arise. Such a situation will arise only when the case of the complainant is that different statements were made by different accused, who are before the Court. *Balraj Khanna* v. *Moti Ram*, (1971) 3 SCC 399: 1971 SCC (Cri) 647: AIR 1971 SC 1389: 1971 Cri LJ 1110.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 22-4-1971]

[11028] — Ss. 499 & 500 — Existence/non-existence of prima facie defamatory imputations — Effect — *Imputations made in a newspaper report against a reputed hospital that it was engaged in trading in kidneys by stealthily depriving its patients of one of their kidneys when they were admitted for minor operations and also engaging brokers to lure the needy poor to part with one of their kidneys for a hefty sum and later exporting the kidneys to Malaysia — Held, imputations are prima facie defamatory — Even if the imputation is not per se defamatory, the complainant can on evidence establish that — Accused therefore not entitled to discharge at this stage*

The only effect of an imputation being per se defamatory is that it would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right-thinking members of the public. Therefore, the imputations are prima facie libellous.

However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. (Para 10). *John Thomas* v. *Dr. K. Jagadeesan*, (2001) 6 SCC 30: 2001 SCC (Cri) 974: AIR 2001 SC 2651: (2001) 106 Comp Cas 619.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 12-7-2001]

[11029] — Ss. 499 and 500 — Public law right to reputation — "Life" — Broadly construed — Right to one's reputation, held, is a facet of right under Art. 21 — *Constitution of India, Art. 21* (Para 3). *Sukhwant Singh* v. *State of Punjab*, (2009) 7 SCC 559: (2009) 3 SCC (Cri) 487.

Bench Strength **2**. Coram: *Markandey Katju* and *Deepak Verma*, JJ. [Date of decision: 18-5-2009]

Kamlendra Pratap Singh v. State of U.P., (2009) 4 SCC 437: (2009) 2 SCC (Cri) 330; Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14, followed

[11030] — Ss. 499 and 500 — Quashment of complaint — If warranted — Good faith/public good defence — *Question whether "Word of Caution" published by appellants (alleged by complainant-educational society to have defamed it) was done in "good faith" and for "public good", is a question of fact which required evidence — Stage for recording evidence had not been reached, and thus, in absence of evidence, findings on issues raised cannot be given — Considering complaint as a whole, High Court rightly held that there was no case for quashing complaint under S. 482 CrPC — CrPC, 1973, S. 482* (Paras 39 to 41)

The ICFAI, Respondent 2 entered into an agreement with Appellant 1, President and CEO of the CFA Institute, which was incorporated under the laws of the State of Virginia, US, to conduct its CFA programme in India. However, realising that Respondent 2 was not adhering to required standards and quality of the programme, a notice for terminating the licence was issued to Respondent 2.

A civil suit for permanent injunction restraining Respondent 2 from using trade marks, services, service marks or trade name or any other name or mark which may be identical or deceptively similar to marks of CFA was filed by the appellant in the High Court. An interim relief vide order dt. 4-8-2006 was granted which was to be operative *after the end of the current academic session of CFA programme run by the defendants.*

On 30-1-2007, Respondent 2, through its sponsored University in Tripura—the Institute of Chartered Financial Analysts of India University, Tripura, issued an advertisement inviting applications for fresh enrolments for award of "CFA" certification. The advertisement being for subsequent programme and in breach of interim injunction the CFA Institute issued a public notice under the caption "A Word of Caution to the Indian Investment Community".

Alleging that the said public notice was defamatory within the meaning of Section 499 IPC, Respondent 2 filed a private complaint against the appellants. The trial court took cognizance of the complaint and issued summons to the appellants. Feeling aggrieved by the summoning order, the appellants preferred a petition before the High Court under Section 482 CrPC which was dismissed by the impugned judgment. Hence, the present appeal by the accused.

The appellants contended that the said "Word of Caution" published by them was a public duty and thus, a legitimate expression which was also absolutely necessary and in public interest and was singularly covered by the Tenth Exception to Section 499 IPC. It was further contended that the contents of the "Word of Caution" did not in any way lower or cast a reflection on the moral or intellectual character of Respondent 2 and, therefore, Explanation 4 to Section 499 IPC, which imposes restrictions in the law of defamation, is clearly attracted in favour of the appellants. It was thus, pleaded that in the light of Explanation 4 as well as the Tenth Exception to Section 499 IPC, the allegations in the complaint did not constitute an offence of defamation punishable under Section 500 IPC and, therefore, the High Court ought to have quashed the complaint.

Dismissing the appeal, the Supreme Court held as above. *Jeffrey J. Diermeier* v. *State of W.B.*, (2010) 6 SCC 243.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 14-5-2010]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866 : 1960 Cri LJ 1239; Dinesh Dutt Joshi v. State of Rajasthan, (2001) 8 SCC 570 : 2002 SCC (Cri) 24; Som Mittal (2) v. Govt. of Karnataka, (2008) 3 SCC 574 : (2008) 1 SCC (L&S) 910 : (2008) 2 SCC (Cri) 1, relied on

[11031] — Ss. 499 and 500 — Right to privacy vis-à-vis freedom of Press — Proper balancing between the two necessary — Publication of life story or biography of a citizen exposing misdeeds of some public officials — Remedies available in case of infringement of right of privacy — *Right to privacy — Held, implicit in Art. 21 — Broad principles laid down; further development to be case-by-case — Publication of any matter concerning privacy of a citizen's own as well as of* *his family, marriage, procreation, motherhood, child-bearing, education etc. without his/her consent would entitle him/her to damages, except where the publication is based on public records including court records, provided it does not pertain to any female victim of sexual assault, kidnap, abduction etc. — However, publication relating to acts or conduct of public officials in discharge of their official duty, unless shown to have been made in reckless disregard for truth, would not entitle the officials to invoke right to privacy and claim damages — Nor the Govt., local authority and other organs and institutions exercising governmental powers entitled to sue for damages — Nor can the Govt. or its officials impose any prior restraint on publication of the matter in question — Relevance of English and American cases — Impact of Arts. 19(1)(a) and (2) on Ss. 499 and 500, IPC not considered — Constitution of India, Arts. 21 and 19(1)(a) & 2*

The first petitioner is the editor, printer and publisher of a Tamil weekly magazine published from Madras and the second petitioner is the associate editor of the weekly. According to them one Auto Shankar (*AS* for short), who was convicted for six murders and was sentenced to death, had written his autobiography in jail and had handed over the same to his wife with the knowledge and approval of the jail authorities for being delivered to his advocate with the request to publish the same in the petitioners' magazine. The autobiography depicted the close nexus between the prisoner and several IAS, IPS and other officers, some of whom were his partners in several crimes. The petitioners decided to commence serial publication of the autobiography and announced the same in their magazine. Thereupon the Inspector General of Prisons wrote a letter to the first petitioner alleging that the serial in question was not written by *AS* and asking him to stop publishing the same forthwith. The petitioners then filed writ petition under Art. 32 before the Supreme Court to challenge the letter and asserting the freedom of press and their right to publish the book. Neither *AS* nor his wife were made parties to the writ petition.

On the pleadings in this petition, the following questions arose:

(1) Whether a citizen of this country can prevent another person from writing his life story or biography? Does such unauthorised writing infringe the citizen's right to privacy? Whether the freedom of press guaranteed by Art. 19(1)(*a*) entitles the press to publish such unauthorised account of a citizen's life and activities and if so to what extent and in what circumstances? What are the remedies open to a citizen of this country in case of infringement of his right to privacy and further in case such writing amounts to defamation?

(2)(*a*) Whether the Government can maintain an action for its defamation?

(*b*) Whether the Government has any legal authority to impose prior restraint on the press to prevent publication of material defamatory of its officials? and

(*c*) Whether the public officials, who apprehend that they or their colleagues may be defamed, can impose a prior restraint upon the press to prevent such publication?

(3) Whether the prison officials can prevent the publication of the life story of a prisoner on the ground that the prisoner being incarcerated and thus not being in a position to adopt legal remedies to protect his rights, they are entitled to act on his behalf?

Allowing the writ petition,

Held :

The petitioners have a right to publish, what they allege to be the life story/autobiography of *AS* insofar as it appears from the public records, even without his consent or authorisation. But if they go beyond that and publish his life story, they may be invading his right to privacy and will be liable for the consequences in accordance with law. Similarly, neither the Government nor the officials who apprehend that they may be defamed, have the right to impose a prior restraint upon the publication of the alleged autobiography of *AS*. The remedy of public officials/public figures, if any, will arise only after the publication and will be governed by the principles indicated herein. However, no opinion need be expressed about the right of the State or its officials to prosecute the petitioners under Ss. 499/500 IPC. This is for the reason that even if they are entitled to do so, there is no law under which they can prevent the publication of a material on the ground that such material is likely to be defamatory of them.

It is not stated in the counter-affidavit that *AS* had requested or authorised the prison officials or the Inspector General of Prisons, as the case may be, to adopt appropriate proceedings to protect his right to privacy. If so, the respondents cannot take upon themselves the obligation of protecting his right to privacy. No prison rule was brought to the Court's notice which empowers the prison officials to do so. Moreover, the occasion for any such action arises only after the publication and not before.

The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin — (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising — or non-advertising — purposes or for that matter, his life story is written — whether laudatory or otherwise — and published without his consent. In recent times, however, this right has acquired a constitutional status.

The freedom of speech flows from the freedom of speech and expression guaranteed by Art. 19(1)(*a*). But the said right is subject to reasonable restrictions placed thereon by an existing law or a law made after the commencement of the Constitution in the interests of or in relation to the several matters set out therein. Decency and defamation are two of the grounds mentioned in clause (2). Law of torts providing for damages for invasion of the right to privacy and defamation and Ss. 499/500 IPC are the existing laws saved under clause (2). But what is called for today — in the present times — is a proper balancing of the freedom of press and said laws consistent with the democratic way of life ordained by the Constitution. Over the last few decades, press and electronic media have emerged as major factors in our nation's life. They are still expanding — and in the process becoming more inquisitive. Our system of Government demands — as do the systems of Government of the United States of America and United Kingdom — constant vigilance over exercise of governmental power by the press and the media among others. It is essential for a good Government. At the same time, it must be remembered that our society may not share the degree of public awareness obtaining in United Kingdom or United States. The sweep of the First Amendment to the United States Constitution and the freedom of speech and expression under our Constitution is not identical though similar in their major premises. All this may call for some modification of the principles emerging from the English and United States decisions in their application to our legal system.

Following broad principles are evolved keeping in mind the above considerations:

(*1*) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Art. 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If one does so, one would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(*2*) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Art. 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(*3*) There is yet another exception to the rule in (1) above — indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false *and* actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Arts. 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(*4*) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(*5*) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(*6*) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.

The principles above mentioned are only the broad principles. They are neither exhaustive nor all-comprehending; indeed no such enunciation is possible or advisable. This right has to go through a case-by-case development. The concepts dealt with herein are still in the process of evolution. However, the impact of Art. 19(1)(*a*) read with clause (2) thereof on Ss. 499 and 500 of Indian Penal Code has not been gone into here. That may have to await a proper case. *R. Rajagopal* v. *State of T.N.*, (1994) 6 SCC 632: AIR 1995 SC 264.

Bench Strength **2**. Coram: **B.P. Jeevan Reddy** and *S.C. Sen*, JJ. [Date of decision: 7-10-1994]

New York Times v. United States, 403 US 713: 29 L Ed 2d 822 (1971), approved

Kharak Singh v. State of U.P., (1964) 1 SCR 332: AIR 1963 SC 1295: (1963) 2 Cri LJ 329; Gobind v. State of M.P., (1975) 2 SCC 148: 1975 SCC (Cri) 468; Olmstead v. United States, 277 US 438: 72 L Ed 944 (1927); Time, Inc. v. Hill, 385 US 374: 17 L Ed 2d 456 (1967); New York Times v. Sullivan, 376 US 254: 11 L Ed 2d 686 (1964); Griswold v. Connecticut, 381 US 479: 14 L Ed 2d 510 (1965); Cox Broadcasting Corpn. v. Cohn, 420 US 469: 43 L Ed 2d 328 (1975); Roe v. Wade, 410 US 113: 35 L Ed 2d 147 (1973); Planned Parenthood v. Casey, 120 L Ed 2d 683 (1992); Derbyshire County Council v. Times Newspapers Ltd., (1993) 2 WLR 449: (1993) 1 All ER 1011, HL; Attorney General v. Guardian Newspapers Ltd. (No. 2), (1990) 1 AC 109: (1988) 3 All ER 545: (1988) 3 WLR 776, HL; Leonard Hector v. Attorney General of Antigua and Barbuda, (1990) 2 AC 312: (1990) 2 All ER 103: (1990) 2 WLR 606, PC, considered

[11032] — Ss. 499 and 500 — Withdrawal of prosecution for purported defamation of Chief Minister, Ministers and other public officials — *Appellants agreeing to telecast clarification in respect of allegedly defamatory telecast, and State agreeing to withdraw prosecution — CrPC, 1973 — Ss. 257, 199 and 482*. *Ramoji Rao* v. *State of A.P.*, (2006) 8 SCC 321: (2006) 3 SCC (Cri) 480: AIR 2006 SC 3384.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L. S. Panta*, JJ. [Date of decision: 13-10-2006]

[11033] — Ss. 499, 500, 501 and 502 r/w S. 34 — Defamation — True report — If defamatory — *Publication of news item disclosing accurate and true report of proceedings of Legislative Assembly — Statement of Minister disclosing misappropriation of govt. fund — Name of complainant mentioned as one of the persons involved in such misappropriation — Circumstances disclosing that the news item was published about public conduct of public servants for public good in good faith believing the statement to be true — Order of the Additional Sessions Judge quashing the proceedings in exercise of its revisional power restored — CrPC, 1973, S. 482*. *Jawaharlal Darda* v. *Manoharrao Ganpatrao Kapsikar*, (1998) 4 SCC 112: 1998 SCC (Cri) 815: AIR 1998 SC 2117.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 26-3-1998]

[11034] — Ss. 499 and 503 — Cognizance of offence taken by the Magistrate without referring the matter to the police under S. 156(3) — Propriety — *Held, the Magistrate was justified in doing so where after examining the complainant on oath he was satisfied that prima facie the alleged offence was made out — CrPC, 1973 — Ss. 190, 156(3) and 482* (Para 3). *Ram Swarup* v. *Mohd. Javed Razack*, (2005) 10 SCC 393: 2005 SCC (Cri) 1549: AIR 2005 SC 2005: 2005 Cri LJ 1725.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 23-2-2005]

[11035] — S. 499 Expln. 2 — Scope — Tamil-speaking women, if could be viewed as a class of persons covered by Expln. 2

There is no prima facie case of defamation in the present case. There was neither any intent on the part of the appellant to cause harm to the reputation of the complainants as contemplated by Section 499 IPC nor can one discern any actual harm done to their reputation. In short, both the elements i.e. mens rea and actus reus are missing. The appellant's statement published in *I* is a rather general endorsement of premarital sex and her remarks are not directed at any individual or even at a "company or an association or collection of persons". Even in the remarks published in *D* which have been categorically denied by the appellant, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. Even if those remarks are considered in their entirety, nowhere has it been suggested that all women in Tamil Nadu have engaged in premarital sex. (Paras 34 and 35)

The fact that most of the complainants are associated with PMK, a political party does add weight to the suggestion that the impugned complaints had been filed with the intention of gaining undue political mileage. (Para 36)

In the present case, the complainants have alleged defamation in respect of imputations against the character of Tamil-speaking women, which could perhaps be viewed as a class of persons. However, the appellant's remarks did not suggest that all women in Tamil Nadu have engaged in premarital sex. Even if it were assumed that the news item carried in *D* caused mental agony to some sections of women in Tamil Nadu, there is no prima facie case for any offence. (Para 43). *S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *Deepak Verma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-4-2010]

[11036] — S. 499 Expln. 2 — Applicability and scope — *Defamation of collection of persons — Expression "Collection of persons"*

The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations.

It is true that where there is an express statutory provision, as in S. 499, Explanation (2), the rules of the Common Law of England cannot be applied. But there is no difference in principle between the rule laid down in Explanation (2) to S. 499 and the law applied in such cases in England. When, therefore, Explanation (2) to S. 499 talks of a collection of persons as capable of being defamed, such collection of persons must mean a definite and a determinate body. *G. Narasimhan* v. *T.V. Chokkappa*, (1972) 2 SCC 680: 1972 SCC (Cri) 777: AIR 1972 SC 2609: (1972) 2 MLJ 61 (SC): 1973 Cri LJ 52.

Bench Strength **3**. Coram: **J.M. Shelat**, *D.G. Palekar* and *S.N. Dwivedi*, JJ. [Date of decision: 4-9-1972]

1969 Cri LJ 536 (All), approved

[11037] — S. 499 Expln. 2 — Defamation — Locus standi to file complaint — "Some person aggrieved by the offence" — *Even if the libellous imputations are not made directly against a person but he has reasons to feel hurt on account of the same, he has locus standi to file a complaint — Where defamatory publications are made against a private limited company, its Director can file the complaint — CrPC, 1973 — S. 199*

The collocation of the words "by some persons aggrieved" in Section 199 definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case. If a company is described as engaging itself in nefarious activities, its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. As the hospital against which imputations were published in the present case is a private limited company, it is too far-fetched to rule out any one of its Directors, feeling aggrieved on account of pejoratives hurled at the Company. (Para 13). *John Thomas* v. *Dr. K. Jagadeesan*, (2001) 6 SCC 30: 2001 SCC (Cri) 974: AIR 2001 SC 2651: (2001) 106 Comp Cas 619.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 12-7-2001]

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, distinguished

[11038] — S. 499 Expln. 2 — Interpretation of — *Defamatory article published against a particular Public Prosecutor and police prosecutors of Aligarh and the State of U.P. — Police prosecutors of Aligarh and the State of U.P. are "collection of persons" mentioned in Expln. 2*

The language of Expln. 2 is general and any collection of persons would be covered by it. Of course, that collection of persons must be identifiable in the sense that one could, with certainty, say that this group of particular people has been defamed, as distinguished from the rest of the community. The prosecuting staff of Aligarh or, as a matter of fact, the prosecuting staff in the State of Uttar Pradesh, is certainly such an identifiable group or collection of persons. There is nothing indefinite about it. This group consists of all members of the prosecuting staff in the service of the Government of Uttar Pradesh. Within this general group of Public Prosecutors of U.P there is again an identifiable group of prosecuting staff, consisting of Public Prosecutors and Assistant Public Prosecutors, at Aligarh. This group of persons would be covered by Expln. 2 and could, therefore, be the subject of defamation. *Sahib Singh Mehra* v. *State of U.P.*, AIR 1965 SC 1451: (1965) 2 SCR 823: (1965) 2 Cri LJ 434, 436.

Bench Strength **2**. Coram: **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 22-1-1965]

Relied on in (1972) 2 SCC 680: 1972 SCC (Cri) 777

[11039] — S. 499 Exceptions and S. 52 — Whether accused protected under the Ninth Exception is a question of fact — *Onus on accused to prove that he is so protected — Nature of the onus — A journalist, like any other accused person, is obliged to discharge the onus — 'Good faith' and 'public good' — How to establish — Questions of fact and matters of evidence*

Per A.P. Sen, J.

It is for the accused to plead Ninth Exception to S. 499, IPC in defence and discharge the burden to prove good faith which implies the exercise of due care and caution and to show that the attack on the character of the appellant was for the public good. Journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under First Exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact in issue. If they make assertions of facts as opposed to comments on them, they must either justify these assertions or, in the limited cases specified in the Ninth Exception, show that the attack on the character of another was for the public good, or that it was made in good faith.

Per Chinnappa Reddy, J. (concurring)

In order to attract the Ninth Exception to S. 499 of the Penal Code, the imputations must be shown to have been made (*i*) in good faith and (*ii*) for the protection of the interest of the person making it or of any other person or for the public good. In the definition of 'good faith' in S. 52, IPC, the insistence is upon the exercise of the due care and attention. Recklessness and negligence are ruled out by the very nature of the definition. The standard of care and attention must depend on the circumstances of the individual case, the nature of the imputation, the need and the opportunity for verification, the situation and context in which the imputation was made, the position of the person making the imputation, and a variety of other factors. Good faith, therefore, is a matter for evidence. It is a question of fact to be decided on the particular facts and circumstances of each case. So too is the question whether an imputation was made for the public good.

For application of the Ninth Exception to S. 499, IPC to the facts of the present case, several questions arise for consideration depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence. Answers to these questions before the plea of the accused is recorded can only be a priori conclusions as 'good faith' and 'public good' are questions of fact and matters for evidence.

Per Islam, J. (dissenting)

Normally proof of an exception lies on the person who claims it; but the definition of the expression "good faith" indicates that lack of good faith has been made a part of the offence which the prosecution has to establish beyond reasonable doubt. On the other hand, the mere proof by the accused of the report to be an authentic document is enough; it will create a doubt in the mind of the court as to the lack of 'good faith' on the part of the accused. Once 'good faith' is proved by the accused, whether the publication was for 'public good' would be a matter of inference. *Sewakram Sobhani* v. *R.K. Karanjia*, (1981) 3 SCC 208: 1981 SCC (Cri) 698: AIR 1981 SC 1514.

Bench Strength 3. Coram: **O. Chinnappa Reddy**[2], **A.P. Sen**[1] and **Baharul Islam**[3], JJ. [Date of decision: 1-5-1981]

[11040] — S. 499 Exceptions — Applicability

The question of applicability of the exceptions in S. 499 cannot be considered at the time of entertaining the complaint to determine if a prima facie case is made out under S. 202, CrPC. It is only at the trial that the question of applicability of any of the exceptions in S. 499 or, as well as other defences that can be considered. *Balraj Khanna* v. *Moti Ram*, (1971) 3 SCC 399: 1971 SCC (Cri) 647: AIR 1971 SC 1389: 1971 Cri LJ 1110.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 22-4-1971]

[11041] — Ss. 499 Exceptions and 500 — Burden of proof — Inherent powers of High Court — Application for quashing complaint petition filed by respondent against appellant under S. 500 IPC dismissed by High Court — Propriety — *FIR registered on basis of complaint made by appellant that the respondent had advised one* **N** *and one* **K** *to damage his nine coconut trees by pouring acid mixed with kerosene on them — However, no charge-sheet was filed within six months, nor extension of time was sought for conducting further investigation — Hence, closure of proceedings ordered by Magistrate — However, said allegations published in various newspapers — Hence, respondent filing private complaint alleging defamation under S. 500 IPC — Application by appellant for quashing said complaint dismissed by impugned order — Held, allegations made in the said complaint petition, make out a case for proceeding against the appellant under S. 500 IPC as thereby imputation concerning the respondent had been made intending to harm or knowing or having* *reason to believe that such imputation would harm his reputation — For the purpose of bringing his case within the purview of Eighth and Ninth Exception appended to S. 499 IPC, it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good — Well settled that those who plead exception must prove it — Hence, burden of proof that his action was bona fide would, thus, be on the appellant alone — At that stage, however, it would have been premature for High Court to consider the materials placed by the appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police authorities — Question as to whether a totally false complaint has been made as against the respondent or not as he was not even in India prior to the date of occurrence, is required to be gone into by the learned trial Judge — No interference with impugned order called for — CrPC, 1973, S. 482* (Paras 2, 18 to 21, 23 and 24). *M.A. Rumugam* v. *Kittu*, (2009) 1 SCC 101: (2009) 1 SCC (Cri) 245: AIR 2009 SC 341.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-11-2008]

Rajendra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134: 1999 SCC (Cri) 393, considered

[11042] — S. 499 Exceptions 1, 8 and 9 — Plea of good faith and public good — Onus on — Privileged communication — Scope of

Public good is a question of fact. Good faith has also to be established as a fact.

In order to come within the First Exception to S. 499 of the Indian Penal Code, it has to be established that what has been reported concerning the respondent is true and the publication of the imputation is for the public good. The onus of proving these two ingredients is on the appellant. The appellant totally failed to establish these pleas.

Interest of the person has to be real and legitimate when communication is made in protection of the interest of the person making it.

Good faith requires care and caution and prudence in the background of context and circumstances.

In order to establish good faith and bona fides it has to be seen first the circumstances under which the letter was written or words were uttered; secondly, whether there was any malice; thirdly whether the appellant made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution, and finally, whether there is preponderance of probability that the appellant acted in good faith.

The plea that the communication to the Civil Surgeon was privileged because as the President of Municipal Committee the appellant had to write to the Civil Surgeon about the work of the complainant, has no evidence to support it. Furthermore, the privilege extends only to a communication upon the subject with respect to which the privilege extends. *Chaman Lal* v. *State of Punjab*, (1970) 1 SCC 590: 1970 SCC (Cri) 253: AIR 1970 SC 1372: 1970 Cri LJ 1266.

Bench Strength **2**. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 6-3-1970]

[11043] — S. 499 Exceptions 1 & 9 — Distinction between — *Proof of truth issue of the two ingredients of the First Exception — It is not an ingredient of the Ninth Exception — Plea under the First Exception not taken — It is immaterial to consider whether the accused has proved the truth of the allegations made by him*

The first Exception to S. 499 is available to an accused person if it is shown by him that the impugned statement was true and had been made public for the public good.

The proof of truth which is one of the ingredients of the First Exception is not an ingredient of the Ninth Exception. What the Ninth Exception requires an accused person to prove is that he made the statements in good faith.

The proof of truth of the impugned statement is not an element of the Ninth Exception as it is of the First.

Where the accused did not press his plea under the First Exception but relied under the Ninth Exception the High Court was not justified in examining whether the evidence adduced by the accused established the truth of the allegations made in his impugned statements. In dealing with the claim of the appellant under the Ninth Exception, it was not necessary, and indeed it was immaterial, to consider whether the appellant had strictly proved the truth of the allegations made by him. *Harbhajan Singh* v. *State of Punjab*, AIR 1966 SC 97: (1965) 2 SCR 235: 1966 Cri LJ 82, 87.

Bench Strength **3**. Coram: **P.B. Gajendragadkar, C.J.** and *Raghubar Dayal* and *V. Ramaswami*, JJ. [Date of decision: 2-3-1965]

[11044] — S. 499 Exception 2 — If provides a defence in contempt proceedings — *Contempt proceedings for scandalising the court initiated for contemptuous statements made in affidavits filed before Supreme Court in reply to show-cause notice in contempt proceedings — Defence under law of* *defamation if can be invoked — Such statements, held, not protected by second exception to S. 499 IPC — Contempt of Courts Act, 1971, Ss. 15, 2(c)(i), 8 and 3 to 7*

The respondent's proposition based on the second exception to Section 499 IPC is too broad and general and is contrary to the law of contempt as adjudicated by the courts in the country from time to time and the limits prescribed by the Act and the judicial pronouncements. The law of defamation under the Penal Code cannot be equated with the law of contempt of court in general terms. (Para 24)

Even a person claiming the benefit of second exception to Section 499 of the Penal Code, is required to show that the opinion expressed by him was in good faith which related to the conduct of a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct. Under the law of contempt, statements made in pleadings, petitions and affidavits of the parties, in a number of cases, have been held defamatory statements amounting to offences under the section unless it is shown that they fall within any of the exceptions. The benefit of the exception even under the law of defamation, much less in contempt proceedings, may not be available if the insinuations are made against an institution of the State and not restricted to the person as an individual or a collection of persons. (Para 24). *Arundhati Roy, In Re*, (2002) 3 SCC 343: AIR 2002 SC 1375: 2002 Cri LJ 1792.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **R.P. Sethi**, JJ. [Date of decision: 6-3-2002]

Surendra Nath Banerjee v. Chief Justice and Judges of the High Court, ILR (1884) 10 Cal 109: 10 IA 171, held, approved

Bathina Ramakrishna Reddy v. State of Madras, AIR 1952 SC 149: 1952 Cri LJ 832; Sanjiv Datta, In re, (1995) 3 SCC 619, relied on

[11045] — S. 499 Exception 3 — Defamatory remarks in good faith — Meaning of — *Article alleging that money passed from the pocket of certain set of people into the pocket of the prosecuting staff — Nothing shown to indicate that the allegations were made after due care and attention — Held, allegations not made in good faith and hence not covered by Exception 3*

The tenor of the article does not indicate that the purpose of the appellant in publishing these remarks was 'public good'. According to the article, the appellant would have welcomed the opportunity that would be offered by the case contemplated against him by the public prosecutor to make public the impugned matters. His remarks therefore, could have the tendency to dissuade the said Public Prosecutor from instituting the proceeding for fear of giving greater currency to untrue allegations which be not favourable to him or to the prosecuting staff of that place or in the State, and by themselves could not render any public good. No enquiry could have been started by the Government on such a publication implying the passing of money from the pockets of certain set of people to the pockets of the prosecuting staff. The impugned remarks could certainly lead the readers of article to believe or suspect that the prosecuting staff is corrupt in the discharge of its duties as Public Prosecutors, and are thus bound to affect the reputation of the prosecuting staff adversely. Unless proved otherwise, the presumption is that every person has a good reputation. In this case, the Public Prosecutor and Assistant Public Prosecutor had deposed that they are not corrupt, and according to their knowledge, none at that place, is corrupt in the discharge of his duty. There is no evidence to the contrary. Exception 3 to S. 499, IPC comes into play when some defamatory remark is made in good faith. Nothing has been brought on the record after due care and attention and so, in good faith. *Sahib Singh Mehra* v. *State of U.P.*, AIR 1965 SC 1451: (1965) 2 SCR 823: (1965) 2 Cri LJ 434, 437.

Bench Strength **2**. Coram: **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 22-1-1965]

[11046] — S. 499 Exception 4 — Defamation — Applicability — Bona fide wrong court mentioned — Defamatory remark regarding complainant Company's debt, not disputed — *However, due to bona fide mistake, the name of a wrong court was published i.e. DRT instead of the civil court where the recovery for such debt was pending — Held, the statement in the prospectus that the matter was pending before DRT instead of the City Civil Court, Ahmedabad, per se, could not be said to be defamatory as the fact that a suit was pending for recovery of the huge amount was neither denied nor disputed*

In the prospectus, a bona fide mistake had been committed. The fact that such a mistake had been committed stood accepted. The statement that the matter was pending before DRT instead and place of the City Civil Court, Ahmedabad, per se, could not be said to be defamatory as the fact that a suit was pending for recovery of the huge amount was neither denied nor disputed. (Para 14). *Maksud Saiyed* v. *State of Gujarat*, (2008) 5 SCC 668: (2008) 2 SCC (Cri) 692: (2007) 140 Comp Cas 590: (2007) 59 AIC 139 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

[11047] — S. 499 Exception 4 — Publication of proceedings of House of Legislature or Parliament not excepted

The fourth exception says that it is not defamation to publish a substantially true report of the proceedings of a court of justice, but does not make any such concession in respect of proceedings of a court of justice, but does not make any such concession in respect of proceedings of a House of Legislature or Parliament. *Jatish Chandra Ghosh* v. *Hari Sadhan Mukherjee*, AIR 1961 SC 613: (1961) 3 SCR 486: (1961) 1 Cri LJ 743, 747.

Bench Strength **5**. Coram: **B.P. Sinha, C.J.** and *S.K. Das, A.K. Sarkar, N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 16-1-1961]

[11048] — S. 499 Exception 5 — Notings in office files — *Government entitled to claim privilege or quasi-privilege in respect of — Will not constitute contempt or defamation — Evidence Act, 1872 — Ss. 123 and 162*

State communication or acts of State in public interest enjoy privilege or in any case quasi-privilege. The internal notes file of the Government, maintained according to the rules of business, is a privileged document. Therefore, disclosure in such communication made to the court will not constitute either contempt or defamation. If the Government claims privilege or quasi-privilege regarding the notes file, the court will not be justified in rejecting the claim outright. The general principle on which confidentiality of State document should be protected is that if a person is involved in litigation, the courts can order him to produce all the documents he has which relate to the issues in the case. Even if they are confidential, the court can direct them to be produced when the party in possession does not produce them, for the other side to see or at any rate for the court to see. When the court directs production of those documents there is an implied understanding that they will not be used for any other purpose. The production of these documents in ordinary cases is imposed with a limitation that the side for whose purpose documents are summoned by court cannot use them for any purpose other than the one relating to the case involved.

Though the ratio of the Court's decision in *Bachhittar Singh case* outlines the conservative view in the law relating to privilege, the doctrine of privilege received a shock treatment against the State at the hands of the Supreme Court in *S.P. Gupta* v. *Union of India*. It may be said that the legal milestone in *Gupta case* also needs to retreat a bit. *State of Bihar* v. *Kripalu Shankar*, (1987) 3 SCC 34: 1987 SCC (Cri) 442: AIR 1987 SC 1554: (1987) 2 SLJ 96.

Bench Strength **2**. Coram: **V. Khalid** and *G.L. Oza*, JJ. [Date of decision: 28-4-1987]

[11049] — S. 499 Exception 7 — Grant of opportunity of hearing — Necessity of, prior to passing a judicial order, particularly when such order adversely affects one's reputation — *Constitution of India, Arts. 21 and 19*

No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation. The impugned order of the High Court directing enquiry and investigation into allegations against the appellant institution in respect of which not even a complaint/information has been lodged with the police is violative of principles of natural justice. The Director of the appellant institution has been impleaded as a party respondent in the criminal petition and the whole of the allegations in the anonymous petition are levelled against the appellant and in such a situation it was imperative for the High Court to put the appellant on notice before passing the impugned order. The appellant undoubtedly is aggrieved by the impugned order and, therefore, entitled to invoke the jurisdiction under Article 136 of the Constitution. (Paras 51 to 53). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171, distinguished on facts

— S. 499 Exception 8 *See also* Ss. 500 and 499 Exception 8

[11050] — S. 499 Exception 8 — Extent of privilege as to marital communications

Rathi, daughter of appellant received from her husband Poonan certain letters, containing alleged defamatory matters as to appellant who filed a complaint under S. 500, IPC Respondent's preliminary objection was that uttering of a libel by husband to his wife was not 'publication' which was an essential ingredient of S. 499, IPC

The principle in *Wenhak case* is one of public policy in England where in the eye of the law, husband and wife are one.

The exceptions to S. 499, IPC, are exhaustively dealt in that provision itself. The courts will not extend the scope of special exceptions by resorting to the rule peculiar to English common law that husband and wife are regarded as one. *M.C. Verghese* v. *T.J. Poonan*, (1969) 1 SCC 37: AIR 1970 SC 1876: 1970 Cri LJ 1651: 1968 KLT 904.

Bench Strength **3**. Coram: **J.C. Shah**, *V. Ramaswami* and *A.N. Grover*, JJ. [Date of decision: 13-11-1968]

[11051] — S. 499 Exceptions 8 and 9 — Lawful authority — *Communication of defamatory matter to District Panchayat Officer — Allegation that complainant was keeping bawdy house in his locality — Conviction of accused upheld — Distinction between Exceptions 8 and 9*

The appellant was prosecuted on a complaint filed by *R* of the offence of defamation under S. 500, IPC. The appellant and *R* were neighbours. The defamatory matter was contained in a communication addressed by the appellant who is a member of the police force to the District Panchayat Officer. In this "application" the appellant alleged that the complainant was a woman of loose character who was having illicit connection with goondas, her paramours coming to her frequently at nights and that her immoral activities reflected badly on the locality in which the appellant lived.

Held, in order to establish a defence under Exception 8, the accused would have to prove that the person to whom the complaint was made had lawful authority over the person complained against, in respect of the subject-matter of the accusation. If the District Panchayat Officer or the Panchayat had such lawful authority, the last paragraph of the offending communication would have justified such a plea. But there is no basis at all for this argument in view of the clear provisions of the Punjab Gram Panchayat Act, 1952 under which statute alone Panchayats have jurisdiction.

Under S. 38 of the Punjab Gram Panchayat Act the criminal jurisdiction of a Gram Panchayat is confined to the trial of offences specified in Schedule 1-A of that Act.

Prostitution is not an offence under the Penal Code and the keeping of a disorderly or bawdy house is not an offence within Schedule 1-A to which offences alone the criminal jurisdiction of Panchayats extends.

Nor is there more substance in the invocation of the 9th Exception. It posits that the person to whom the communication is made has an interest in protecting the person, making the accusation. In other words, besides the bona fides of the person making the imputation, the person to whom the imputation is conveyed must have a common interest with the person making it which is served by the communication.

The point of difference between Exceptions 8 and 9 is that whereas in the former the person to whom the complaint is made must have lawful authority to deal with the subject-matter of the complaint and take proceedings against that person, there is no such requirement in Exception 9 where it is sufficient if a communication is made to a person for the protection of one's own interest in which the other also has an interest. This is clearly brought out by the illustrations to the Exception. It cannot be seriously suggested that the communication now in question satisfies this test. *Kanwal Lal* v. *State of Punjab*, AIR 1963 SC 1317: 1963 Supp (1) SCR 479: (1963) 2 Cri LJ 345, 346.

Bench Strength **3**. Coram: *Syed Jafer Imam*, **N. Rajagopala Ayyangar** and *J.R. Mudholkar*, JJ. [Date of decision: 28-9-1962]

Harrison v. Bush, (1855) 5 E & B 344, relied on

— S. 499 Exception 9 *See also* Ss. 500/34 and S. 499 Exception 9

[11052] — S. 499 Exception 9 — Ingredient of

The ingredients of the Ninth Exception are: first, that the imputation must be made in good faith; secondly, the imputation must be for protection of the interest of the person making it or of any other person or for the public good. Good faith is a question of fact. So is protection of the interest of the person making it. Public good is also a question of fact. The person alleging good faith has to establish as a fact that he made enquiry before he made the imputation and he has to give reasons and facts to indicate that he acted with due care and attention and was satisfied that the imputation was true. The assent is on objective satisfaction. *Sukra Mahto* v. *Basdeo Kumar Mahto*, (1971) 1 SCC 885: 1971 SCC (Cri) 372: AIR 1971 SC 1567: 1971 Cri LJ 1168.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 2-4-1971]

[11053] — S. 499 Exception 9 — Plea of good faith — Absence of personal malice is only a relevant fact — *Accused will nevertheless have to show that he acted with due care and attention*

Absence of personal malice may be a relevant fact in dealing with the appellant's plea of good faith, but its significance or importance cannot be exaggerated. Even in the absence of personal malice, the appellant will have to show that he acted with due care and attention. *Harbhajan Singh* v. *State of Punjab*, AIR 1966 SC 97: (1965) 2 SCR 235: 1966 Cri LJ 82, 89.

Bench Strength **3**. Coram: **P.B. Gajendragadkar, C.J.** and *Raghubar Dayal* and *V. Ramaswami*, JJ. [Date of decision: 2-3-1965]

[11054] — S. 499 Exception 9 — "Protection of interest" — *Meaning*

The protection of interest contemplated in the Ninth Exception is that communication must be made bona fide upon a subject in which the person making the communication has an interest or duty and the person to whom the communication is made has a corresponding interest or duty. Merely because a proceeding is pending it will not be open to a person to impute the statements made by him in an earlier case. There was no question of title involved. Even if title is involved that by itself will not entitle a person to make a defamatory statement and then take the plea that it was for the protection of interest. Protection of interest of the person making the imputation will have to be established by showing that the imputation was itself the protection of the interest of the person making it. *Sukra Mahto* v. *Basdeo Kumar Mahto*, (1971) 1 SCC 885: 1971 SCC (Cri) 372: AIR 1971 SC 1567: 1971 Cri LJ 1168.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 2-4-1971]

[11055] — S. 499 Exception 9 & S. 52 — Good faith — Proof of — For getting the benefit of Exception Ninth the accused must show that the belief in his impugned statement had a rational basis — *Question of good faith to be considered on facts and circumstances of each case*

The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of IPC; and one is governed by the definition prescribed by S. 52 of IPC. So, in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, it has to be enquired whether he acted with due care and attention. There is no doubt that the mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith under the Ninth Exception. Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention, that would defeat his plea of good faith. But it must be remembered that good faith does not require logical infallibility.

In deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each case — what is the nature of the imputation made; under what circumstances did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the the imputation was true? These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the Ninth Exception. *Harbhajan Singh* v. *State of Punjab*, AIR 1966 SC 97: (1965) 2 SCR 235: 1966 Cri LJ 82, 88.

Bench Strength **3**. Coram: **P.B. Gajendragadkar, C.J.** and *Raghubar Dayal* and *V. Ramaswami*, JJ. [Date of decision: 2-3-1965]

Followed in (1971) 1 SCC 885: 1971 SCC (Cri) 372

[11056] — Ss. 499 Exception 9 & S. 500 — Impugned statement for public good and in good faith — *Offence under S. 500 not established. Harbhajan Singh* v. *State of Punjab*, AIR 1966 SC 97: (1965) 2 SCR 235: 1966 Cri LJ 82.

Bench Strength **3**. Coram: **P.B. Gajendragadkar, C.J.** and *Raghubar Dayal* and *V. Ramaswami*, JJ. [Date of decision: 2-3-1965]

[11057] — S. 499 Exceptions 9 and 1 — Requirements of both "good faith" and "public good" must be satisfied for the application of Exception Ninth

There is no doubt that the requirements of good faith and public good have both to be satisfied, and so, the failure of the appellant to prove good faith would exclude the application of the Ninth Exception in his favour even if the requirement of public good is satisfied. *Harbhajan Singh* v. *State of Punjab*, AIR 1966 SC 97: (1965) 2 SCR 235: 1966 Cri LJ 82, 86.

Bench Strength **3**. Coram: **P.B. Gajendragadkar, C.J.** and *Raghubar Dayal* and *V. Ramaswami*, JJ. [Date of decision: 2-3-1965]

— S. 499 Exception 10 *See also* Ss. 500 and 499 Exception 10

[11058] — S. 499 Exception 10 — Defence of caution issued in good faith — Applicability — *Held, it must be proved that the statement/publication was intended in "good faith" to convey a* *caution to one person against another; that such caution was intended for the good of the person to whom it was conveyed, or of such person in whom that person was interested, or for the "public good"* (Para 32). *Jeffrey J. Diermeier* v. *State of W.B.*, (2010) 6 SCC 243.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 14-5-2010]

[11059] — S. 499 Exception 10 and S. 500 — Burden of proof — Plea that appellant acted in "good faith" and for "public good" — *Held, mere plea that the accused believed that what he had stated was in "good faith" is not sufficient and he must justify the same by adducing evidence — However, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt — Onus is discharged the moment he proves the same on preponderance of probability — Evidence Act, 1872, Ss. 101 and 102* (Paras 37 and 38). *Jeffrey J. Diermeier* v. *State of W.B.*, (2010) 6 SCC 243.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 14-5-2010]

[11060] — S. 499 Exception 10 and S. 500 — "Good faith" and "public good" — Proof — *Held, where to the charge of defamation accused invokes aid of S. 499 Exception 10, "good faith" and "public good" have both to be established by him — However, it is neither feasible nor possible to lay down a rigid test for deciding whether an accused person acted in "good faith" and for "public good" under the said Exception — Said question has to be considered on the facts and circumstances of each case, having regard to the nature of imputation made, the circumstances in which it came to be made and status of person who makes the imputation as also status of person against whom the imputation is allegedly made* (Paras 37 and 39). *Jeffrey J. Diermeier* v. *State of W.B.*, (2010) 6 SCC 243.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 14-5-2010]

[11061] — S. 499 r/w Ss. 107/34 — Miscarriage of justice — Factual error — *Alleged harassment of Accused 6 by her husband and father-in-law published in newspaper at instance of Accused 6 and her father (Accused 5) — Criminal complaint for defamation filed against editor, publisher, reporter, newspaper (Accused 1 to 4 respectively) and Accused 5 and 6 by appellant (father-in-law of Accused 6) and husband of Accused 6 (who committed suicide during pendency of complaint) — Subsequently at request of appellant proceedings against Accused 6 dropped — High Court by impugned judgment quashing complaint against Accused 1 to 4 on ground that since proceedings against principal tortfeasors Accused 5 and 6 had been dropped, whole genesis of complaint had vanished — However, factually proceedings were dropped only against Accused 6 — Held, inadvertent factual error about dropping of proceedings against Accused 5 had influenced the Court to great extent, resulting in miscarriage of justice — Hence, matter remanded to High Court for consideration afresh — CrPC, 1973, S. 482* (Paras 4, 7, 11 and 12). *S.D. Kathuria* v. *N. Ravi*, (2010) 13 SCC 771.

Bench Strength **2**. Coram: *D.K. Jain* and *R.M. Lodha*, JJ. [Date of decision: 6-3-2009]

— S. 500 *See also* Ss. 34, 120-B, 177, 181, 191, 192, 425 and 500

See also Ss. 120-B, 177, 181, 191, 192, 425 and 500

See also Ss. 120-B, 465, 466 and 500

See also Ss. 182, 211 and 500

See also Ss. 295-A and 500

See also Ss. 297 and 500

See also Ss. 399 and 500

See also Ss. 498-A and 500

See also Ss. 499 and 500

See also Ss. 499, 500, 501 and 502 r/w S. 34

See also Ss. 499 Exception 9, 500

See also Ss. 499 Exception 9, 500 and 52

[11062] — S. 500 — Complaint alleging offence under S. 500 filed by petitioner against 7 accused — *Summons issued by Magistrate to all the accused — Magistrate's order challenged by accused-respondents 3 to 6 without impleading accused-respondent 2 as party — Notice under S. 251 given to all the accused — Petition filed under S. 482 for quashing the criminal proceedings and the notice under S. 251 — High Court finding that facts of the case did not disclose the offence of defamation against respondent 2 even taking the allegations in the complaint as correct on its face value and accordingly by its order quashing the proceedings against him — Held, order does not warrant interference of Supreme Court — Constitution of India — Article 136 — CrPC, 1973, S. 482. Dhanwanti Vaswani (Dr.)* v. *State*, 1991 Supp (2) SCC 329: 1991 SCC (Cri) 1040: AIR 1993 SC 1206.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 12-9-1991]

[11063] — S. 500 — Complaint alleging that appellant in an interview published in a magazine made statements outraging religious feeling of Marwari community and alleging that the members of that community were not a class

belonging to India, having no faith and love towards India and being traitors and enemies of India — *Held, allegations do not disclose offence under S. 500 and hence Magistrate not justified in issuing process against the appellant. Shatrughna Prasad Sinha* v. *Rajbhau Surajmal Rathi*, (1996) 6 SCC 263: 1996 SCC (Cri) 1310.

Bench Strength **3**. Coram: *K. Ramaswamy*, *Faizan Uddin* and *G.B. Pattanaik*, JJ. [Date of decision: 10-9-1996]

[11064] — S. 500 — Managing Editor, Chief Editor or Resident Editor — Criminal complaint under S. 500 against, for publication of libellous matter in their newspapers — Maintainability — *Complaint alleging that Managing Editor/Chief Editor/Resident Editor had knowledge of and were responsible for publishing defamatory matter in their newspaper publications — "Editor" not coming forward to admit responsibility for selecting the alleged defamatory matter published — In such circumstances, the said complaint, held, maintainable — Press and Registration of Books Act, 1867, Ss. 7, 1(1), 5, 8-A and Preamble*

The appellants were either Managing Editor, Chief Editor or Resident Editor of their respective newspaper publications. Separate criminal complaints were filed against them under Section 500 IPC alleging that in their newspaper publications, libellous matter was published and that they had knowledge of, and were responsible for such publication and thus they had committed the offence of defamation besides other allied offences. The Magistrate took cognizance of the offences and issued summonses to the appellants. The appellants unsuccessfully challenged under Section 482 CrPC their prosecution on the ground that in view of Section 7 of the Press and Registration of Books Act, 1867 (for short "the Act"), they were not liable to be prosecuted and that the person whose name was printed on the newspaper as the "Editor" of that publication alone was so liable.

Dismissing the appeals,

Held:

There is no statutory immunity for the Managing Editor, Resident Editor or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control. (Para 16)

Sections 7, 1(1), 5, 8-A and the preamble of the Act clearly show that there could be a presumption against the Editor whose name is printed in the newspaper to the effect that he is the Editor of such publication and that he is responsible for selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Managing Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 is a rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than the Editor can also be held responsible for selecting the matter for publication in a newspaper. (Paras 20 and 14)

In the instant appeals, the complainant in each case has alleged that the appellants who are either Managing Editor, Chief Editor or Resident Editor had knowledge and were responsible for publishing defamatory matter in their respective newspaper publications. Moreover, in none of these cases, the "Editor" had come forward and pleaded guilty to the effect that he was the person responsible for selecting the alleged defamatory matter published. It is a matter of evidence in each case. If the complaint is allowed to proceed only against the "Editor" whose name is printed in the newspaper against whom there is a statutory presumption under Section 7 of the Act, and in case such "Editor" succeeds in proving that he was not the "Editor" having control over the selection of the alleged libellous matter published in the newspaper, the complainant would be left without any remedy to redress his grievance against the real culprit. Section 319 CrPC although is there but such powers are circumscribed by limitations. (Para 22). *K.M. Mathew* v. *K.A. Abraham*, (2002) 6 SCC 670: 2002 SCC (Cri) 1480: AIR 2002 SC 2989: (2002) 3 KLT 282.

Bench Strength **2**. Coram: *U.C. Banerjee* and **K.G. Balakrishnan**, JJ. [Date of decision: 23-8-2002]

State of Maharashtra v. Dr. R.B. Chowdhari, AIR 1968 SC 110: (1967) 3 SCR 708: 1968 Cri LJ 95; Haji C.H. Mohammad Koya v. T.K.S. M.A. Muthukoya, (1979) 2 SCC 8; K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88, distinguished

[11065] — S. 500 — Prosecution of Editorial Board of a weekly for publishing defamatory article — Presumption under S. 7 of Press and Registration of Books Act, 1867

Members of the Editorial Board of a weekly were prosecuted for publishing a defamatory article against a public servant. The name of *A* was printed as the editor of the weekly. The declaration in Form I, showed the name of *A* not only as the printer and publisher but also as the editor.

Held, the presumption under S. 7 of the Press and Registration of Books Act, 1867 will attach to *A* as having selected the material for publication in the newspaper.

In the circumstances not only the presumption cannot be drawn against the others who had not declared themselves as editors of the newspaper but it is also fair to leave them out because they had no concern with the publishing of the article in question. *State of Maharashtra* v. *Dr. R.B. Chowdhari*, AIR 1968 SC 110: (1967) 3 SCR 708: 1968 Cri LJ 95, 96.

Bench Strength **2**. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 19-4-1967]

[11066] — S. 500 — Quashing of criminal complaint — Private complaint alleging commission of offence under S. 500 by appellant — *Magistrate prima facie coming to conclusion that allegations in the complaint might come within the definition of 'defamation' under S. 499 IPC and could be taken cognizance of — Held, at this stage Supreme Court's interference by quashing the complaint not called for — CrPC, 1973, Ss. 482, 200, 196 — Constitution of India, Arts. 226 and 136*

It is not the province of the Supreme Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation is a matter to be considered by the Magistrate at a later stage. At this stage, the Supreme Court cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie at this stage it is not a case warranting quashing of the complaint. *Shatrughna Prasad Sinha* v. *Rajbhau Surajmal Rathi*, (1996) 6 SCC 263: 1996 SCC (Cri) 1310.

Bench Strength **3**. Coram: *K. Ramaswamy*, *Faizan Uddin* and *G.B. Pattanaik*, JJ. [Date of decision: 10-9-1996]

[11067] — S. 500 — Sanction to file a complaint — Form of — *Sanction to file a complaint under S. 500 for making defamatory remarks against a particular Public Prosecutor and other prosecuting staff of the State — Validity of sanction — CrPC, 1898 — S. 198-B (3)*

The sanction conveyed by the Home Secretary for making a complaint under S. 500, IPC against the appellant with respect to the defamatory article containing defamatory remarks against the Assistant Public Prosecutor, Aligarh and other prosecuting staff against the Government in respect of their conduct in the discharge of public functions. The sanction was therefore with respect to defamation of two persons: (*i*) Assistant Public Prosecutor Aligarh; and (*ii*) other police prosecuting staff of Government of Uttar Pradesh which would be the entire prosecuting staff in the State. There was therefore nothing wrong in the form of sanction. *Sahib Singh Mehra* v. *State of U.P.*, AIR 1965 SC 1451: (1965) 2 SCR 823: (1965) 2 Cri LJ 434.

Bench Strength **2**. Coram: **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 22-1-1965]

[11068] — S. 500 — Sentence — Reckless defamatory comments in newspapers — *Six months' simple imprisonment and a fine of Rs 200 — Sentence is not severe — A deterrent sentence is called for*

The press has great power in impressing the minds of the people and it is essential that persons responsible for publishing anything in newspapers should take good care before publishing anything which tends to harm the reputation of a person. Reckless comments are to be avoided. When one is proved to have made defamatory comments with an ulterior motive and without the least justification motivated by self-interest, he deserves a deterrent sentence. *Sahib Singh Mehra* v. *State of U.P.*, AIR 1965 SC 1451: (1965) 2 SCR 823: (1965) 2 Cri LJ 434, 438.

Bench Strength **2**. Coram: **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 22-1-1965]

[11069] — S. 500 — Whether defamatory allegations should contain the actual words — *Whether English Law on libel applicable*

The propositions laid down in English decisions dealing with libel that the actual words alleged to be used must be stated in the indictment cannot be applied on all forms when dealing with the cases of defamation by spoken words under S. 499, IPC. It will be highly desirable no doubt if the actual words stated to have been used by an accused and which are alleged to be defamatory are reproduced by the complainant. The actual words used or the statements made may be reproduced verbatim by the complainant if the words are few and the statement is very brief. But in cases where the words spoken are too many or the statements made are too long, it will be the height of technicality to insist that the actual words and the entire statements should be reproduced verbatim. A complaint cannot be thrown out on the mere ground that the actual words spoken or the statements made have not been stated in the complaint. From the point of view of accused also it is necessary that the matter alleged to be defamatory in the complaint must be so stated as to enable them to know the nature of the allegations that they have to meet. *Balraj Khanna* v. *Moti Ram*, (1971) 3 SCC 399: 1971 SCC (Cri) 647: AIR 1971 SC 1389: 1971 Cri LJ 1110.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 22-4-1971]

[11070] — Ss. 500 and 182 — Cognizance of offence under S. 500 not barred by failure of public servant to proceed under S. 195 CrPC, 1898 for offence under S. 182 IPC

As regards the charge under S. 500, Penal Code, it seems fairly clear both on principle and authority that where the allegations made in a false report disclose two distinct offences, one against the public servant and the other against a private individual, that other is not debarred by the provision of S. 195 from seeking redress for the offence committed against him.

But, it must be remembered that though S. 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the Court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in S. 195, CrPC Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of S. 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or putting a wrong label on it. *Basir-ul-Haq* v. *State of W.B.*, AIR 1953 SC 293: 1953 SCR 836: 1953 Cri LJ 1232.

Bench Strength **3**. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 10-4-1953]

Satish Chandra v. Ram Dayal, AIR 1921 Cal 1: 22 Cri LJ 31 and Hori Ram v. Emperor, AIR 1939 FC 430, approved

See also AIR 1962 SC 876: 1962 (1) Cri LJ 770; AIR 1966 SC 1775: 1966 Cri LJ 1491

[11071] — Ss. 500 and 499 Exception 8 — Applicability of Exception 8 to S. 499 — *Allegation in complaint that the accused persons made a complaint to the Treasury Officer containing false imputation to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer — Magistrate directing the Treasury Officer to hold enquiry and submit a report — Report of the Treasury Officer indicating that a departmental enquiry had been initiated and the complainant was found guilty — Held, in the circumstances Exception 8 to S. 499 attracted — No case of defamation made out — Order of issuance of process and the proceeding itself quashed — CrPC, 1973, Ss. 482 and 204. Rajendra Kumar Sitaram Pande* v. *Uttam*, (1999) 3 SCC 134: 1999 SCC (Cri) 393: AIR 1999 SC 1028: 1999 Cri LJ 1620.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *S. Rajendra Babu*, JJ. [Date of decision: 11-2-1999]

[11072] — Ss. 500 & 501 — Defamation of the Governor — *Essentials explained — Secretary to Government according the sanction — Authorization by the Governor before the sanction is essential — Governor cannot leave the decision relating to authorization to Government — Decision must first be taken by him — Thereafter he is free to accord or not to accord the sanction — Sanction by the Secretary without proper authorization is illegal and prosecution is without jurisdiction — CrPC, 1898, S. 198-B(3)(a). Gour Chandra Rout* v. *Public Prosecutor, Cuttack*, AIR 1963 SC 1198: 1963 Supp (2) SCR 447: (1963) 2 Cri LJ 194, 98.

Bench Strength **4**. Coram: *Syed Jafer Imam, K. Subba Rao, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 23-11-1962]

See fully CrPC, 1898, S. 198-B(3)(a)

[11073] — Ss. 500 and 501 r/w S. 34 — Transfer of criminal case — *Allegations in complaints filed at different places almost the same — Case should be tried by same court — Case remitted to High Court for directions accordingly — CrPC, 1973 — S. 407. P.R. Behere* v. *Ganpatrao Shrinivasrao Chavan*, 1990 Supp SCC 139: 1990 SCC (Cri) 540(1).

Bench Strength **2**. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 18-1-1988]

[11074] — Ss. 500/34 and S. 499 Exception 9 — Expression "acting or purporting to act in discharge of his official duty" — Test — *There must be a reasonable connection between the act and* *discharge of official duty — For this purpose allegations in complaint relevant — Counter-affidavit containing alleged defamatory statement filed by the accused, a Govt. officer, only as a defence to the allegations made in the writ petition in connection with transfer of the complainant — Held, accused was acting in discharge of his official duties — It is for the criminal court to decide the question of necessity of sanction — Opinion of sanctioning authority in this regard immaterial — CrPC, 1973 — S. 197*

The complainant was subordinate to the accused persons. He filed two writ petitions under Art. 226 of the Constitution in connection with his promotion and transfer. The accused persons filed counter-affidavit making certain averments. The complainant filed two complaints before the Chief Judicial Magistrate for offence under Ss. 500/34 IPC alleging that in the said counter-affidavit the accused persons had made defamatory statements. The Chief Judicial Magistrate took cognizance of the offence complained of and issued process and summoned the appellants to face the trial. The appellants filed two petitions under S. 482 CrPC in the High Court for quashing the complaints on the ground that the Chief Judicial Magistrate had no jurisdiction to take cognizance of the offence in the absence of any sanction under S. 197 CrPC by the Government and also on the ground that they were entitled to the benefit under the Ninth Exception to S. 499 IPC. The High Court dismissed both the petitions. Allowing the appeal,

Held :

The counter-affidavit was filed on behalf of the accused-appellants in their defence to the allegations made in the writ petition by the respondent. Therefore whatever imputations that have been made in the counter-affidavit were made certainly while acting or purporting to act in the discharge of the official duties. The imputations which according to the complainant amounts to defamation cannot in any manner be said to be not in connection with the official duty. The appellants made these alleged imputations only by virtue of their office while filing the counter-affidavit.

In order to apply the provisions of S. 197 CrPC two conditions must be fulfilled; one is that the offence mentioned therein must be committed by a public servant and the other is that the public servant employed in connection with the affairs of the Union or a State is not removable from his office save by or with the sanction of the Central Government or the State Government, as the case may be. The object of the section is to provide guard against vexatious proceedings against judges, magistrates and public servants and to secure the opinion of superior authority whether it is desirable that there should be a prosecution. If on the date of the complaint itself it is incumbent upon the court to take cognizance of such offence only when there is a previous sanction then unless the sanction to prosecute is produced the court cannot take cognizance of the offence. Naturally at that stage, the court taking cognizance has to examine the acts complained of and see whether the provisions of S. 197 CrPC are attracted. If the above two conditions are satisfied then the further enquiry would be whether the alleged offences have been committed by the public servant while acting or purporting to act in discharge of his official duties. If this requirement also is satisfied then no court shall take cognizance of such offences except with the previous sanction. For this purpose the allegations made in the complaint are very much relevant to appreciate whether the acts complained of are directly concerned or reasonably connected with official duties so that if questioned the public servant could claim to have done these acts by virtue of his office, that is to say, there must be a reasonable connection between the act and the discharge of official duties. It is in this context that the words "purporting to act in discharge of official duties" assume importance. The public servant can only be said to act or purporting to act in the discharge of his official duties if his act is such as to lie within the scope of his official duties. *Director of Inspection & Audit* v. *C.L. Subramaniam*, 1994 Supp (3) SCC 615: 1995 SCC (Cri) 121: AIR 1995 SC 866.

Bench Strength **2**. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 16-9-1994]

Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140; Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944; State of Maharashtra v. Dr. Budhikota Subbarao, (1993) 3 SCC 339: 1993 SCC (Cri) 901, followed

Hori Ram Singh (Dr.) v. Emperor, AIR 1939 FC 43: 40 Cri LJ 468: 43 CWN 50: 1939 FCR 159, approved

— **S. 501** *See also* Ss. 499, 500, 501 and 502 r/w S. 34

See also Ss. 500 and 501

— **S. 501 r/w S. 34** *See also* Ss. 500 and 501 r/w S. 34

— **S. 502 r/w S. 34** *See also* Ss. 324, 504 r/w S. 34

See also Ss. 499, 500, 501 and 502 r/w S. 34

— S. 503 *See also* Ss. 383, 384, 503 and 506
See also Ss. 499 and 503

[11075] — S. 503 — Prohibition against land grabbing — Scope of — *Held, the legislation deals with all types of land grabbing, whether the land is public or private — The Act is a self-contained code and provides for a comprehensive mechanism which is substantially different from previous legislation, namely, Andhra Pradesh Land Encroachment Act, 1905, for eviction of land grabbers and adjudication of related disputes without requiring parties to seek remedy before regular courts — The definition of land grabber also includes those who abet land grabbing or finance activity of land grabbing, etc. and successors-in-interest of land grabber — Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (12 of 1982), Ss. 2(d), (e) and 4* (Paras 12 and 20). *Mandal Revenue Officer* v. *Goundla Venkaiah*, (2010) 2 SCC 461.

Bench Strength **2**. Coram: **G.S. Singhvi** and *A.K. Ganguly*, JJ. [Date of decision: 6-1-2010]

Govt. of A.P. v. Thummala Krishna Rao, (1982) 2 SCC 134, relied on

Special Courts Bill, 1978, In re, (1979) 1 SCC 380, referred to

[11076] — Ss. 503, 506, 447 and 426 — Inherent powers of High Court — Exercise of, held on facts, was called for — Quashing of complaint filed against appellant by Respondent 3 — Complaint alleging that appellant abused Respondent 3 with name of his caste, demolished the compound wall of his plot, and intimidated him — *Held, according to S. 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view — When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law — Further, Respondent 3 was not even in possession of the suit property on the date of incident which fact had not been disputed — In such circumstances allegation made in the complaint, that the appellant demolished the wall are totally baseless and without any foundation — Criminal complaint was prima facie false and frivolous and filed with an oblique motive — Hence, High Court ought to have exercised its jurisdiction under S. 482 CrPC and quashed the complaint — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(1)(x) — CrPC, 1973 — S. 482* (Paras 3 to 6, 11 and 27). *Gorige Pentaiah* v. *State of A.P.*, (2008) 12 SCC 531.

Bench Strength **2**. Coram: *Dalveer Bhandari* and *J.M. Panchal*, JJ. [Date of decision: 20-8-2008]

Connelly v. Director of Public Prosecutions, 1964 AC 1254: (1964) 2 WLR 1145: (1964) 2 All ER 401 (HL); Director of Public Prosecutions v. Humphrys, 1977 AC 1: (1976) 2 WLR 857: (1976) 2 All ER 497 (HL); R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Roy V.D. v. State of Kerala, (2000) 8 SCC 590: 2001 SCC (Cri) 42; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259, considered and relied on

— S. 504 *See also* Ss. 302, 307, 143, 148, 504 and 149
See also Ss. 302, 323 and 504
See also Ss. 302, 452 and 504
See also Ss. 323, 504, 506, 117, 366-A and 373
See also Ss. 323, 506, 498-A, 307 and 504
See also Ss. 324, 427 and 504
See also Ss. 332, 353, 504 and 506
See also Ss. 341, 326, 504, and 506 r/w S. 34 and Ss. 324 and 325 r/w S. 34
See also Ss. 354, 323, 504 and 506
See also Ss. 406, 420, 468, 471, 504, 506, 382 and 120-B
See also Ss. 452, 323, 504, 506, 420

[11077] — S. 504 — Intentional insult to provoke breach of peace — Ingredients of offence — *Accused 1 and 2 who respectively were seller and purchaser of land, alleged to have asserted to complainant (who claimed to be real owner of property) that they would obtain possession of property under sale deeds and complainant could do whatever he wanted — Held, such an assertion did not amount to insult with intent to provoke breach of peace — Offence under S. 504 was therefore not made out* (Para 29). *Mohd. Ibrahim* v. *State of Bihar*, (2009) 8 SCC 751: (2009) 3 SCC (Cri) 929.

Bench Strength **2**. Coram: **R.V. Raveendran** and *R.M. Lodha*, JJ. [Date of decision: 4-9-2009]

[11078] — Ss. 504, 498-A and 406 — Anticipatory bail — *Factors to be taken into consideration for grant of, held, are the gravity of the offence and the need for custodial interrogation — The mere fact of taking of cognizance or filing of charge-sheet, held, is not by itself a bar against grant of anticipatory bail — Dowry Prohibition Act, 1961, Ss. 3 and 4 — CrPC, 1973 — S. 438*

The appellants herein were husband and wife. They were accused by their daughter-in-law of offences punishable under Sections 504, 498-A and 406 IPC and Sections 3/4 of the Dowry Prohibition Act. Their application for anticipatory bail under Section 438 CrPC was rejected by the Patna High Court. They filed the instant appeal by special leave. After hearing the parties the Supreme Court was inclined to grant the anticipatory bail but the respondent State raised a legal objection that since the trial court had taken cognizance of the offence, Section 438 could not be used for granting anticipatory bail even by the Supreme Court and the only remedy available to the appellants was to approach the trial court and surrender, and thereafter apply for regular bail under Section 439 CrPC.

Rejecting the State's objection and allowing the appeal,

Held :

The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of a charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. The courts i.e. the Court of Session, High Court or Supreme Court have the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 CrPC even when cognizance is taken or a charge-sheet is filed provided the facts of the case require the court to do so. (Para 7). *Bharat Chaudhary* v. *State of Bihar*, (2003) 8 SCC 77: 2003 SCC (Cri) 1953: AIR 2003 SC 4662.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198, explained

[11079] — Ss. 504 and 506 — Issue of process — Prerequisites as to — *Issuance of summons in relation to offences under Ss. 504 and 506 IPC, in absence of any reference or prima facie finding as to alleged threat in impugned order, held, not justified — Proceedings initiated in relation to those offences, quashed — CrPC, 1973, Ss. 204, 200 and 482*

In the order passed by the Magistrate, there is no whisper about the threat alleged to have been given by the appellant to the complainant nor the Magistrate recorded even a prima facie finding as to such threat. The High Court also, in the impugned order, does not refer to such intimidation. On the contrary, the High Court observed that the allegations were sufficient to summon the appellant for causing death of *F* under Section 304 IPC. Thus, on the facts and in the circumstances of the case, no summons could have been issued to the appellant for the commission of offences punishable under Sections 504 and 506 IPC. Hence, the proceedings initiated against the appellant for the offences punishable under Sections 504 and 506 IPC are quashed. (Paras 18, 19 and 38). *Mahadev Prasad Kaushik* v. *State of U.P.*, (2008) 14 SCC 479: (2009) 2 SCC (Cri) 834: AIR 2009 SC 125: (2008) 72 AIC 131 (SC): (2009) 1 ECrN 368 (SC): (2009) 1 All LJ 96.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 17-10-2008]

— S. 504 r/w S. 34 *See also* Ss. 323, 384, 504 r/w S. 34

See also Ss. 324, 504 r/w S. 34

— S. 504 r/w S. 149 *See also* Ss. 147, 148, 341, 504, 506, 324, 326 r/w S. 149

— Ss. 504/34 *See also* Ss. 341, 323, 504/34 and 120-B

— S. 505 *See also* Ss. 124-A and 505

— S. 505(2) *See also* Ss. 153-A and 505(2)

See also Ss. 153-A(1)(a) and (b) and 505(2)

— S. 506 *See also* Ss. 120-B, 420, 468, 471 and 506

See also Ss. 120-B r/w 326, 342, 417, 465, 473, 506 and 307

See also Ss. 302, 120-B, 307 r/w Ss. 149, 397, 147, 506 and 449

See also Ss. 302, 201 and 506

See also Ss. 302, 307, 148, 149, 364, 342, 506, 201 and 120-B

See also Ss. 302 and 506

See also Ss. 302, 506, 324, 426, 427, 435, 143, 144, 147 and 148

See also Ss. 302/34, 120-B and 506

See also Ss. 323, 34, 387, 498-A and 506

See also Ss. 323, 382, 420, 465, 468, 471, 120-B, 506 and 34

See also Ss. 323, 504, 506, 117, 366-A and 373
See also Ss. 323, 506, 427, 354 and 452
See also Ss. 323, 506, 498-A, 307 and 504
See also Ss. 332, 353, 504 and 506
See also Ss. 354, 323, 504 and 506
See also Ss. 363, 368, 506 and 507 r/w S. 34
See also Ss. 365/411, 494 and 506
See also Ss. 376, 120-B, 342 and 506
See also Ss. 376, 302, 304, 120-B, 354, 312, 343, 201, 506, 109 and 34
See also Ss. 376, 323, 342 and 506
See also Ss. 376, 354 and 506
See also Ss. 376, 366 and 506
See also Ss. 376, 375, 148, 452, 149, 342, 323, 366 and 506
See also Ss. 376, 375, 148, 452, 149, 342, 323 and 506
See also Ss. 376, 460, 325 and 506
See also Ss. 376 and 506
See also Ss. 376, 506 and 511
See also Ss. 376/149, 375, 148, 452, 342, 323, 366 and 506
See also Ss. 376(2)(g), 506, 149 and 148
See also Ss. 376(2)(g) and 506 Pt. II
See also Ss. 383, 384, 503 and 506
See also Ss. 384 and 506
See also Ss. 395, 447 and 506
See also Ss. 396, 506, 341 and 379
See also Ss. 406, 420, 468, 471, 504, 506, 382 and 120-B
See also Ss. 436, 447, 427, 147 and 506
See also Ss. 452, 232, 427, 506 and 147 to 149
See also Ss. 452, 323, 504, 506, 420
See also Ss. 498-A, 323 and 506
See also Ss. 498-A, 342, 506 and 406 r/w S. 34
See also Ss. 498-A, 406, 323, 506, 148 and 149
See also Ss. 498-A, 506 and 323
See also Ss. 503, 506, 447 and 426
See also Ss. 504 and 506

[11080] — S. 506 — Sentence — Trial Magistrate convicting appellant under Part II of S. 506, and directing his release under S. 4 of the Probation of Offenders Act on execution of personal bond of Rs 700 — Additional Sessions Judge releasing him by altering his conviction to that under Part I of S. 506, and awarding a fine of Rs 50 — *Whether Additional Sessions Judge can deprive benefit given by the trial Magistrate without any cogent reason*

Where the trial Magistrate released the appellant on probation of good conduct under S. 4 of the Probation of Offenders Act even though the appellant had been found to be guilty of the graver offence under Part II of Section 506, Indian Penal Code, the Additional Sessions Judge should not deprive the appellant of that benefit without some cogent grounds when the Additional Sessions Judge had partly allowed the appeal of the appellant and found him to be guilty of a lighter offence. *Ramnaresh Pandey* v. *State of M.P.*, (1974) 3 SCC 380: 1973 SCC (Cri) 1030: AIR 1974 SC 35: 1974 Cri LJ 153.

Bench Strength **3**. Coram: **H.R. Khanna**, *V.R. Krishna Iyer* and *R.S. Sarkaria*, JJ. [Date of decision: 28-9-1973]

[11081] — Ss. 506 and 384 — Appropriate sentence — *A-1 sentenced to SI for 1 year and fine of Rs 1000 for offence under S. 384, and to SI for 1 year and fine of Rs 500 for offence under S. 506 IPC, with default stipulation — A-1 aged about 83 years and suffering from various ailments and was under continuous medical supervision — Property which was subject-matter of dispute returned by him to complainant, and compensation amounting to Rs 50,000 in terms of High Court order also paid — Hence, instead of sentencing him to undergo substantive sentence, held, interest of justice would be satisfied if fine is increased from Rs 1000 to Rs 3000 under S. 384 and from Rs 500 to Rs 2000 for offence under S. 506* (Paras 24 and 25). *Karipi Rasheed Ahmed* v. *State of A.P.*, (2009) 17 SCC 515.

Bench Strength **2**. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 26-2-2009]

— S. 506 r/w S. 34 *See also* Ss. 341, 326, 504, and 506 r/w S. 34 and Ss. 324 and 325 r/w S. 34
See also Ss. 376, 342 and 506 r/w S. 34
— S. 506 r/w S. 120-B *See also* Ss. 306 and 506 r/w S. 120-B
— S. 506 r/w S. 149 *See also* Ss. 147, 148, 341, 504, 506, 324, 326 r/w S. 149
— Ss. 506/34 *See also* Ss. 307 and 506/34

[11082] — Ss. 506/452/323/34 r/w S. 120-B — Discharge — Private complaint — *Discharge of 3 out of 4 accused persons perusing same evidence against all of them — Propriety of — Trial court discharging all the accused persons (Respondents 1-4) against whom a complaint under Ss. 506/452/323/34 r/w S. 120-B IPC was filed by the petitioner's husband — Sessions Court dismissing* *petitioner's revision petition against Respondents 1-3, but allowing it only as against Respondent 4 — High Court upholding order passed by the courts below — Under the circumstances, when there was no justification to proceed against Respondents 1-3, held, courts below were justified in discharging them — Matter, held, was not liable to be interfered with under Art. 136 — Constitution of India, Art. 136 — CrPC, 1973 — Ss. 245, 227, 397 and 482*

The learned Additional Sessions Judge has considered both oral and documentary evidence. It is no doubt true that referring to the statements of the complainant and his wife, the learned Additional Sessions Judge has said that their evidence is positive. But, on scrutiny and after examination of evidence, both oral and documentary, he did not find any justification to proceed with the criminal case against Respondents 1-3. On perusal of the impugned order, it appears that the complainant was bearing some ill will against one of the respondents. It has also been pointed out that the names of Respondents 1-3 have not been anywhere mentioned by the complainant. Further, neither the medical examination has been got done nor the photographs of the alleged breaking of the door have been placed on the record. Under the circumstances, Additional Sessions Judge rightly dismissed the revision petition against Respondents 1-3 after considering both oral and documentary evidence. (Para 4). *Surjit Kaur* v. *D.S. Kapoor*, (2001) 9 SCC 468.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 28-9-2001]

— S. 506 Pt. II *See also* Ss. 34/302/324 and S. 506 Pt. II

See also Ss. 302, 307, 324, 323, 427, 453, 506 Pt. II, S. 147 r/w S. 149 and S. 148

See also Ss. 333, 506 Pt. II

See also Ss. 354, 452, 323, 506 Pt. II r/w S. 34

See also Ss. 376 and 506 Pt. II

See also Ss. 376(2)(g) and 506 Pt. II

See also Ss. 379, 468, 471, 420 and 506 Pt. II

See also Ss. 384 and 506 Pt. II

See also Ss. 395, 427, 506 Pt. II and S. 34

See also Ss. 448 and 506 Pt. II

See also Ss. 452, 354, 323, 506 Pt. II r/w S. 34

— S. 506-B *See also* Ss. 420, 467, 471, 323, 506-B and 120-B

— S. 507 r/w S. 34 *See also* Ss. 363, 368, 506 and 507 r/w S. 34

— S. 509 *See also* Ss. 354 and 509

[11083] — S. 509 — Insulting the modesty of a woman — Act of slapping on the posterior of a woman in the presence of a gathering comprising the elite of society, considered in the light of sequence of events involving overtures, words used and gestures made — *Held, prima facie constituted offence under S. 509. Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194: 1995 SCC (Cri) 1059: AIR 1996 SC 309.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-10-1995]

[11084] — S. 509 — Offence under — Ingredients of, restated — *Grievance with publication of a statement calling for social acceptance of premarital sex made by appellant, held, does not make out said offence*

I, a news magazine conducted a survey on the subject of sexual habits of people residing in the bigger cities of India. One of the issues discussed therein was the increasing incidence of premarital sex. Thereafter, the magazine published the views expressed by various persons, including the appellant, a well-known actress. Expressing her personal opinion, she noted the increasing incidence of premarital sex, especially in the context of live-in relationships and called for societal acceptance of the same. Subsequently, *D*, a Tamil daily reproduced the appellant's statement published in the said magazine. It added that in a conversation with its correspondent, the appellant had defended her views and stated: "The persons who are protesting against my interview, are talking about which culture? Is there anyone who does not know about sex in Tamil Nadu? Is there anyone who does not know about AIDS? How many men and women do not have sex before marriage?" The appellant, however, in a legal notice to the editor of the said daily denied the said statement.

Several persons and organisations, particularly functionaries of a political party PMK filed as many as 23 criminal complaints against the appellant for the offences contemplated under Sections 499, 500, 509, 153-A and 292 IPC read with Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986. Most of the complaints were filed in various districts of T.N. State while one was filed in M.P.

The appellant then approached Madras High Court under Section 482 CrPC seeking quashment of said proceedings. Taking the view that the questions involved in the complaints required consideration by a trial Judge, the High Court rejected the plea of the appellant. However, the High Court directed all the complaints to be consolidated and tried by *CJM* at *E*. Aggrieved thereby, the appellant filed the present batch of appeals by special leave.

Before the Supreme Court, the appellant contended that: (*i*) the respondent complainants were not "persons aggrieved" within the meaning of Section 199(1) CrPC and could not therefore maintain the complaints; (*ii*) the opinion expressed by the appellant was protected by Article 19(1)(*a*) of the Constitution; (*iii*) the allegations made in the complaints, even if taken on their face value, did not disclose any offence under the provisions specified therein; and (*iv*) the criminal proceedings were instituted in a mala fide manner by workers of a particular political party to vilify the appellant and gain undue political mileage.

The respondents supported the order of the High Court.

Allowing the appeals,

Held :

In order to establish the offence under Section 509 IPC it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act. Clearly this offence cannot be made out when the complainants' grievance is with the publication of what the appellant had stated in a written form. (Para 23). *S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *Deepak Verma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-4-2010]

[11085] — S. 509 — Validity — Conviction under, held, involves moral turpitude — *Hence where such conviction attained finality, although the amount of fine imposed was below Rs 2000, dismissal of the convict-worker from service, held, proper — Supreme Court's suggestion in* Pawan Kumar case *for making provision for not treating the punishment of fine up to Rs 2000 or so as conviction for entry and retention in government service not applicable to such a case — However, order of the Division Bench of the High Court modifying the order of dismissal to one of discharge with payment of gratuity left undisturbed — Further held, the Single Judge had erred in directing the reference under the ID Act for adjudication of the dismissal — Industrial Disputes Act, 1947, S. 10. J. Jaishankar* v. *Govt. of India*, (1996) 6 SCC 204: 1996 SCC (L&S) 1372.

Bench Strength **2**. Coram: *K. Ramaswamy* and *S.B. Majmudar*, JJ. [Date of decision: 14-8-1996]

Pawan Kumar v. State of Haryana, (1996) 4 SCC 17: 1996 SCC (Cri) 583, distinguished

— S. 511 *See also* Ss. 57 and Ss. 65, 116, 119, 129 and 511

See also Ss. 302, 376 and 511

See also Ss. 347, 161, 167, 385 and 511

See also Ss. 354 and 511

See also Ss. 375, 376 and 511

See also Ss. 376, 506 and 511

See also Ss. 376 and 511

See also Ss. 376 and 511 or S. 354

See also Ss. 376, 511, 363 and 366

See also Ss. 376, 511, 451 and 354

See also Ss. 376 r/w Ss. 302 and 511

See also Ss. 376(2)(f) and 511

See also Ss. 409 and 511

See also Ss. 420, 471, 474, 467, 468, 417 and 511

See also Ss. 498-A Expln. (a) and 511

[11086] — S. 511 — An attempt in order to be criminal need not be the penultimate act. *Lachman Singh* v. *State of Haryana*, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123: AIR 2006 SC 2763: 2006 Cri LJ 4041.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L. S. Panta*, JJ. [Date of decision: 28-7-2006]

Sarju Prasad v. State of Bihar, AIR 1965 SC 843: (1965) 1 Cri LJ 766; State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28: 1983 SCC (Cri) 320; Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863; Vasant Vithu Jadhav v. State of Maharashtra, (2004) 9 SCC 31: 2004 SCC (Cri) 1323; State of M.P. v. Saleem, (2005) 5 SCC 554: 2005 SCC (Cri) 1329, relied on

[11087] — S. 511 — Attempt — Smuggling of currency notes outside India

H and *G* were seen carrying a tin box near the Pakistan border on September 25, 1961 at a little distance from the village Valtoha, when a customs-cum-police raiding party reached there. *H* and *G*, having noticed the raiding party, turned round and started running towards the house of *H*. The raiding party entered the house and caught *H* and *G* in the act of concealing the box in a heap of wheat. In the tin box was found a sum of Rs 1,40,000 in 14 bundles of currency notes of Rs 100 each. *H* made a confessional statement. The Collector of Customs convicted the accused under S. 8(2), read with Ss. 23-A and 23-B of the Act and ordered the confiscation of the offending currency notes. He also imposed a penalty of Rs 5000 on *H* and Rs 500 on *G*, on the finding that the currency notes were clearly attempted to be exported illegally out of India.

Held, no doubt the appellant's contention was that his village was 10 miles away from the border but that fact was immaterial as long as other circumstances prove that an attempt had been made to smuggle out the currency.

There is ample independent evidence in this case that *H*, the appellant and *G* were seen together going towards the border with a tin case in their hands and when they saw the nakabandi they immediately turned round and ran away; they were chased into the house of the appellant where they found the appellant secreting the tin box in the heap of wheat in his house. These facts are sufficient to constitute an attempt by the appellant and *G* to smuggle the currency notes. *Hazara Singh* v. *Union of India*, (1973) 3 SCC 401: 1973 SCC (Cri) 312: AIR 1973 SC 62: 1974 Cri LJ 391.

Bench Strength **2**. Coram: **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 12-9-1972]

[11088] — S. 511 — Attempt and preparation — Distinction

There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if he fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence.

A person commits the offence of "attempt to commit a particular offence" when (*i*) he intends to commit that particular offence; and (*ii*) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence. *Abhayanand Mishra* v. *State of Bihar*, AIR 1961 SC 1698: (1962) 2 SCR 241: (1961) 2 Cri LJ 822, 824.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 24-4-1961]

In re Mac Crea, ILR 15 All 173; Queen v. Peterson, ILR 1 All 316; R. v. Padala Venkatasami, ILR 3 Mad 4: 1 Weir 543, approved

In re Riasat Ali, ILR 7 Cal 352: 8 Cal LR 752, In re Amrita Bazar Patrika Press, AIR 1920 Cal 478: 21 Cri LJ 98 and Queen v. Ramsarun Chowley, 4 NWP 46: 26 LJMC 134, overruled

In re Munirathamma Reddi, AIR 1955 Andb 118; 1955 Cri LJ 917, Limited

AIR 1959 Pat 328, affirmed

R. v. M'Pherson 1857 Dears & B 197 and R. v. Collins, (1864) 9 Coc. 497, dissented

Affirmed and applied in (1974) 3 SCC 357: 1973 SCC (Cri) 1007

[11089] — S. 511 — Attempt and preparation — Stages in commission of crime reiterated

There are different stages in a crime. First, the intention to commit it; second, the preparation to commit it; third, an attempt to commit it. If at the third stage, the attempt fails, the crime is not complete but the law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission. (Para 6). *Sagayam* v. *State of Karnataka*, (2000) 4 SCC 454: 2000 SCC (Cri) 819: AIR 2000 SC 2161: 2000 Cri LJ 3182.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **S. Rajendra Babu**, JJ. [Date of decision: 26-4-2000]

[11090] — S. 511 — "Attempt at evasion of any duty" — "Attempt" what constitutes — Compared with "preparation" — *On facts, "proved" that the accused attempted to export silver out of India by sea in contravention of FERA, 1973, Imports & Exports (Control) Act, 1947 and Customs Act, 1962 thus constituting offence within Section 135(1)(a) — Proof may be by direct evidence or by circumstantial evidence — Evidence Act, 1872 — S. 3 — Customs Act, 1962, S. 135(1)(a)*

At about midnight a jeep, driven by Respondent 1, and a truck stopped near a bridge at a creek and while the accused started removing some bundles from the truck and placing them aside on the ground, the customs officers who were following them on the basis of definite information, rushed to the spot and accosted the persons present there. At the same time, the sound of the engine of a mechanised seacraft from the side of the creek was heard by the officers. Thereafter, two residents of the area were called for and in their presence silver ingots were recovered from the two vehicles. Some ingots were also found near the footpath leading to the creek. From the personal search of Respondent 1, a pistol, a knife and currency notes were found. On questioning he gave false name and address. It was found that the accused were not dealers in silver. The trial Court convicted the accused under S. 135(1)(*a*) read with S. 135(2) of the Customs Act for attempting to smuggle out of India silver ingots worth about Rs 8 lakhs in violation of the Foreign Exchange Regulation Act, the Imports and Exports

(Control) Act and the Customs Act. But the Additional Sessions Judge acquitted them on the ground that the facts proved by the prosecution fell short of establishing that the accused had 'attempted' to export silver in contravention of the law. The High Court upheld the acquittal.

Held :

Per Sarkaria, J.

What constitutes an attempt is a mixed question of law and fact, depending largely on the circumstances of the particular case. Attempt defies a precise and exact definition. There is a distinction between 'preparation' and 'attempt'. Attempt begins where preparation ends. Broadly speaking, all crimes which consist of the commission of affirmative acts are preceded by some covert or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an offence. In the second stage, he makes preparations to commit it. The third stage is reached when the culprit takes deliberate overt steps to commit the offence. Such over act or step in order to be 'criminal' need not be the penultimate act towards the commission of the offence. It is sufficient if such act or acts were deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence. Such act must be an act during the course of committing that offence.

The penal provisions in the present case have been enacted to suppress the evil of smuggling precious metal out of India. Therefore, these provisions should be construed in a manner which would suppress the mischief, promote their object, prevent their subtle evasion and foil their artful circumvention. A narrow interpretation of the word "attempt", therefore, in these penal provisions, which will impair their efficacy as instruments for combating this baneful activity, has to be eschewed.

Thus construed, the expression "attempt" within the meaning of these penal provisions is wide enough to take in its fold any one or series of acts committed, beyond the stage of preparation in moving the contraband goods deliberately to the place of embarkation, such act or acts being reasonably proximate to the completion of the unlawful export. In the present case, beyond the stage of preparation, most of the steps necessary in the course of export by sea, had been taken. The only step that remained to be taken towards the export of the silver was to load it on a seacraft for moving out of the territorial waters of India. But for the intervention of the officers of law, the unlawful export of silver would have been consummated. The clandestine disappearance of the seacraft when the officers intercepted and rounded up the vehicles and the accused at the creek, reinforces the inference that the accused had deliberately attempted to export silver by sea in contravention of law.

The definition of 'proved' in S. 3, Evidence Act does not draw any distinction between circumstantial evidence and other evidence. The circumstances in the present case established such a high degree of probability that a prudent man ought to act on the supposition that the respondents were attempting to export silver from India in contravention of law. The circumstances are, therefore, sufficient proof of that fact in issue.

Accused-Respondent 1, is sentenced to suffer one year's rigorous imprisonment with a fine of Rs 2000 and, in default, to suffer six months' further rigorous imprisonment. Accused-Respondents 2 and 3 (the drivers and cleaners of the truck), are each sentenced to six months' rigorous imprisonment with a fine of Rs 500 and, in default to suffer two months' further rigorous imprisonment.

Per Chinnappa Reddy, J. (concurring)

In order to constitute 'an attempt' first, there must be an intention to commit a particular offence, second, some act must have been done which would necessarily have to be done towards the commission of the offence, and, third, such act must be proximate to the intended result. The measure of opportunity is not in relation to time and action but in relation to intention. In other words, the act must reveal, with reasonable certainty, in conjunction with other facts and circumstances and not necessarily in isolation, an intention, as distinguished from a mere desire or object to commit the particular offence, though the act by itself may be merely suggestive or indicative of such intention, but that it must be, that is, it must be indicative or suggestive of the intention.

The fact that the truck was driven up to a lonely creek from where the silver could be transferred into a sea-faring vessel was suggestive or indicative, though not conclusively, that the accused wanted to export the silver. It might have been open to the accused to plead that the silver was not to be exported but only to be transported in the course of inter-coastal trade. But, the circumstance that all this was done in a clandestine fashion, at dead of night, revealed, with reasonable certainty, the intention of the accused that the silver was to be exported. *State of Maharashtra* v. *Mohd. Yakub*, (1980) 3 SCC 57: 1980 SCC (Cri) 513: AIR 1980 SC 1111: 1980 Cri LJ 793: 1980 Cri LR (SC) 251.

Bench Strength **2**. Coram: **R.S. Sarkaria**[1] and **O. Chinnappa Reddy**[2], JJ. [Date of decision: 4-3-1980]

[11091] — S. 511 — Attempt or preparation — *Export of fertiliser bags from M.P. to Maharashtra without a valid permit — Trucks intercepted at sales tax barriers in M.P. eighteen miles from Maharashtra border — Invoices and other records seized from truck drivers confirming the despatch — Held it was a case of attempt to export fertilisers and not merely a preparation — Fertilizers (Movement Control) Order, 1973 — Essential Commodities Act, 1955 — Ss. 7 and 3*

In these cases two trucks carrying fertilisers without a valid permit were proceeding from Indore (MP) to Maharashtra. They were intercepted at sales tax barriers situate at a distance of 18 miles from the border of Maharashtra State. The documents seized from the truck drivers contained invoices and other records but they did not include a permit issued under the Fertilizers (Movement Control) Order, 1973. Consequently, the truck drivers, the cleaners and the coolies were prosecuted under the Fertilisers (Movement Control) Order, 1973 read with Ss. 3 and 7 of the Essential Commodities Act. In both the cases, the trial Magistrate held that the prosecution had failed to prove that the accused were attempting to export the fertilisers and he therefore acquitted them. On the State preferring appeals against acquittal under S. 378(3) CrPC, the High Court declined to grant leave.

Held :

In the commission of an offence there are four stages viz. intention, preparation, attempt and execution. The first two stages would not attract culpability but the third and fourth stages would certainly attract culpability. The respondents in each case were actually caught in the act of exporting fertiliser bags without a permit therefor from Madhya Pradesh to Maharashtra. If the interception had not taken place, the export would have become a completed act and the fertiliser bags would have been successfully taken to Maharashtra State in contravention of Fertiliser (Movement Control) Order. It was not therefore, a case of mere preparation viz. the respondents trying to procure fertiliser bags from someone or trying to engage a lorry for taking those bags to Maharashtra. They were cases where the bags had been procured and were being taken in the lorries under cover of sales invoices for being delivered to the consignees and the lorries would have entered the Maharashtra border but for their interception at the sales tax barrier. Surely, no one can say that the respondents were taking the lorries with the fertiliser bags in them for innocuous purposes or for mere thrill or amusement and that they would have stopped well ahead of the border and taken back the lorries and the fertiliser bags to the initial place of despatch or to some other place in Madhya Pradesh State itself. They were therefore clearly cases of attempted unlawful export of the fertiliser bags and not cases of mere preparation alone. *State of M.P.* v. *Narayan Singh*, (1989) 3 SCC 596: 1989 SCC (Cri) 670: AIR 1989 SC 1789. Bench Strength 2. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 25-7-1989]

[11092] — S. 511 — "Attempt to commit an offence" — Meaning — Distinguished from "intention to commit an offence" and "preparation to commit an offence" — *When does the said attempt commence, explained*

In every crime, there is first, intention to commit, secondly, preparation to commit it, thirdly, attempt to commit it. Thus, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. (Para 9)

An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. (Para 10)

An attempt to commit a crime is to be distinguished from an intention to commit it, and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under

Section 122 IPC (waging war against the Government of India) and Section 399 IPC (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt. (Paras 9 and 10)

Thus, an attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. (Para 9). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

[11093] — S. 511 — Attempt to commit an offence — Why made punishable — Explained

Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. (Para 8)

An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded. (Para 8). *Aman Kumar* v. *State of Haryana*, (2004) 4 SCC 379: 2004 SCC (Cri) 1266: AIR 2004 SC 1497: 2004 Cri LJ 1399.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-2-2004]

[11094] — S. 511 — "Attempt to commit an offence" — Why made punishable — Explained

Section 511 makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded. (Para 8). *Koppula Venkat Rao* v. *State of A.P.*, (2004) 3 SCC 602: 2004 SCC (Cri) 840: AIR 2004 SC 1874: 2004 Cri LJ 1804.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-3-2004]

[11095] — S. 511 — "Attempt" to commit crime — Meaning — When does the said attempt commence — *"Attempt" to commit crime distinguished from "intention" to commit crime and "preparation" to commit crime*

In every crime, there is firstly, an intention to commit, secondly, preparation to commit it, and thirdly, attempt to commit it. Thus, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. (Paras 8 and 9)

An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. (Para 10)

Thus, an attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. (Para 9)

An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 IPC (waging war against the Government of India) and Section 399 IPC (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt. (Paras 9 and 10). *Koppula Venkat Rao* v. *State of A.P.*, (2004) 3 SCC 602: 2004 SCC (Cri) 840: AIR 2004 SC 1874: 2004 Cri LJ 1804.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 10-3-2004]

[11096] — S. 511 — Conditions for applicability of S. 511 — "Attempt" to commit an offence is an essential condition — When the attempt itself constitutes an offence under IPC, S. 511 is not attracted

Section 511 makes attempt to commit an offence punishable. The offence attempted should be one punishable by the Code with imprisonment. The conditions stipulated in the provision for completion of the said offence are: (*1*) The offender should have done some act towards commission of the main offence. (*2*) Such an attempt is not expressly covered as a penal provision elsewhere in the Code. Thus, "attempt" on the part of the accused is the sine qua non for the offence under Section 511. (Paras 10 and 11)

In this case the act attributed to the appellants was that they asked the victim PW 5 to go to the rail track and commit suicide and that act was alleged to have driven her to proceed to the railway line on the next morning to be run over by the train. This act is expressly made punishable under Section 498-A IPC. That being so, the act involved therein stands lifted out of the purview of Section 511 IPC. The very policy underlying Section 511 seems to be for providing it as a residuary provision. The corollary, therefore, is that the accused, in this case, cannot be convicted under Section 511 on account of the acts alleged against him. (Para 12). *Satvir Singh* v. *State of Punjab*, (2001) 8 SCC 633: 2002 SCC (Cri) 48: AIR 2001 SC 2828.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 27-9-2001]

[11097] — S. 511 — Conviction for attempt to commit the main offence, though not charged — Applicability — Conviction for attempt to commit offence although attempt not separately charged — Maintainability — *Held, settled legal position is that if accused is charged of a major offence, but is not found guilty thereunder, he can be convicted of minor offence, if facts established indicate that such minor offence was committed — When a person is charged for an offence, he may be convicted of an attempt to commit such offence, although attempt is not separately charged — In the instant case, if it appeared to Court that S. 376 IPC was not applicable but a lesser offence under S. 376 r/w S. 511 IPC was made out, the Court was not prevented from taking recourse to and punishing accused for commission of such lesser offence — CrPC, 1973, S. 222* (Paras 17, 18 and 20). *Pandharinath* v. *State of Maharashtra*, (2009) 14 SCC 537: (2009) 80 AIC 240 (SC).

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 6-7-2009]

State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386: 1998 SCC (Cri)) 76; Tarkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, relied on

[11098] — S. 511 — Preparation and attempt — Attempt to cheat — *Accused making false representation to complainant that he could duplicate currency notes — Complainant delivering currency notes to accused — Held, offence of attempt to cheat complete*

In fact the making of the false representation is one of the ingredients for an offence of cheating under S. 420 of the Indian Penal Code. So also the delivery of property is another of such ingredients. Both these ingredients took place in this case and the accused brought them about. Therefore it cannot be said that the accused had only made a preparation and not an attempt to commit the offence. *Bashirbhai Mohamedbhai* v. *State of Bombay*, AIR 1960 SC 979: (1960) 3 SCR 554: 1960 Cri LJ 1383, 1384: 62 Bom LR 908.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **A.K. Sarkar**, JJ. [Date of decision: 19-4-1960]

[11099] — S. 511 — R. 2(3) and R. 3 read with Ss. 20 and 29 of A.P. Forest Act, 1967 — 'Forest produce in transit' — Meaning of — *Loading of 28 logs of red sanderswood and storage of 118 red sanderswood on the road margin for loading into the lorry covered — Distinction between preparation and completion of the act of forest offence bears no relevance — In absence of any permit issued by the competent authority, persons found in possession of such sanderswood rightly convicted* *by the trial court under R. 3 read with Ss. 20 and 29 — Confiscation of lorry also upheld — Forest Act, 1927, Ss. 26 and 41. State of A.P. — Andhra Pradesh Sandalwood and Red Sanderswood Transit Rules, 1969, R. 2(3) and R. 3 read with Ss. 20 and 29 of A.P. Forest Act, 1967. State of A.P.* v. *Korrapati Subrahmanyam*, 1995 Supp (1) SCC 483: 1995 SCC (Cri) 400: AIR 1995 SC 961.

Bench Strength **2**. Coram: *K. Ramaswamy* and *S.C. Sen*, JJ. [Date of decision: 13-1-1995]

Chennupati Vazeer v. State of A.P., (1980) 2 Andh LT 391, overruled

Govt. of A.P. v. C. Satyanarayana Raju, (1993) 1 Andh LT 147, approved

[11100] — Ss. 511 and 420 — Attempt and preparation — *On facts, held, the case to be one of attempt to cheat and not of mere preparation*

The appellant was an employee in charge of soda lime department of a company and co-appellant was the supplier of limestone to the said firm. Four bags of limestone were needed every day. The procedure in respect of the supply was that the co-appellant used to bring the bags to the appellant and present a challan to him. Thereupon he would send the challan to P.W. 2, who used to initial it and send it back to the appellant. Thereupon he would put a seal on it as also his signature and the co-appellant would present that challan to the concerned department and receive payment for the supply made.

The Managing Director of the company had heard certain complaints that the appellant was in the habit of signing the challan without actually receiving the goods. He therefore asked P.W. 2 to make a physical verification of the limestone to be received on March 4, 1968. On that day the appellant sent the challan to P.W. 2 for his signature through P.W. 3. P.W. 2 initialled it and went down to verify the stock. As the four bags of limestone were not there he asked the appellant who stated that the quantity received had been spent. On questioning, he changed his statement and said that he might have signed the challan through mistake. The co-appellant was then sent for and he denied having received any challan or having made any supply of limestone on that day. But when he was told that he would be sent to the police, he produced the challan which bore P.W. 2's initials. On these facts the prosecution was instituted and the conviction and sentence imposed.

Held, in the present case the challan had been prepared and the initials of P.W. 2 obtained. That was a most important and crucial step towards cheating. Towards this end both the accused cooperated. Thereafter it only remained for the appellant to affix the stamp and put his signature. Co-appellant could then have presented it to the company's office and received payment. This is a definite step towards the commission of the offence of cheating though it is not the penultimate step. The acts of the accused did not stop at the stage of preparation but had reached the stage of attempt. *Sudhir Kumar Mukherjee* v. *State of W.B.*, (1974) 3 SCC 357: 1973 SCC (Cri) 1007: AIR 1973 SC 2655: 1973 Cri LJ 1798.

Bench Strength **2**. Coram: *H.R. Khanna* and **A. Alagiriswami**, JJ. [Date of decision: 24-9-1973]

[11101] — Ss. 511/201 — Attempt to cause disappearance of evidence by issuing a false death certificate to facilitate cremation — *Accused, a doctor, issuing two death certificates — One showing doubt about cause of death and other disclosing a false cause of death — False certificate allegedly issued after dead body had been sent for post-mortem and a case of murder registered against the husband of the deceased — No evidence to show that such false certificate was used for facilitating the cremation or issued earlier — Held, even assuming that the false certificate had been issued by the accused, no case of attempt to commit an offence under S. 201 made out. Balai Chandra Biswas* v. *State of W.B.*, (1994) 1 SCC 423: 1994 SCC (Cri) 536: AIR 1994 SC 914: 1994 Cri LJ 1035.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *N. Venkatachala*, JJ. [Date of decision: 12-10-1993]

— Ss. 511/376 *See also* Ss. 302 and 511/376

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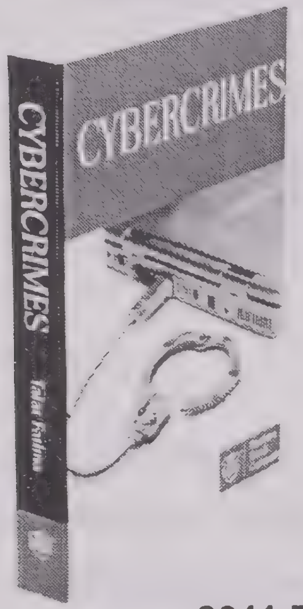

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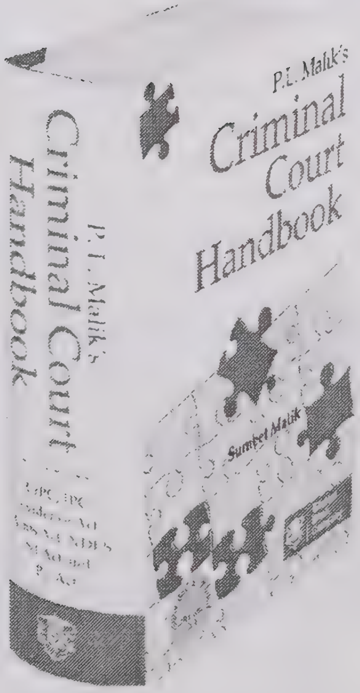

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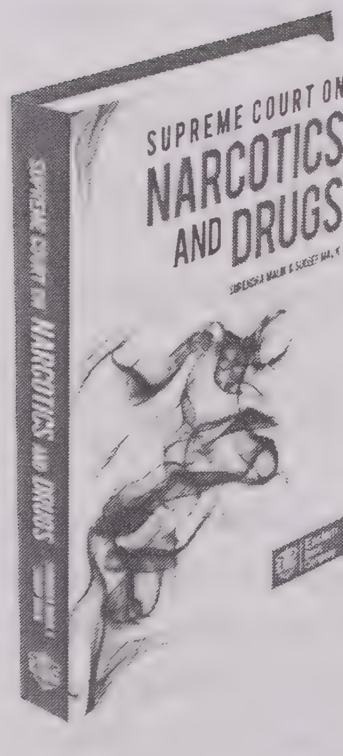

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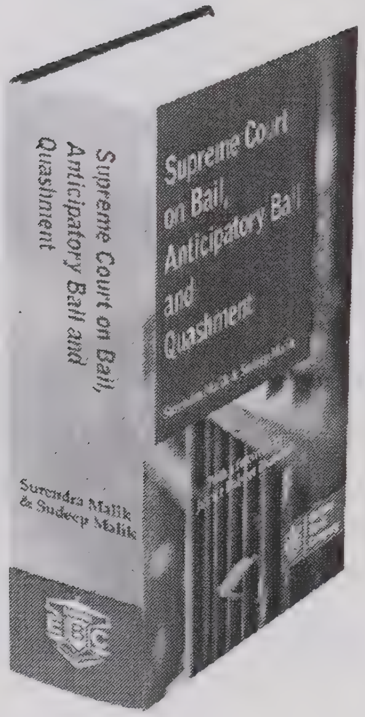

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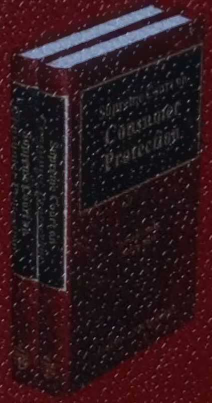

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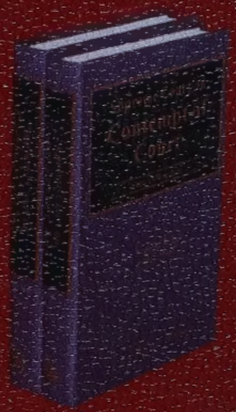

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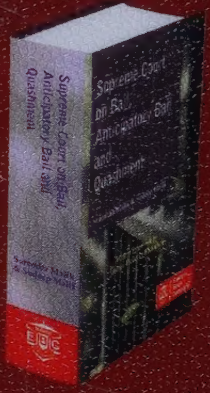

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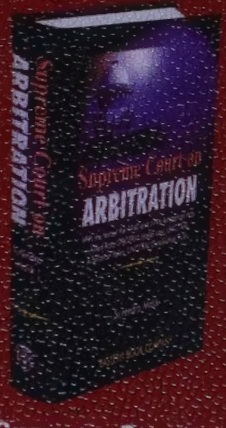

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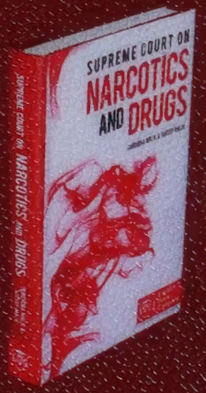

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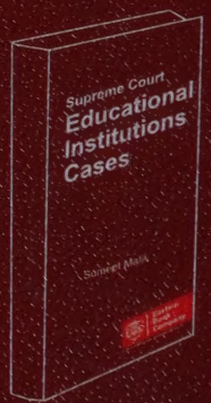

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